



## The Collector's ITEM

A 10-year celebratory collection of ITEM Cross-Border Impact Assessments  
*10 years of expertise*





**ITEM**  
Cross-border

10 years  
of expertise



Maastricht University

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The *Institute for Transnational and Euregional cross-border cooperation and Mobility / ITEM* is the pivot of scientific research, counselling, knowledge exchange, and training activities with regards to cross-border cooperation and mobility.

ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Euregio Meuse-Rhine (EMR), and the Dutch Province of Limburg.



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euregio

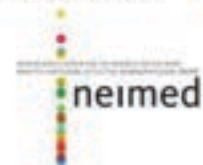
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## Foreword

10 years of ITEM! A milestone with results to be proud of. Proud of my employees of the ITEM core team who have deployed their knowledge, expertise and skills with passion and drive. ITEM's core values are 'knowledge – connecting – collaboration'. You will find all of this in this contribution, which includes all 51 ITEM Cross-Border Impact Assessments from 2016 to 2023 in abbreviated form and an insight into the upcoming 6 ITEM Cross-Border Impact Assessments from 2024.

The choice of topics for the dossiers is determined by the social issues at stake. Characteristics of ITEM is that the institute has one foot in society and the other in science. By connecting with players in the social field, ITEM can determine the substantive course and use the available knowledge. We work in anticipation as much as possible in order to be able to make a substantive contribution early in processes. As soon as things become clear, cooperation is sought. Of course, we work together with our colleagues and students from Maastricht University. These are researchers from various disciplines, faculties, institutes, but also students who have been able to delve deeper and work on cross-border issues through 'PREMIUM' projects. In that way ITEM also tries to involve the new generation. We also collaborate with external colleagues from other Dutch and foreign knowledge institutions. We are indebted to Martin Unfried, Dr. Lavinia Kortese, Dr. Nina Büttgen and Susanne Sivonen for ensuring that everything went smoothly methodologically and organizationally.

Over the past 10 years, social developments have led to creating ITEM Cross-Border Impact Assessments in the following 8 domains:

1. Labour Market & Economy
2. Healthcare and Welfare
3. Mobility and Infrastructure
4. Security and Safety
5. Energy transitions and Climate
6. Euregional Governance and collaboration
7. Pension, Taxation and Social security
8. Living environment and broad prosperity in the border region

The separate ITEM Cross-Border Impact Assessments have often been used to substantiate the development of legislation and regulations, to clarify issues and thus provide input for solutions, but also to bring social players together substantively who can take joint steps. Over the past ten years, cross-border impact analyzes have proven to be a very useful instrument for making a substantive contribution to solving cross-border issues.

I would like to thank all researchers, and everyone involved in the Cross-Border Impact Assessment Working Group for their dedication and cooperation during all these years.

*July 2024*

**Prof. Dr. Anouk Bollen-Vandenboorn**

Director ITEM – Institute for Transnational and Euregional cross border cooperation and Mobility

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## 1. The Collector's ITEM – 10 years of ITEM Cross-Border Impact Assessments

*Martin Unfried, Susanne Sivonen, Pim Mertens*

You are reading the Collector's ITEM – a celebratory collection of the past 10 years of ITEM Cross-Border Impact Assessments. As one of ITEM's core tasks, with these assessments, ITEM strives to give insight into the effects of new legislation and policy on border regions and on how existing law and policy affect border regions. Through its Cross-Border Impact Assessment, ITEM offers a valuable resource for policy makers at the regional, national and European level when they make decisions concerning border regions. In particular, these annual impact assessments support the identification of existing or future (cross-)border effects and thereby contribute to the political debate. Moreover, the results of the individual dossier research also allow timely adjustments to be made to legislative proposals during their adoption phase. By doing so, ITEM contributed to the academic debate on developing sound but practical methodologies with respect to ex ante regulatory impact assessment. In a broader sense, this also corresponds to the needs of territorial impact assessment, with the understanding that cross-border territories are a very specific territory. Meaning, that ITEM's experiences from the impact assessment practice could also be of value for territorial effects on other type of territories (islands, outermost regions, etc.).

Since its creation in 2015, by 2025 ITEM will have effectively conducted a total of 57 Cross-Border Impact Assessments. The assessments encompass a diverse range of themes, including cross-border labour markets, healthcare, mobility and infrastructure, security, energy transition, social security, pensions and taxation, Euregional governance, and broad prosperity in border regions. The successful completion of these assessments in the past decade is for the most part owed to the efforts of the Maastricht University researchers (and partner institutes) involved, providing valuable research on the effects of legislation and policy on border regions.



In the past decade, the ITEM Cross-Border Impact Assessment methodology has received recognition on both European and national level. A milestone for ITEM's activities in the field of regulatory impact assessment for border regions<sup>1</sup> has been the fact that the Dutch Government has made the

<sup>1</sup> ITEM has long voiced its support and expressed the need for more Cross-Border Impact Assessments to be carried out in the Netherlands at several Dutch Ministries. M. Unfried and L. Kortese, 'Cross-border impact assessment as a bottom-up



“Guidelines on cross-border effects” (*leidraad grenseffecten*) an obligatory quality requirement integral to the official Integrated Impact Assessment Framework (IAK) (now: *Beleidskompas*) for policy and legislation.<sup>2</sup> The Ministry of Interior and Kingdom Relations had already drawn up this document (with recommendation status) in 2019 following the advice and input by ITEM in collaboration with several Dutch ministries. It is published on the web page of the *Beleidskompas*.<sup>3</sup> Meanwhile, the quality requirement has been pointed out several times by both Parliament and the Council of State.

Already early on, ITEM’s methodology had been recognised a best practice by the European Commission’s Directorate-General for Regional and Urban Policy (DG Regio) in its 2017 Communication *Boosting growth and cohesion in EU border regions*.<sup>4</sup> As ITEM keeps advising the Dutch Government and other authorities on the implementation and enhancement of the Cross-Border Impact Assessment methodology, it also continues to cooperate with the European Commission and other EU institutions. In 2021, the European Commission has recognised this working group as well as the Dutch governmental guidelines as a best practice, too, for improving the legislative process in the context of enhancing policy on border regions.<sup>5</sup> In the same report, the Commission also promotes adopting a ‘single’ territory-perspective on cross-border labour markets, a view that ITEM has been advocating for many years.<sup>6</sup>

The experiences in conducting cross-border impact assessments are now being used and deployed by ITEM to inspire and inform other regions and institutions. In the context of Franco-German cooperation, more specifically the Aachen Treaty, ITEM has, together with the Euro-Institut and MOT, published an advice for a border impact assessment and a cross-border process in the fall of 2022. The project was exploring options for an appropriate border impact assessment in the context of Franco-German cooperation, more specifically Article 14 of the Aachen Treaty. In the meeting of 23 October 2023, the Ausschuss für grenzüberschreitende Zusammenarbeit (AGZ) decided to act upon this report by setting up a special working group for border effects assessment. In June 2024, ITEM and the Dutch Ministry of Interior and Kingdom Relations presented the Dutch approach and recent experiences to a special German-French working group on regulatory impact assessment for border regions. Recently, also the Flemish government has shown interest in the method as well during the Flemish-Dutch summit of January 2023.

Looking ahead, ITEM will continue to map the effects of international, European, national and regional legislation and policy in its Cross-Border Impact Assessments. The Expertise Centre is dedicated to

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tool for better regulation’ in: J. Beck (ed.), *Transdisciplinary discourses on cross-border cooperation in Europe*, EUROCLIO vol. 107, Peter Lang, Brussels, 2019, pp. 463-481.

<sup>2</sup> On 6 June 2020, a motion to that effect by Dutch Parliamentarian Van der Molen (et al.) got a majority of the votes in the plenary. See the respective Parliamentary letters on Progress of cross-border cooperation from the State Secretary for the Interior and Royal Relations (April 2021) on <https://www.tweedekamer.nl/kamerstukken/detail?id=2021D16100>; and <https://www.tweedekamer.nl/kamerstukken/detail?id=2021D11846> (last accessed 31 August 2021).

<sup>3</sup> See <https://www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving/7-wat-zijn-de-gevolgen/76-grenseffecten>.

<sup>4</sup> COM(2017) 534 final, Brussels, 20 September 2017.

<sup>5</sup> COM(2021) 393.

<sup>6</sup> *Ibid.* at 9.

developing<sup>7</sup> its impact assessment methodologies further and is looking forward to doing so in cooperation with its partners, stakeholders and researchers.

## 1.1. Need for Cross-Border Impact Assessments

The idea behind ITEM Cross-Border Impact Assessments is that cross-border effects should ideally be assessed at all levels: European, national and regional. Considering the large number of (cross-)border regions and the diversity of their characteristics, there is only so much European and national level impact assessments can map. This gives rise to the need for supplementary small-scale and bottom-up Cross-Border Impact Assessments conducted by competent actors in specific border regions. These in-depth border specific impact assessments could, in turn, contribute to national and European evaluations identifying the cross-border impact of legislation and policy.

Various instruments aimed at the assessment of cross-border effects exist at the European and national levels. Examples of such initiatives include the European Commission's Regulatory Impact Assessment<sup>8</sup>, the ESPON Territorial Impact Assessment, and the Impact Assessment Toolkit for cross-border cooperation of the Euro-Institut and the Centre for Cross Border Studies. Each of these initiatives has a different focus and objective. ITEM's regulatory Cross-Border Impact Assessment is complementary to such existing evaluations. This complementarity of ITEM's report mainly consists of its particular focus on a designated border region.

Conducting in-depth and border-specific impact assessments may be difficult at the European and even at the national level due to the great differences that exist among European border regions. A 2016 study commissioned by the European Commission highlights the needs of border regions according to their particular features and shows the extent to which border regions differ from one another.<sup>9</sup> Therefore, the existing differences in border regions complicate the exercise of European level Cross-Border Impact Assessments. At the same time, suggesting that in-depth and border specific impact assessments be carried out at the national level by line ministries may also be a difficult proposition, as the diversity of border regions may also be large at the national level. Germany, for example, has nine neighbouring countries comprising numerous cross-border territories.

Despite these challenges, plenty of action is undertaken at the European and the national levels to tackle them. For example, ITEM experts have been involved in DG Regio and ESPON projects, which aim at improving the methodologies for EU level Territorial Impact Assessments focused on cross-border territories. ITEM experts have also published the method in the handbook 'Territorial Impact Assessment'.<sup>10</sup> When looking at the national level in the Netherlands, ITEM is further assisting the

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<sup>7</sup> In this context, ITEM has collaborated with UHasselt, RWTH Aachen and ULiège in the INTERREG EMR Crossquality project, which is developing a border effects methodology to understand the effects of the INTERREG programme on the quality of cross-border cooperation.

<sup>8</sup> Since april 2024, ITEM is partner of a project led by the Dutch government on the question how to improve territorial impact assessment at the EU and national level, with the involvement of other Member States.

<sup>9</sup> SWECO et al., Collecting solid evidence to assess the needs to be addressed by Interreg cross-border programmes (2015CE160AT044) Final Report 2016, European Commission.

<sup>10</sup> Unfried, M., Kortese, L., & Bollen-Vandenboorn, A. H. H. (2020). The bottom-up approach: Experiences with the impact assessment of EU and national legislation in the German, Dutch and Belgian cross-border regions. In E. Medeiros

Dutch government in reviewing how to improve its own policy assessments with regard to border effects. Since 2021, the assessment of border effects is an obligatory part of the general Dutch regulatory assessment scheme, which since 2023 has been converted into the Beleidskompas.<sup>11</sup> Commissioned by the Ministry of Interior, ITEM has developed a guidance document and ITEM is active with organising workshops with governmental officials to discuss the methodology and practical aspects of a cross-border impact assessment. ITEM is in this regard also responsible for the annual monitoring of border effects by the different departments and the final evaluation of the application of the border impact assessment.

Together with partners of the TEIN network of cross-border institutes, ITEM has been discussing possibilities to establish a network of partners who will also conduct assessments in their own cross-border territories.<sup>12</sup> To advance this idea, the 2020 Cross-Border Impact Assessment included an ITEM-TEIN joint study on border effects in several cross-border regions in Europe for the first time. In 2024, ITEM and TEIN continued to join their forces on another Impact Assessment focusing on facilitating cross-border solutions across European cross-border regions. The 2021 edition also saw already productive collaboration.

## 2. Composing the ITEM Cross-Border Impact Assessment: Process and Method

### 2.1. The Impact Assessment Process

Despite the diverse ranges of themes, researchers of the Cross-Border Impact Assessment each apply the methodology developed by ITEM. The research for the impact assessment comprises three stages (see figure 1 below). In the first stage, the topics to be included in that year's impact assessment are identified by means of a survey which allows stakeholders and other interested parties to inform ITEM about legislation and policy having potential cross-border effects. Apart from this survey, topics are also identified following ITEM's core activities in the annual cycle, among others, when conducting research, undertaking counselling activities, knowledge exchange and trainings. During the second stage, the Cross-Border Impact Working Group assesses the suggested topics. During this assessment phase, the working group (consisting of representatives of partner organisations) focuses on the topicality of the issue, the relationship to ITEM's research focus, the number of requests submitted and the frequency of the issue. Once the topics have been identified, the third step will commence with the selected researchers embarking on their respective impact assessment studies. This research is documented in separate dossiers, which together form the ITEM Cross-Border Impact Assessment of that year.

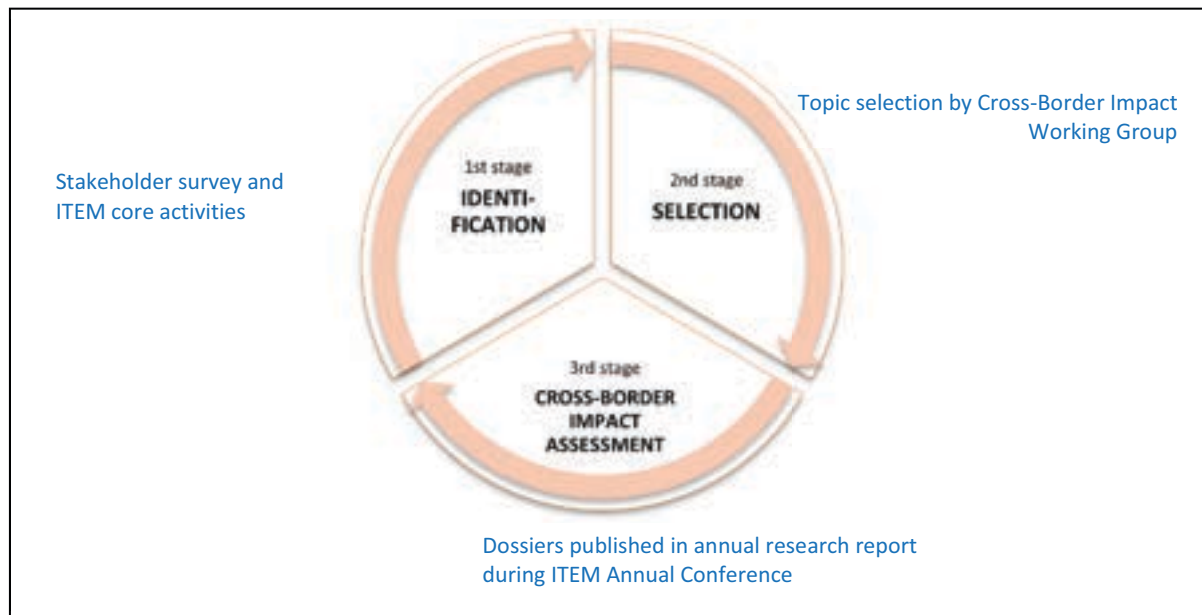
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(Ed.), *Territorial Impact Assessment, Advances in Spatial Science* (pp. 103-121). Springer International Publishing. [https://doi.org/10.1007/978-3-030-54502-4\\_6](https://doi.org/10.1007/978-3-030-54502-4_6)

<sup>11</sup> The guidance document can be found on the official site of the Dutch government, i.e. the Integrated Impact Assessment Framework (IAK) for policy and legislation (see Annex): <https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/beleidskompas/achtergrond-beleidskompas/verplichte-kwaliteitseisen/grenseffecten>.

<sup>12</sup> The Transfrontier Euro-Institut Network (TEIN), formed in 2010, brings together 15 partners from 9 border regions in Europe. Its unique feature is that it consists of universities, research institutes and training centres which are dedicated to the practical business of cross-border cooperation in Europe. See: <http://www.transfrontier.eu/>. In October 2019 and October 2020, two TEIN workshops were dedicated to cross-border impact assessment.

Figure 1: The ITEM Cross-Border Impact Assessment Cycle



## 2.2. Applying the Method

### Demarcating the Research – What is a Border Region?

Researchers taking part in the Cross-Border Impact Assessment follow the same methodology developed by ITEM, which begins with the definition of the border region. As mentioned above, ITEM aims to fill the existing gap calling for more border specific impact assessments. The borders forming the topic of analysis of the ITEM Cross-Border Impact Assessment are the cross-border areas surrounding the borders of the Netherlands, Belgium and Germany. This concerns a broad definition relating to the whole of the impact assessment. Different topics may call for a different definition of the border. Therefore, this definition will be refined further in the individual dossiers of this report, as appropriate to the subject. The idea underlying this dossier-based definition of the border is that general observation reveals few if any

Figure 2: Cross-border partnerships BE/NL/DE/LU  
Source: DG Regio



generic causes of the cross-border effects. These issues are rooted in the national implementation of European law, the level of coordination between the neighbouring countries and the way in which certain national legislation or policy is shaped.

Furthermore, it is important to stress that ITEM strives to maintain a truly cross-border perspective in relation to the border region (as opposed to a national one). The choice for such a perspective is a deliberate one, as it avoids the focus being placed on the national perspective. The rationale behind this choice is to avoid a bias favouring one nation's perspective on a certain matter as opposed to representing a genuinely cross-border perspective. In order to represent this perspective as much as possible the starting point for the ITEM Cross-Border Impact Assessment is not only the border region of the Netherlands, Belgium and Germany, but especially the cross-border Euregions located within that area.

In view of the successful initiation of this method, ITEM remains keen to advance the Cross-Border Impact Assessment-methodology. One ambition is to apply the method also in other border regions across Europe and, thereby, enhance its complementary role vis-à-vis regulatory impact assessments conducted at EU level. Whilst endeavouring to establish a network of partners conducting research dossiers in their own cross-border territories through the Cross-Border Impact Assessment, ITEM is also actively working with partners assessing the impact for other border regions. For example, a joint project between ITEM, Euro-Institut and MOT on a border impact assessment in the Franco-German cooperation was conducted in the fall of 2022. These joined studies offer a unique opportunity to apply and test the methodology of the ITEM Cross-Border Impact Assessment throughout other parts of Europe in close collaboration with our partners equally specialised in cross-border research. In that regard ITEM also often exchanges experiences of border effect assessment with Flemish partners.

Another avenue to engage more regions in border assessment is ITEM's cooperation with the Committee of the Regions. The CoR has established a Reghub network. The intention is to gather a group of regions that are ready to evaluate EU legislation and policy and assess the impact on regional policies. In cooperation with the Reghub secretariat, ITEM contributes to the development of a Reghub questionnaire where it formulates specific questions in relation to border effects.

Furthermore, ITEM devotes itself actively to dissemination of the accumulated experience and methodology. During the European Week of Regions and Cities 2023, ITEM and the Secretariat General of the Benelux Union organised a workshop on the topic. The border effects methodology was also presented during the workshop organised by TEIN.

### *Identifying the Central Research Themes, Principles, Benchmarks, and Indicators*

Cross-border effects come in many shapes and forms. The ITEM Cross-Border Impact Assessment focuses on three overarching themes for which cross-border effects are analysed:

- **European integration:** the cross-border impact of certain legislation and policy from the perspective of individuals, associations, and enterprises correlated with the objectives and principles of European Integration (i.e. freedoms, citizenship, and non-discrimination);
- **Socioeconomic/sustainable development:** the cross-border impact of legislation and policy on the development of the economy in the border region;
- **Euregional cohesion:** the cross-border impact of legislation and policy on cohesion and cross-border governance structures in border regions (e.g. cooperation with governmental agencies, private citizens, the business sector, etc.).

The first theme concerns the potential impact of legislation on individuals living and working in cross-border regions. Dossiers focused on European integration consider questions such as the extent to which certain legislative or policy measures violate or foster the principles of non-discrimination and free movement.

Researchers focusing on the socioeconomic/sustainable development of certain measures adopt a different angle. Their research focuses on questions related to the functioning of the cross-border and Euregional economy and society.

Finally, researchers may also ask what cross-border effects a certain measure has on Euregional cohesion, meaning cooperation between institutions, business contacts, and the mind-set of cross-border activities amongst citizens. Such aspects play an important role in the assessment of the relationships between the institutions and governance of Euregions.

Table 1: Examples of principles, benchmarks, and indicators

Research themes	Principles	Benchmark	Indicators
<b>European integration</b>	European integration, European citizenship, Non-discrimination	No border controls, open labour market, facilitated recognition of qualifications, adequate coordination of social security facilities, taxes	Number of border controls, cross-border commuting, duration and cost of recognition of diplomas, access to housing market, etc.
<b>Socioeconomic /Sustainable development</b>	Regional competitive strength, Sustainable development of border regions	Cross-border initiatives for establishing companies, Euregional labour market strategy, cross-border spatial planning	Euregional: GDP, unemployment, quality of cross-border cluster, environmental impact (emissions), poverty
<b>Euregional cohesion</b>	Cross-border cooperation/Good Governance, Euregional cohesion	Functioning of cross-border services, cooperation with organizations, coordination procedures, associations	The number of cross-border institutions, the quality of cooperation (in comparison to the past), development of Euregional governance structures, quantity and quality of cross-border projects

Dossiers may focus on one of these themes, or all of them, depending on the relevance of the theme for their topic, the scope of their research and the availability of necessary data. The research for the ITEM Cross-Border Impact Assessment is not only focused on sources stemming from legislation and policy, but also on empirical data, focus groups, interviews and background talks.

After selecting the research themes pertaining to their dossier, researchers identify the principles relevant to their dossier. These principles subsequently provide the basis for defining benchmark criteria (i.e. what would the ideal situation look like) and ultimately indicators used to review whether legislation or other rules might facilitate or impede best practices. Table 1 above provides examples for principles, benchmarks and indicators for the three research themes of the ITEM Cross-Border Impact Assessment.

The themes do not reveal any specific ranking. Their order depends on the nature of the topic and to what extent it is approachable from all three perspectives. Lack of data or useful qualitative inferences may lead to excluding a theme from the discussion. The choice is left to the individual researchers and how they may weigh each theme within their narrative.

### 3. Political and societal impact of the ITEM Cross-Border Impact Assessments in the past decade

Throughout the past decade, ITEM Cross-Border Impact Assessments have been able to provide a basis for further action and research aimed at improving cross-border mobility and cooperation. Here, a reference is made to selected dossiers and their political and societal impact.

Already the 2017 and 2018 assessments provided a broad basis for action. The Dossiers on Social Security led to follow-up actions. For instance, ITEM provided input to the European Parliament rapporteur on the Posted Worker's Directive. In the case of the dossier on different retirement ages, Belgian cross-border workers who worked in the Netherlands, faced a financial gap at the age of 65 in the case of unemployment due to the later retirement age in the Netherlands. The Belgian legislator corrected that in December 2018 and made it possible that affected employees could receive unemployment benefits also after they reached the age of 65 (*Koninklijk Besluit d.d. 12 december 2018*). ITEM has also developed follow-up activities with respect to the social security of non-standard work in cross-border situations. The Committee for Social Affairs and Employment (SZW) of the Dutch Senate in summer 2019 sent a letter the Dutch Minister for Social Affairs pleading towards the Government for dealing with concrete cross-border problems that specifically frontier workers are facing in daily life. The Committee warned, for instance, about the lack of cross-border coordination between social security- and tax regimes. The ITEM Cross-Border Impact Assessment has provided the backbone to this plea. The dossier of 2019 on the effects of the Dutch Act on the Legal Status of Civil Servants also resulted in parliamentary questions of the Committee. Additionally, the Administrative Jurisdiction Division of the Dutch Council of State ruled that denying cross-border workers access to DigiD constitutes discrimination. This court case, prepared with the help of the ITEM Expertise Centre, directly contributed to the Dutch government reviewing its access policy to online public services.

Furthermore, the legal analysis included in the ITEM Cross-Border Impact Assessment dossier on the German car toll proposal of 2017, in turn, partly contributed to the decision of the Netherlands to join Austria in a claim against Germany before the Court of Justice of the European Union. In line with ITEM's analysis, in June 2019, the Court found that the infrastructure use charge, in combination with the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany, constitutes indirect discrimination on grounds of nationality and was in breach of the principles of the free movement of goods and of the freedom to provide services (Case C-591/17 Austria v German). Following ITEM's conclusion in the 2018 assessment of the German "*Baukindergeld*" (Housing grants for buyers) that it was likely that cross-border workers working in Germany but living abroad would have to be eligible for the German grant. In July 2019, Pascal Arimont, a Belgian Member of the European Parliament, formulated a related question to the Commission (E-002147-19) based on the same assumption. The background was, that on 7 March 2019, the Commission decided to send a reasoned opinion to Germany in response to its refusal to grant another benefit, the *Wohnungsbauprämie* (housing premium) to cross-border workers. Whether these grants may be extended to cross-border workers even if the property is outside Germany became a subject of assessment.

The dossier of 2018 on the cross-border effects of the increase of the low VAT rate in the Netherlands was often referred to in parliamentary letters when it comes to cross-border effects of changes in VAT



rates or excise duties. As to the research results of the Cross-Border Impact Assessment of 2020, ITEM organised three (online) workshops in the second half of the year. The first joined impact assessment project conducted together with three other cross-border research institutes - Euro-Institut Kehl, Centre for Cross-border Studies in Northern Ireland and the B/ORDERS IN MOTION-Center of Viadrina University in Frankfurt/Oder - gained particular prominence. This joined study examined the effects of the national COVID-19 crisis management on particular cross-border regions. It also served as a successful test of applying the methodology developed by ITEM in other cross-border regions in the EU. First results were presented at an official event of the European Days of Regions and Cities in Brussels, co-organized by ITEM and its partner institutes from the TEIN network.<sup>13</sup> ITEM and the TEIN-partners later presented the full study in an international workshop in November 2020, discussing the results amongst others with the European Commission and a member of the Provincial-Executive of the Dutch Province of Limburg.<sup>14</sup> A third online workshop also gathered several dozen participants, with whom ITEM discussed the research results of the remaining 2020 dossiers.<sup>15</sup>

Another dossier from 2020, too, generated immediate follow-up: The study on the implementation and possible effects of the Dutch Strategy on Spatial Planning and the Environment (NOVI) from a Euregional perspective. Continuing the collaboration with our partners at Fontys, ITEM followed suit with research on the potential cross-border options for informing the Dutch Province of Limburg's strategic planning in relation to the NOVI. This in turn has led to ITEM's membership in a corresponding thematic working group chaired by the Limburg Province and the city region Parkstad.

As to the research results of the Cross-Border Impact Assessment of 2021, ITEM's COVID-19 dossier on crisis management and its effects on the Euregio Meuse-Rhine received a lot of media attention and generated written questions to the Provincial Government as to the development of the crisis response. The dossier derives from ITEM's research efforts together with colleagues from Leiden University and the Ockham IPS Institute as part of the INTERREG Pandemic project. The Pandemic project produced three in-depth studies, on cross-border crisis response, cross-border ambulance transport and cross-border procurement.<sup>16</sup> The research resulted in multiple contributions in articles, essays, and presentations. Worthy of mentioning is for example the working visit of the Temporary Committee Corona of the Dutch House of Representatives in January 2023 during which ITEM presented and discussed the results of the COVID-19 dossier.<sup>17</sup>

In a scientific sense, the dossier and Pandemic research provided a starting point for a larger research project. Under the NWO program 'National Science Agenda: Research on Routes by Consortia' (NWA ORC), the research proposal 'Borders in Times of Crisis: Challenges and Chances' (BITOC) was initiated by ITEM. In this application, ITEM brought together researchers, policymakers, stakeholders, and

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<sup>13</sup> TEIN-ITEM workshop on cross-border impact assessment (with a special focus on Coronavirus crisis management) as part of the (web) sessions of the DG Regio Open Days in October 2020. See also the presentation of M. Unfried 'Effects on Cross-border territories: The blind spot of regulatory impact assessment' at the TEIN Annual Conference 'Assessing impact across borders' (incorporating the Centre for Cross Border Studies' Annual Brussels Policy Seminar), Brussels, 10 October 2019.

<sup>14</sup> See <https://www.maastrichtuniversity.nl/events/item-online-workshop-20nov2020-crisis-border-regions-first-wave>

<sup>15</sup> See <https://www.maastrichtuniversity.nl/nl/events/item-online-workshop-04dec2020-item-grenseffectenrapportage-2020?view=overlay>

<sup>16</sup> The studies can be found here: <https://pandemic.info/wp3-studies-and-legal-advice/>

<sup>17</sup> <https://www.tweedekamer.nl/nieuws/kamernieuws/tijdelijke-commissie-corona-brengt-werkbezoek-aan-zuid-limburg>

other societal actors across the Dutch national border with Germany and Belgium for research on border region resilience. The application did not make it to the final stage, but resubmission is planned. The BITOC proposal also focuses on the results of the 2021 Healthcare dossier. The dossier was further cited in the publication "Cross-Border Patient Mobility in Selected EU Regions" by AEER for the European Commission.<sup>18</sup>

One dossier that received particular attention is the 2021 dossier on working from home. Several media reports covered the dossier.<sup>19</sup> In addition, the dossier study was published and cited in several professional journals and magazines.<sup>20</sup> The dossier also received political and policy follow-up. As a result of the publication, Parliamentary questions were raised, with responses indicating that the report would be used in shaping future policy.<sup>21</sup> The ITEM study was also cited in the SER Advice on the Future of Hybrid Work, which also forms the basis of Dutch policy.<sup>22</sup> ITEM Expertise Centre itself has also taken several follow-up actions on this issue, not only in 2022 but also in 2023. On 14 June 2023 the B-Solutions workshop took place, organised by ITEM, GIP Aachen/Eurode and AEER, in cooperation with the Benelux Union, in the context of a B-Solutions project financed by DG REGIO. With a focus on the border regions between Germany, the Netherlands and Belgium, the workshop examined solutions in the field of teleworking, cross-border working, taxes and issues regarding social security, examined how these issues can be solved within new frameworks on both an EU and national level and discussed the role of the most important organisations for implementing earlier made recommendations.<sup>23</sup>

Dossiers from 2022 were also followed up sufficiently. The dossier on the cross-border energy transition for example resulted in multiple mentions in news articles. It furthermore constituted the beginning for follow-up in multiple projects such as the Euregional Sustainability Center<sup>24</sup> with Fontys Venlo and a scientific Horizon Europe application. The fireworks dossier from 2022 also attracted media attention and the provided directions of solutions are now on the list of bottlenecks to be solved of the Administrative Border Region Consultation between the Netherlands and Flanders.

Next to political and hands-on follow-up that the ITEM Cross-Border Impact Assessment methodology generates, it also provided publicity and further traction for ITEM's border impact assessment methodology.<sup>25</sup> The concept of ITEM's approach on regulatory government led to an article for the

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<sup>18</sup> [https://health.ec.europa.eu/publications/cross-border-patient-mobility-selected-eu-regions\\_en](https://health.ec.europa.eu/publications/cross-border-patient-mobility-selected-eu-regions_en)

<sup>19</sup> Such as Zoals L1 (27-12-2021), L1mburg Centraal: thuiswerkproblemen voor grenswerkers, <https://1.nl/l1mburg-centraal-thuiswerkproblemen-voor-grenswerkers-168630/>; FD (19-11-2021), Grenswerkers de klos als zij ook na corona blijven thuiswerken, <https://fd.nl/economie/1420109/grenswerkers-de-klos-als-zij-ook-na-corona-blijven-thuiswerken>.

<sup>20</sup> Verschuieren H. The Application of the Conflict Rules of the European Social Security Coordination to Telework During and After the COVID-19 Pandemic. *European Journal of Social Security*. 2022;24(2):79-94.

doi:[10.1177/13882627221107042](https://doi.org/10.1177/13882627221107042); Mertens, P. (2022). De veelzijdige impact van thuiswerken voor grensarbeiders. *Pensioen Magazine*, 2022(3), 11-15; Weerepas, M. J. G. A. M. (2021). Grenswerkers na de crisis: aanpassing regelgeving vereist? *Vakblad Grensoverschrijdend Werken*, 2021(43), 3-9; Mertens, P. (2022). Grenzen aan grensarbeid. *Thema Hoger Onderwijs*, 2022 (3).

<sup>21</sup> <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2021Z21404&did=2021D50692>

<sup>22</sup> <https://www.ser.nl/-/media/ser/downloads/adviezen/2022/hybride-werken.pdf>, p. 88.

<sup>23</sup> <https://crossborderitem.eu/succesvolle-workshop-wegwerken-van-belemmeringen-voor-grensoverschrijdend-telewerken/>

<sup>24</sup> <https://sustainabilitycenter.eu/>

<sup>25</sup> N. Büttgen, 'Cross-border impact assessment: a bottom-up tool for better regulation and more cohesion' in "Bliżej Brukseli" ("Closer to Brussels") – Special Issue on Cross-Border Cooperation, e-magazine of the Malopolska Region (PL)

latest handbook on “Territorial Impact Assessment” edited by Prof. Eduardo Medeiros (Instituto Universitário de Lisboa) and published by Springer in 2020.<sup>26</sup> In 2022, the peer-reviewed publication of "Cross-Border Impact Assessment for EU's Border Regions" appeared in the European Journal of Law Reform, discussing ITEM's methodology, border effects and implications for EU policy.<sup>27</sup> Furthermore, ITEM has co-organised a EU Regions Week workshop on "Evaluation and assessment of EU policies: how to strengthen the voice of cross-border regions?", together with the European Committee of the Regions (CoR) on 13 October 2021. It thus actively promotes the development of the Committee's "Fit for Future platform" as an essential tool for regional input into EU policy assessment and evaluation. On the same line, the CoR's Regional Hub network (RegHub) is a recent approach to better integrating the expertise of regional administrations. The workshop served to examine how RegHub can include cross-border perspectives.<sup>28</sup>

Out of the dossiers of the 2023 edition, ITEM's work on broad prosperity indicators from a cross-border perspective will have a follow-up. The impact assessment illustrated that the measurement applied under the framework of the Dutch approach of broad prosperity (brede welvaart) does have some shortcomings if it comes to border regions. Today, data from the other side of the border are not included, meaning that institution like hospitals, universities, etc. or cross-border interactions are not part of the measurement. The findings were presented and discussed with experts and stakeholders at the Dutch national network broad prosperity (Nationaal Netwerk Brede Welvaart). With CBS and others, ITEM is part of a working group looking into the possibility to get a better picture of the situation in border regions by including cross-border data.

#### 4. Upcoming ITEM Cross-Border Impact Assessments 2024

Based on the annual cycle, ITEM is continuing its work on its Cross-Border Impact Assessments. For the year of 2024, ITEM has selected six topics. The final reports will be published during the ITEM Annual Conference on 22 November 2024. The table below provides an overview of the research topics of the ITEM Cross-Border Impact Assessment 2024 dossiers.

No	Title	Description
1	<b>Opportunity analysis: European cross-border impact assessment and cohesion policy for border regions</b>	Articles 174 and 175 TFEU stress the importance of territorial cohesion in addition to social and economic cohesion. Nevertheless, the status quo regarding the development of border regions is not enough. On the one hand, the development of border regions is not adequately addressed and facilitated, on the other hand, policies do not sufficiently take into account the position of border regions. The European Commission's 2021 Communication 'Joining forces to make better laws' recognises the need to improve its own Impact Assessment by including, among other things, the perspective of border regions. It is also clear from the European Commission's various Cohesion Reports that border regions have been hit disproportionately hard by COVID measures, among other things. There is a

Brussels Office, 2019, No. 26, pp. 10-13: [https://issuu.com/blizejbrukseli/docs/26.\\_closer\\_to\\_brussels\\_-\\_cross-border\\_cooperation](https://issuu.com/blizejbrukseli/docs/26._closer_to_brussels_-_cross-border_cooperation).

<sup>26</sup> E. Medeiros (ed.), Territorial Impact Assessment, Springer International Publishing, 2020: <https://www.springer.com/de/book/9783030545017>.

<sup>27</sup> Martin Unfried, Pim Mertens, Nina Büttgen e.a. , 'Cross-Border Impact Assessment for EU's Border Regions', (2022) European Journal of Law Reform 47-67

<sup>28</sup> See <https://cor.europa.eu/en/events/Pages/ewrc-evaluation-eu-policies.aspx>.

		certain 'border blindness', which calls for better place-based policy and legislation. For EU policies and legislation, there is an Impact Assessment Toolkit. One of the tools is the Territorial Impact Assessment, which however is not mandatory and therefore not always applied. With the ongoing renewals of the Cohesion Policy, this analysis looks at how EU policy can and should better take into account cross-border regions and which actors should be equipped to do so.
2	<b>Facilitating cross-border solutions across European cross-border regions (ITEM-TEIN study)</b>	On 12 December 2023, the European Commission published the proposal to amend the Regulation on a European Cross-border Mechanism (ECBM). The proposed Regulation will be updated to Facilitating Cross-border Solutions. The aim is to better address border obstacles and, potentially, provide ad hoc solutions. To this end, the regulation establishes national and/or regional Cross-border Coordination Points, designated for better structuring of border obstacles. This case study assesses the effects on border regions in Europe. Some countries already have collaborations and structures, others do not yet. How does the impact differ between border regions? Together with TEIN partners, several border regions are examined and compared.
3	<b>Benelux Police Treaty</b>	On 1 Oct 2023, the new Treaty between Belgium, Luxembourg and the Netherlands on police cooperation entered into force (BENELUX Police Treaty for short). This happened more than five years after the treaty was signed in 2018. The treaty replaces the 20-year-old 2004 treaty on cross-border police action. The question is, in terms of border effects, can this treaty be seen as a particular milestone in border-regional crime fighting? Does it lead to more or better trans-regional cohesion in the border region? Does the treaty contribute to European integration in the area of societal security? How groundbreaking is the Benelux Police Treaty compared to, for example, the 2004 Benelux Police Treaty, the Prüm Treaty, or the Mutual Legal Assistance in Criminal Matters Treaty when it comes to border-regional cooperation in crime fighting? Will the Police Treaty be more effective in border regions than the latter agreements? Based on comparing the above-mentioned treaties, interviews with relevant experts and an analysis of parliamentary documents. Literature and media reports, an attempt will be made to answer the above-mentioned questions.
4	<b>Cross-border Impact of Cannabis-Gesetz (PREMIUM-student study)</b>	On 1 April 2024, the Cannabis-Gesetz is due to enter into force in Germany. The bill legalises cannabis under certain conditions, such as a limit of 25 grams and a maximum of three cannabis plants in the home. It should also allow sales under the umbrella of cannabis clubs. This dossier looks at the border effects of the Cannabis-Gesetz between Germany and the Benelux countries, with a focus on the Netherlands and Belgium. What does this mean for Dutch border municipalities and coffee shops, for example? How do the Netherlands-Germany border regions compare with Belgium-Germany? A multidisciplinary PREMIUM team of master students is conducting the research.
5	<b>The Impact of recent EU legislation in the field of EU industrial policy on border regions</b>	This dossier will assess the impact of EU industrial policy with a view on border regions. It will analyse the current EU strategies on industrial policy and in particular the recently negotiated legislative proposals. <ul style="list-style-type: none"> <li>• European Commission, Proposal for a regulation establishing a framework for ensuring a secure and sustainable supply of critical raw materials, 16 March 2023, COM(2023) 160</li> <li>• European Commission, Proposal for a regulation on establishing a framework of measures for strengthening Europe's net-zero</li> </ul>

		<p>technology products manufacturing ecosystem ('Net Zero Industry Act'), COM(2023)161</p> <ul style="list-style-type: none"> <li>European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence, 2022/0051 (COD) COM/2022/71 final</li> </ul> <p>In December 2022, the European Council underlined the importance of an ambitious European industrial policy to make the economy fit for the green and digital transitions and reduce strategic dependencies. The Commission then tabled a communication entitled 'A Green Deal Industrial Plan for the Net-Zero Age' in February 2023 to speed up the net-zero transformation of industry and set Europe on the path towards climate neutrality. Accordingly, the Commission made a proposal for a "critical raw materials act" for the future of EU supply chains. New rules would aim to: increase and diversify the EU's critical raw materials supply, strengthen circularity, including recycling, support research and innovation on resource efficiency and the development of substitutes strengthen the EU's strategic autonomy. In February 2024, the Council and the European Parliament reached a provisional deal on the net-zero industry act. These new rules will facilitate the conditions for investments in green technologies by: simplifying permit granting procedures, supporting strategic projects, based on specific criteria contributing to decarbonisation, facilitating access to markets for net-zero technological products, defining rules for public incentives and enhancing the skills of the European workforce. The objective is to cover 40% of the EU's needs in strategic technology products, such as solar photovoltaic panels, wind turbines, batteries and heat pumps.</p> <p>On 23 February 2022, the Commission published a legislative proposal for a Directive on corporate sustainability due diligence. The proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains. Companies would be required to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment, for example pollution and biodiversity loss.</p> <p>What are the specific effects of these proposals for industry in Dutch, German and Belgian border regions. Are there specific aspects that are positive or negative if it comes to industrial activities and investment close to the border and with respect to the business relation in the proximity?</p>
6	<p><b>New Netherlands-Belgium tax treaty: an ex-ante assessment</b></p>	<p>On 21 June 2023, the Netherlands and Belgium signed the new tax treaty. This treaty replaces the 2001 treaty. The new tax treaty is important to prevent double taxation, combat abuse and it resolves some ongoing bottlenecks under the current treaty, including for teachers, professors and athletes and artists. However, other (long-term) bottlenecks, such as taxation of cross-border pensions and home working by frontier workers, have remained untouched. The treaty will be accompanied by a joint explanatory memorandum in due course. After that, the treaty can enter into force; that is expected to be in 2025. This file looks at the ex-ante effects of the new tax treaty for the Dutch-Belgian border region.</p>

## 5. The Collector's ITEM – A reader's guide

This Collector's ITEM presents the summaries of ITEM Cross-Border Impact Assessments from years 2016 until 2023. Full reports of the assessment can be found consulting the ITEM website: [www.crossborderitem.eu](http://www.crossborderitem.eu). The assessments of 2024 are to be published in the upcoming ITEM Annual Conference on 22 November 2024.

The summaries of ITEM Cross-Border Impact Assessments are organised in the following Annex in reverse chronological order, starting from the year 2023. For a thematic overview of the assessments, please consult the following tables.

<b>Labour market and economy</b>		<b>page</b>
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<b>2021</b>	Impact analysis into the future of working from home for cross-border workers post-COVID-19	76
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<b>2017</b>	Cross-border mobility of third-country national students in the Euregio Meuse-Rhine	164
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<b>2023</b>	Transnational Infrastructure projects: Ambitions, sectors, instruments and effect on border regions	28
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<b>2024</b>	Benelux Police Treaty	<i>To be published in 2024</i>
<b>2022</b>	Cross-border exchange of information in the fight against organised crime (ex-ante)	60
<b>2022</b>	Border effects of the Dutch fireworks prohibition (ex-ante)	63

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<b>2020</b>	Implementation and possible effects of the Dutch Strategy on Spatial Planning and the Environment (NOVI) from a Euregional perspective	104
<b>2020</b>	Ex-ante evaluation of the (potential) cross-border impact of the structural reinforcement programme to end coal-based power generation in Germany	107
<b>2019</b>	Cross-border effects of the EU Nitrates Directive and manure quotas between the Netherlands and Germany	135

<b>Euregional governance and collaboration</b>		<b>page</b>
<b>2024</b>	European cross-border impact assessment and cohesion policy for border regions	<i>To be published in 2024</i>
<b>2024</b>	Facilitating Cross-border Solutions – proposed EU Regulation	<i>To be published in 2024</i>
<b>2021</b>	The effects of national Corona crisis management on cross-border crisis management in the Euregio Meuse-Rhine (follow-up study)	81
<b>2019</b>	‘European Cross-Border Mechanism’ (ECBM) – An ex-ante evaluation of cross-border impact for resolving border obstacles in Belgian, Dutch and German border regions	128
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<b>Pension, taxation and social security</b>		<b>page</b>
<b>2024</b>	New Netherlands-Belgium tax treaty: an ex-ante assessment	<i>To be published in 2024</i>
<b>2023</b>	<i>Kinderzuschlag</i> and <i>Kindgebunden budget</i> : The border worker falls between two stools?	35
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<b>2019</b>	The qualifying foreign taxpayer obligation (“90% rule”) – An ex-post impact assessment	122
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2018	Schemes relating to retirement ages in NL/BE/DE: a multidisciplinary analysis	144
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2019	Cross-border data monitoring – a real challenge	133
2018	Exploration of the cross-border impact of an increase in the low VAT rate in the Netherlands	138
2018	The potential effects of the ‘ <i>Experiment gesloten cannabisketen</i> ’ on the Euregions Meuse-Rhine and Rhine-Meuse-North (Student dossier)	154



## 6. Collection of ITEM Cross-Border Impact Assessment summaries 2016-2023

### Summaries Cross-Border Impact Assessments 2023

#### Dossier 1: Euregional Barometer: broad prosperity from a cross-border perspective

Joint research collaboration with socio-economic Knowledge Institute NEIMED

*Dr. Inge Hooijen (NEIMED)*

*Pim Mertens (ITEM)*

#### Introduction

Worldwide, the idea of measuring and promoting prosperity at regional and national levels in the broad sense is gaining attention. Over the years, “Brede Welvaart” (Broad Prosperity) has become an important concept in the Netherlands at the national, provincial and local levels. In several provinces, party manifestos explicitly refer to steering towards broad prosperity, the ITEM reflection showed.<sup>29</sup> Indeed, even in the provincial coalition agreements, broad prosperity, and more specifically broad prosperity in and for the region, has a central place.<sup>30</sup> Regional broad prosperity is also central to the advisory report 'Every region counts' by three advisory councils, the Council for the Environment and Infrastructure (Rli), the Council for Public Health & Society (RVS) and the Council for Public Administration (ROB). In this publication, the advisory councils note significant regional differences and recommend investing in regional broad prosperity. Border regions in particular come off particularly badly. "There is a lack of targeted investment in structural solutions to specific issues that put residents of border regions at a disadvantage."<sup>31</sup> It therefore calls for more attention to border-specific features and opportunities across the border. The Cabinet's response to the advisory report also agrees: "*For instance, in the case of regions on the border, it is important to take into account their location and the opportunities and challenges that this border location can bring. Looking at our border regions from the air, one sees a contiguous area full of villages and towns, offices and businesses and a finely-meshed infrastructure full of roads, railway lines and paths. People travel back and forth to work, study or have a day out. We don't see the border itself from the air. But it is there.*"<sup>32</sup>

For border regions, it is important to also focus on cross-border opportunities and to approach the border region not only from the national perspective but also from the cross-border perspective: that is, instead of a border region, the *cross-border* region. This file focuses on the cross-border perspective of Broad Prosperity in border regions. The results of this study are based on a literature study and interviews with 10 participants (researchers and policy officers) in an online (group) interview, as well as based on qualitative data from 16 participants in a workshop "Steering for Impact: Broad Prosperity

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<sup>29</sup> ITEM Reflection: Provincial Council Elections from a Cross-Border Perspective.

<sup>30</sup> ITEM Reflection: Coalition agreements in the border provinces.

<sup>31</sup> Rli, RVS & ROB, 2023, p. 47.

<sup>32</sup> Minister Bruins Slot (BZK), Parliament letter with cabinet response to advisory report Every region counts!, 12 July 2023, <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/07/12/kabinetsreactie-op-het-adviesrapport-elke-regio-telt>, p. 4. Own translation.

in border regions" held during the Two-Day Conference of the National Network Broad Prosperity, 27 and 28 September 2023.

### Broad Prosperity

In late 2015, the United Nations (UN) adopted the Sustainable Development Goals (SDGs).<sup>33</sup> The SDGs cover 17 goals with themes ranging from poverty reduction to sustainable consumption and production, and from health to the environment. UN member states have committed to these goals, with voluntary periodic reporting on national implementation by member states. For instance, neighbouring countries the Netherlands, Germany and Belgium all report periodically on development within the SDGs. The Netherlands was also already moving towards the concept of 'Broad Prosperity'.<sup>34</sup> Broad prosperity includes everything people consider of value.<sup>35</sup> Besides material prosperity (including gross domestic product), it also includes immaterial prosperity (welfare) such as the living environment, social cohesion, health and safety. In the Netherlands, Broad Prosperity is measured by various monitors, based on various indicators and spread across different domains. This involves objective and subjective aspects, as well as different dimensions: in time ('now' versus 'later') and in space ('here' versus 'elsewhere').<sup>36</sup> The dimensions have been defined internationally, in cooperation with UNECE, Eurostat and OECD, in a statistical framework: *CES Recommendations for measuring sustainable development*.<sup>37</sup> Since 2019, CBS has been monitoring Broad Prosperity in combination with the SDGs. To this end, a structured set of indicators has been developed by CBS, based on the above framework.<sup>38</sup> This data is also available and translated regionally through CBS' Regional Monitor Broad Prosperity.<sup>39</sup> The data is objective and subjective in nature. On the basis of the Regional Monitor Broad Prosperity, a response is given annually by the government. Region Deals are also considered in conjunction with it. However, the Regional Monitor Broad Prosperity is currently limited in measurement and assessment to the administrative country borders. However, this is not necessarily the case for the subjective data. For instance, indicators on satisfaction with life or with the living environment can also include aspects beyond the national border. Objective indicators such as natural area per inhabitant, distance to pubs etc. and to sports grounds are currently not cross-border.

However, for regional broad prosperity and its steering, it is important to look at the region in context. That is, there may be interregional relationships and effects.<sup>27</sup> For instance, the presence of a certain facility, such as a theatre or hospital, in a nearby municipality may affect the broad welfare of residents of another municipality. Similarly, policy measures in one municipality may affect the broad welfare in another. Effective policies therefore require an adequate picture of the region and the interregional interactions that exist. This varies by topic and also by region. For instance, the scale of 'the region' is different for someone when it comes to work (commuting) than to a visit to a pub or theatre.

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<sup>33</sup> VN, 2015.

<sup>34</sup> PBL, SCP & CPB, 2017.

<sup>35</sup> Maas & Lucas, 2017, p. 9.

<sup>36</sup> Ibid, Horlings & Smits, 2019, p. 13.

<sup>37</sup> UNECE, 2014.

<sup>38</sup> CBS, 2021 & 2022.

<sup>39</sup> <https://www.cbs.nl/nl-nl/visualisaties/regionale-monitor-brede-welvaart> 27 Thissen & Content, 2022.

## Evaluation research themes: Broad prosperity in a cross-border region

Broad prosperity thus forms a framework, consisting of aspects that are important for people's well-being, both in the 'here and now' and 'elsewhere' and 'later'. Formulating policies to promote broad welfare is essentially about making trade-offs within this framework.<sup>40</sup> Particularly relevant from a cross-border perspective is also the 'elsewhere' dimension, i.e. how policies in one region can affect the neighbouring region. This interregional effect is not only within national borders, but also cross-border. Examples of such border effects can be found in previous Cross-Border Impact Assessments.

However, there is currently insufficiently complete picture of the cross-border region and the interactions that exist across borders. Current objective indicators such as the so-called proximity indicators do not take into account what is present across the border. A quick win for the Dutch border regions is therefore to include these facilities across the border in the Regional Broad Prosperity Indicators. With this, there can also be distinguished differences between border regions, depending on the accessibility and presence of facilities across the border. However, the presence of facilities across the border does not necessarily actually increase broad prosperity. Indeed, an additional level of complexity concerns the extent to which these cross-border facilities are actually used. This is influenced by several factors, which may also be related to the border itself. Language, culture, legislative differences and accessibility by public transport, for example, can be factors that influence whether or not residents actually cross the border for certain facilities or work. It is therefore important not only to arrive at this **cross-border data**, but also to better understand **cross-border interactions**. It is crucial to examine how broad prosperity is affected by specific geographical locations and to identify which issues need to be addressed across borders. Understanding what happens across borders is not only important, but also how easily people can access it, which is often influenced by regulatory differences. Considerable differences exist between border regions, but these also vary by domain. It is therefore important not only to analyse different cross-border regions, but also to include the various domains in the analysis.

With regard to cross-border data, steps are already being taken. For instance, the REGIONS2030 project, which seeks to establish a European framework of indicators for regional SDGs through pilot regions, will come to an end at the end of 2023. This could already benefit the comparability of some data across borders. CBS's previously launched Border Data initiative also contributes to a better picture of cross-border mobility and interactions. It is very important that efforts to map statistics for border regions are continued and sustainably arranged, especially as a basis for policy-making. Many factors come into play in solving problems and developing effective policies, and data serves as a starting point to explore and understand what will and will not work.

However, to date, comparability of data leads to international rankings rather than to a better understanding of welfare in a cross-border region. In conclusion, the case study therefore reflects on steering for broad prosperity in the region in policy. This has priority and attention for policymakers at national and regional levels. However, steering for broad welfare implies a trade-off of different effects. For instance, policies in one region can affect the other region, in both positive and negative ways. To achieve better steering for the cross-border region, it is important to also arrive at a Euroregional trade-off. In doing so, it is possible that the impact on one side of the border is negative, but the broad prosperity for the Euroregion as a whole is positively promoted. From a policy

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<sup>40</sup> Weterings, Van der Staak, Daalhuizen, Evenhuis, Thissen, Verwoerd, 2022.

perspective and when addressing cross-border broad prosperity issues, this requires a multi-actor approach, involving policymakers at different levels, from municipal to national. In this, it is important to recognise that the (Dutch) political system is mainly sectorally organised, which can hinder the challenge of integrated thinking around broad prosperity, as each deputy largely focuses on individual policy areas. For border regions, it becomes important to also have collaborative or consultative bodies, taking those actors from across the border on board. In the future, it will therefore be essential to consult with stakeholders from neighbouring countries Germany and Belgium on the theme of broad prosperity and to set considerations and priorities in this. Euroregional partners should thereby jointly recognise and support such a concept as regional broad prosperity or SDGs, so that a common language and image exist.

## Dossier 2: Transnational Infrastructure projects: Ambitions, sectors, instruments and effect on border regions

*Martin Unfried*

### Introduction

In this research, a distinction is made between transnational infrastructure plans and projects and the corresponding cross-border dimension. One example to illustrate this: a transnational high-speed train requires cross-border planning, but not necessarily from the cross-border perspective of border regions or Euregions. This is evident, for instance if the travel time between capitals is improved but not between destinations in the border regions. Meaning, transnational infrastructure does not necessarily serve the needs of cross-border territories.

Currently, governments, municipalities, other public sector bodies and commercial partners are discussing (with letters of intent) or preparing joint infrastructure plans and projects related to initiatives in the Netherlands, Germany and Belgium. These initiatives are corresponding to the challenges of the energy transition, economic competitiveness and the future of certain energy intensive industries. The “Delta Rhine Corridor” for instance is a collection of initiatives to construct several underground pipelines and direct current connections between Rotterdam and the German tborder. Public and private stakeholders are involved in the construction of six pipelines to transport hydrogen (by Gasunie), natural gas (by Gasunie), CO<sub>2</sub> (by Delta Rhine Corridor Partners), ammonia, LPG, propylene and several underground direct current connections (possibly by Tennet). On 5 October 2023, outgoing Minister Jetten (Climate and Energy) informed the House of Representatives about the progress of the Delta Rhine Corridor (DRC) through a parliamentary letter.<sup>41</sup>

Besides that, there are more infrastructure plans:

- the cross-border Eynatten (BE)-Hürth (DE) hydrogen pipeline is planned as part of the “H2ercules” project,
- a cross-border Belgian-Dutch rail connection between Gent-Terneuzen (with a letter of intent),
- a freight rail relation between the harbour of Antwerp and the Ruhrgebiet (Ijzere Rijn with the 3RX variant) supported by the governments of Flanders and NRW
- the scientific gravitation project “Einstein Telescope” in the Euregio Meuse-Rhine (with multiple public and private partners) ,
- ambitious grid connections for off-shore wind parks in the North Sea
- and individual projects linked to inland shipping and hydrogen.

The question is what are potential effects of these projects on the Dutch/German and Dutch/Belgian border regions? Do they foster European Integration in accordance with EU policies and legislation?

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<sup>41</sup> For LPG and propylene there are currently no commercial partners found.

Do they foster a sustainable development in the border regions and what is their impact on cross-border cohesion?

### Focus on the “Eurodelta”

Approximately 45 million people live in the highly urbanized cross-border area that is called “The Eurodelta”. This geographical area stretches from the Randstadt (NL), Flemish Diamond (B) to the Rhineland and goes beyond the traditional border regions or cross-border Euroregions at the border of the three Member States Germany, the Netherlands and Belgium. In this sense, the Eurodelta is less a prominent geographical or political region, but an economic area identified by different stakeholders. The study focuses on infrastructure initiatives of the broader geographical area of the Eurodelta and discusses in particular the potential effects of transnational infrastructure on smaller border areas, border regions (for instance Dutch or Belgian Provinces located at the border, or German Landkreise). Potential effects are described with respect to the cross-border perspective of cross-border territories that are for instance established by Euregios between Germany, the Netherlands and Belgium.

### Effects on EU integration?

The presented transnational infrastructure projects in the “Strategic Urban Region Eurodelta” (between NL, BE and DE) are very much in line with European Integration objectives (e.g. Fit for 55). This refers in particular to the objective of carbon neutrality (e.g. hydrogen pipelines) and scientific excellence (Einstein telescope). There is a clear understanding, that without adequate distribution of hydrogen to energy intensive industries, the substitution of natural gas and other fossil fuels in production processes is not feasible. In this respect, the plans correspond largely to EU policies and objectives. In addition, the research shows that it is still important to determine the particular needs in border regions and with respect to cross-border questions (not the same as transnational). This is also true for infrastructure projects related to rail and inland shipping transport where changing the modal shift, away from transnational road transport. The objectives are very much in line with EU policies however, the particular needs of border regions have to be still more elaborated. In this respect, the responsibility for doing so is also very much in the hands of stakeholders in border regions and within cross-border entities (like Euregios). The Einstein Telescope is in this respect a unique project, since general EU objectives in the field of scientific excellence are in this case not only represented by a transnational consortium, but also by a cross-border regional network of border regions. Here, the border regions are very much involved and formulate their particular needs.

A still open question related to most of the infrastructure projects is the way, how national and regional stakeholders will involve citizens in a cross-border approach and corresponding to EU rules (for instance in the field of environmental impact assessment and citizens participation).

In addition, recent studies in the field of innovative infrastructure have shown that still a lot of EU harmonization is needed, or harmonization at the bilateral or trilateral level between neighbouring Member States. Especially a recent study by the Benelux Union<sup>42</sup> on the preconditions of a successful and fast development of a hydrogen infrastructure showed that there is a need for integrated markets

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<sup>42</sup> Benelux Union (2023): Cross-border Hydrogen value chain in the Benelux and its neighbouring regions. Identifying and connection renewable hydrogen demand and supply via the cross-border hydrogen backbone, executed by: WaterstofNet Vzw.

(e.g. for hydrogen) further harmonisation or coordination of permitting, subsidy schemes, spatial planning procedures, technical standards and interoperability. In particular, given the relatively short timeframe for achieving greenhouse gas targets (for instance in 20230) streamlined and fast-track procedures are key. According to the Benelux research, this could be achieved by speeding up the permitting process to increase renewable energy and electrolyser capacity, by exploring harmonisation possibilities of permitting rules and by facilitating fast-track procedure for Intellectual property and patenting within the Benelux and its neighbouring regions.<sup>43</sup>

### Effects on a sustainable economic development of the cross-border territory

In the following, two cases are briefly described from the report.

#### High expectations in the case of the Einstein Telescope – but so far weak impact assessment

Do the projects make the cross-border regions stronger in socio-economic terms? What about their effects on sustainability in a broader sense? A case by case analysis show that expectations in cross-border regions are divers with respect to the benefits. The most positive expectations refer to the cross-border Einstein telescope where the border regions play an important role in supporting the project. There is a common understanding in the Euregio Meuse Rhine that the project will bring many economic and social advantages. According to the Province of Limburg (NL) the arrival of the Einstein Telescope will give a boost to the regional economy, as the billions in European investment will be an added value over a longer period. Furthermore, the Einstein Telescope would create an estimated 500 direct and 1,150 indirect jobs, and lay the foundation for developing scientific and technical talent and providing better opportunities in Limburg and the Netherlands. These numbers were calculated in a first socio-economic impact assessment that was already done in 2018 and are since then widely used.<sup>44</sup> In addition, it is the investment coming from the Dutch government (and others) that are welcomed by stakeholders in the border regions. Limburg's Gedeputeerde (Regional Minister) Stephan Satijn posted on LinkedIn in October 2022: "Nearly a billion euros from the state for the Einstein Telescope. Great news for our Province of Limburg"<sup>45</sup>. The positive expectations correspond with the hope of other regions in the Euregio, for instance the German side. According to the Region Aachen, there is an expected return of investment of four to one and the potential settlement of more than 1,500 top jobs and many industrial jobs. The project would not only strengthen the already excellent educational location in the Aachen region, but also create considerable positive secondary effects.<sup>46</sup> However, the current assessment of the economic and social benefits have been rather vague and mainly based on a short study from 2018. For a more detailed socio-economic benefit analysis, a more detailed study is key. In particular, impact studies on the environment and other sustainability questions are so far not published. There is for instance still the open questions with respect to the future of renewable energy production, in particular wind energy, and whether objectives in the field of the energy transition are not achievable because of the Einstein Telescope (noise sensitivity). The same is true for an energy related assessment of the future energy consumption, the CO2 and other emissions (e.g. nitrogen) that are part of the construction of the tunnels, the emissions caused by the logistics in the building phase and question of recycling and waste

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<sup>43</sup> Ibid. Page 9.

<sup>44</sup> Technopolis group 2018: Impact assessment of the Einstein Telescope Final report, 28/09/2018.

<sup>45</sup> See: [https://nl.linkedin.com/posts/stephan-satijn\\_bijna-miljard-van-het-rijk-voor-de-einstein-activity-6920375195539013632-uc\\_0?trk=public\\_profile\\_like\\_view](https://nl.linkedin.com/posts/stephan-satijn_bijna-miljard-van-het-rijk-voor-de-einstein-activity-6920375195539013632-uc_0?trk=public_profile_like_view).

<sup>46</sup> Region Aachen, 25.04.2023, Pressemitteilung: Das Einstein-Teleskop: Eine Jahrhundert Chance für unsere Region!

production. There are also so far no official publications with respect to the future energy need of the Einstein Telescope itself. Meaning, that in a later stage of the process this questions have to be publicly discussed. Today, since there are only a few rather abstract impact assessment published, a broader estimate of the effects on social, economic and environmental effects is hardly possible. A problem with the timing of these debates could emerge. If the decision will be positive for the location Euregio Meuse-Rhine in the year 2024/2025, it is not likely that principal concerns with respect to sustainability could still mean a halt of the project, especially since the investments made for the development of the project were already considerable.

### **The hydrogen pipelines - transnational character versus direct benefits for cross-border territories**

Border regions - or more precisely - certain districts or cities in border region have to ensure that transnational projects do also match their needs. One example is the debate about the Delta Rhine corridor hydrogen planning. According to current plans, the pipeline will end in Sittard (NL), where it will supply the Chemelot chemical park not far from the German-Dutch border with hydrogen. For the Aachen region, a continuation of this pipeline would be an opportunity.<sup>47</sup>

A survey of 200 industrial companies conducted by the Aachen Chamber of Industry and Commerce showed that in the neighbouring district of Heinsberg, the city and city region of Aachen alone, 1.5 TWh of gas will have to be substituted annually in the future. In the neighbouring districts of Düren and Euskirchen, the figure is at least another 3.6 TWh per year. In the Limburg region (NL), hydrogen demand is expected to be up to 2.6 TWh per year.

A continuation of the pipeline infrastructure from Chemelot to the Rhenish Revier is also regarded as an important prospect for South Limburg (NL). In this sense, political stakeholders from South Limburg and from the Städteregion Aachen joined forces and formulated in September 2023 a joint position paper addressed to the government in the Netherlands and Germany/NRW. "An intelligent dovetailing of the hydrogen infrastructure projects is an important next step in the development of an economic corridor to be created between the Netherlands and Germany via Aachen and South Limburg,"<sup>48</sup> said Roel Wever, Mayor of Heerlen and Chairman of Parkstad Limburg.

In addition, another pipelines is planned with potential for the stakeholders in the Euregio Meuse-Rhine. The Eynatten (BE)-Hürth (DE) pipeline is planned as part of the "H2ercules" project<sup>49</sup>. In the current planning status as a new construction pipeline there exit points in the StädteRegion and the city of Aachen included. However, according to the "Hydrogen Hub Aachen"<sup>50</sup> there are no connections or further exit points in the districts of Euskirchen, Düren and Heinsberg, neither from existing pipelines nor from new construction projects. According to the Hydrogen Hub Aachen, all three districts have energy-intensive industrial sites whose energy needs cannot be met by decentralised generation or electricity generation alone. An energy demand survey conducted by the

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> The goal of the H2ercules initiative is to create the heart of a super-sized hydrogen infrastructure for Germany by 2030. See: <https://www.h2ercules.com/en>.

<sup>50</sup> See: Hydrogen Hub Aachen, Stellungnahme zum Planungsstand des Wasserstoff-Kernnetzes, <https://hydrogenhubaachen.de/aktuelles/news-detail/stellungnahme-des-hydrogen-hubs-zum-planungsstand-des-wasserstoff-kernnetzes.html>.



Aachen Chamber of Industry and Commerce among approx. 200 industrial companies has identified current gas requirements per year of approx. 830 GWh, 384 GWh and 198 GWh in the districts of Euskirchen, Düren and Heinsberg, respectively, which need to be substituted in the future. This example illustrates, that the final economic benefits for the border regions can be only assessed when the final plans are consolidated and local and regional connections are known. The same is true for the environmental impacts. Whereas the construction will have certain negative impacts, the substitution of natural gas and other fuels by hydrogen will lead to CO<sub>2</sub>-reduction in the border regions.

### Effects on Euregional cohesion

In the case of the precise location of the Delta Rhine corridor pipelines or the H2ercules network, stakeholders in border regions cannot rely on the fact that transnational plans do always serve the needs of cities and companies close to the border. The described cross-border initiative in the Euregio Rhine-Meuse is already a positive effect: it is very important from a Euregional point of view that a cross-border network exists formulating common objectives across the border. In this respect, cross-border cohesion has been strengthened.

Even more evident, is the positive effect on cross-border cohesion in the case of the Einstein telescope. It has led to the formulation of common objectives across the border and the formation of a cross-border community. In the first place, scientists in the Netherlands, Belgium and Germany are part of a larger European 'ET cooperation' who wrote a proposal for the European roadmap for large research infrastructures (ESFRI roadmap).<sup>51</sup> They will continue to be involved with the Einstein Telescope in the future, regardless of whether it will be located in the Euregio Meuse-Rhine. However, the process is very much supported and guided by a political cross-border consortium. In September 2023, an inter-ministerial conference in Brussels signed a "Declaration of Intent" on the way to a joint official bid (the "Bid Book") of the three countries. This declaration contains further agreements on cooperation. A working group from Belgium, the Netherlands and the German state of North Rhine-Westphalia is preparing a joint application.<sup>52</sup>

### Big cross-border infrastructure: potential conflicts in border regions

Whereas in the case of the Einstein telescope the project as such had already a positive impact on Euregional cohesion, there are still aspects that can lead to potential conflicts in the border region. One particular concern is the consequences with respect to new wind park locations. The Einstein Telescope is a highly sensitive measuring instrument and it requires an environment that is as noise-free as possible. According to the Einstein Telescope project site, studies have shown that wind turbines are an important source of noise (so-called seismic impact). The Dutch scientific body Nikhef therefore asked the Dutch Province of Limburg to provide guarantees that no new activities will take place in the search area for the Einstein Telescope and a 10-kilometre zone around it that could lead to new vibration sources.<sup>53</sup> The (Dutch) Province of Limburg has set rules for wind turbines and excavations. Wind turbines in and around the search area for the Einstein Telescope are excluded;

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<sup>51</sup> The background of the process is described on the official homepage of the Einstein Telescope, <https://www.einsteintelelescope.nl/en/organisation-and-timeline/>.

<sup>52</sup> See Press Release, Euregio Maas-Rhein, 26 September 2023: Neuer Schritt zur Kandidatur EMR Einstein Teleskop, <https://euregio-mr.info/de/aktuelles/meldungen/ET-ministerkonferenz.php>.

<sup>53</sup> 41 See Q&A of the official Einstein Telescope homepage, <https://www.einsteintelelescope.nl/veelgestelde-vragen/>.

excavations are only possible if it is demonstrated that they are not disruptive to the Einstein Telescope.

The Flemish side send a letter confirming the exclusion of these developments and stating that they would be vigilant to ensure that such developments do not occur in Flanders and announcing formal action against current initiatives. The Walloon side has also recognised the importance and is going to examine the technical compatibility of Einstein Telescope and wind turbines. For this reason, in April 2023, the Belgian Council of State annulled some permits for wind turbine plans in the Walloon part of the search and protection area.

In the case of the German side, this concerns the current planning of the city of Aachen. The amendment of the AACHEN 2030 land use plan aims to designate special areas for wind energy. Citizens had the opportunity to see a first draft in the spring of 2023. The aim is, among other things, to create the legal planning conditions for the priority placement of wind turbines within these areas (19 areas spatially assigned to 4 subsections). Some of the locations are very close to the Dutch border, meaning critical with respect to the Einstein location. The Land NRW was also asked to protect their share a buffer zone. However, this could be critical with respect to the needs of the City of Aachen, who has to fulfil obligations with respect to the increase of renewable energies. In particular, a top down ban on certain locations could be critical vis-à-vis the ongoing public consultation process. An exclusion of sites due to the Einstein telescope was not part of the information given to citizens in the border region (Spring 2023).

The case of wind power locations shows that cross-border infrastructure is also a question of conflicting interests. A clash of legitimate objectives can also lead to cross-border conflicts.

Another prominent example of conflicting interests is the rail connection 3RX. The 3RX is an alternative to the revitalisation of the historic route "Iron Rhine" as well as to the previously studied A52 route and uses the existing rail infrastructure as far as possible. In a joint declaration, the governments of Flanders and North Rhine-Westphalia declared in 2022 that they will continue to campaign for the realisation of the "3RX", an alternative rail link between the Flemish seaports on the North Sea and the Rhine-Ruhr area.<sup>54</sup>

For the Dutch Province of Limburg, however, the line remains a concern. The perception is that Limburg bears all the burdens where Belgium and Germany enjoy the benefits, the province formulated in a letter to the Dutch government in March 2023.<sup>55</sup> Since the three countries are talking to each other about a new rail link, Limburg wanted to be involved in the administrative consultations on the railway. In this respect, the infrastructure projects bears the potential to transform a general dispute at the national and regional level, were Germany/NRW and Belgium/Flanders have very different interests compared to the Dutch government, to the border region. The operation of the railway connection – if it is decided – will be materialised only in 2040-2050. However, there is already today the need for a sophisticated debate about interests and a balance of benefits. The case in Gent-Terneuzen that is also described in the report is in this respect different, since at the Dutch and Flemish

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<sup>54</sup> See press release 29.3. 2022, NRW Landesregierung: „NRW und Flandern streben Energie und Klimapakt an“, <https://www.land.nrw/pressemitteilung/nordrhein-westfalen-und-flandern-streben-energie-und-klimapakt>

<sup>55</sup> See 1Limburg article 23 March 2023, “Limburg wil meepraten over goederenspoor België Duitsland”, <https://www.1limburg.nl/nieuws/2158162/limburg-wil-meepraten-over-goederenspoor-belgie-duitsland>

side there is a common understanding that a better rail infrastructure has benefits for the entire cross-border region.

## Dossier 3: Kinderzuschlag and Kindgebonden budget: The border worker caught in the middle?

Dr. Bastiaan Didden  
Sander Kramer

### Introduction

The right to the German *Kinderzuschlag* and Dutch *kindgebonden budget* child budgets relies on a residence criterion. This may leave cross-border workers ineligible for either benefit in certain cases. This report comprises an ex-post assessment of the potential effects of the eligibility criteria for the German *Kinderzuschlag* and the Dutch *kindgebonden budget*.

Until 1 July 2022, non-residents, e.g., residents of the Netherlands working in Germany, could claim German *Kinderzuschlag*, making it exportable across the border. As of 1 July 2022, however, Germany no longer qualifies *Kinderzuschlag* as a family benefit but as a social benefit. As a result, it is no longer exported from Germany. This adversely affects cross-border workers, particularly those with lower incomes.

In line with previous ITEM studies, such as the dossier on *Baukindergeld* and the report on *Grundrente*, it was examined to what extent this situation is in line with European law and to what extent such situations can be avoided in the future. In addition, the change in national interpretations was studied in the context of European social security legislation and examined as to the consequences for frontier workers.

This dossier highlights the need for more cross-border cooperation and communication between neighbouring countries in the application and interpretation of national social security legislation and European social security legislation. ITEM's main recommendation would be to ensure that no adverse impact exists on cross-border workers, compared to residents, both from a financial and administrative point of view.

Table 1: Research themes, principles, benchmarks, and indicators for assessing the cross-border impact

Research theme	Principles	Benchmarks	Indicators
European integration; non- discrimination	<i>Article 7(2) Regulation (EU) No 492/2011 on freedom of movement of workers within the Union</i>	The same 'tax and social benefits' for migrant workers and national workers	Are cross-border workers with children who live outside Germany (and one of whom works in Germany) entitled to <i>Kinderzuschlag</i> ?  Are cross-border workers with children who live outside the Netherlands (and one of whom works in the Netherlands) entitled to <i>kindgebonden budget</i> ?
	<i>Freedom of travel and residence ex Art. 21 TFEU in conjunction with Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L. 29 June 2004, afl. 229, 35;</i>  <i>Free movement of workers ex. art. 45 VWEU; Freedom of establishment of self-employed persons ex art. 49 VWEU</i>	No discriminatory treatment of frontier workers  Equality among colleagues (equality in the workplace)	Comparison between receiving and not receiving <i>Kinderzuschlag/kindgebonden budget</i>  Is there an impediment to the freedom to live outside Germany or the Netherlands, respectively?  No discriminatory treatment of frontier workers living abroad?

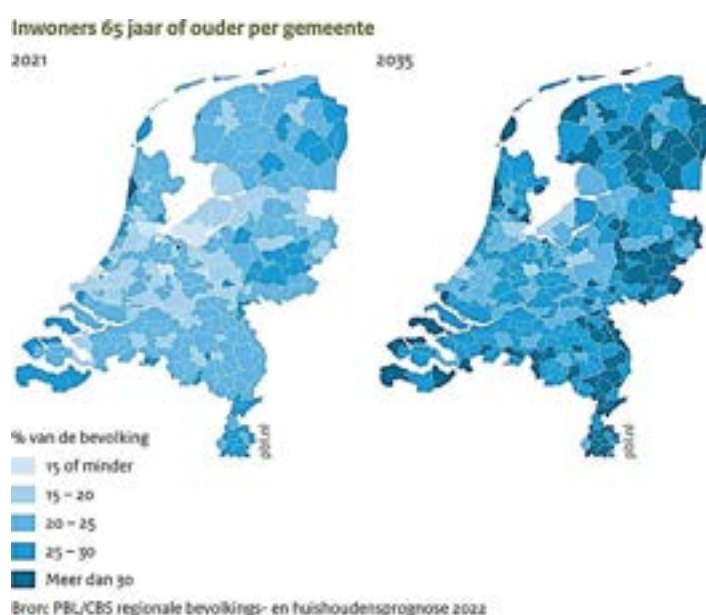
## Dossier 4: Future-proof acute care in the Netherlands: 360° cross-border perspectives

Susanne Sivonen

### Introduction

The provision of acute care is under pressure due to an aging population, rising demand for healthcare, and a shortage of healthcare professionals.<sup>56</sup> Aging population also leads to increasing demand of complex care. These demographic changes on aging population and population decline can be especially observed in smaller municipalities in the border regions (Illustration 1<sup>57</sup>). In 2035, it is estimated that 54 municipalities will have substantially fewer inhabitants than now. This mainly concerns municipalities in the northeast of Groningen, Drenthe, the Achterhoek and Limburg, that are also aging rapidly.<sup>58</sup>

In response to these pressing issues, The Minister of Health, Welfare and Sport, Ernst Kuipers, has proposed a policy aimed at creating a future-proof acute care in the Netherlands.<sup>59</sup> The policy agenda aims to ensure high-quality and accessibility of acute care to everyone, by developing quality standards and better care coordination (directing the patient to the right care based on their urgency and demand of care) via the acute care chain. By enhancing transparency on management and



capacities of acute care, congestion in the care chain would be prevented allowing to spread patients regionally or nationally if necessary. Additionally, the current 45-minute standard (the legal norm in which time the citizen should reach an emergency department by an ambulance<sup>60</sup>) would be abolished. Rather than focusing on proximity as a quality standard, instead, medically substantiated standards will be developed for time-critical conditions. In this regard, the policy agenda notes that there is a need to investigate whether additional measures should be implemented to ensure the accessibility of care in regions, such as border regions, where care might be under pressure. However,

<sup>56</sup> Policy agenda for future-proof acute care (Kamerbrief over beleidsagenda toekomstbestendige acute zorg). 3 October 2022, p. 53. See also: Parliamentary Papers II, 2021/22, 29 282, no. 451.

<sup>57</sup> PBL/CBS regionale bevolkings- en huishoudensprognose 2022: <https://www.pbl.nl/nieuws/2022/prognose-in-2035-vooral-meer-inwoners-in-en-om-grotere-gemeenten>

<sup>58</sup> Ibid.

<sup>59</sup> Policy agenda for future-proof acute care (Kamerbrief over beleidsagenda toekomstbestendige acute zorg). 3 October 2022.

<sup>60</sup> Healthcare Quality, Complaints and Disputes Act (Wet kwaliteit, klachten en geschillen zorg, Wkkgz) specifies acute care meet certain standards for the availability and accessibility, as part of the obligation for the hospitals to provide 'good care' (Art. 2). The accessibility standard laid down the Wkkgz Implementation Decree and Regulations (§3.3) specifies the 45-minute standard.

it is concluded that it is not feasible to provide all forms of acute care at every location in the Netherlands.<sup>61</sup>

The policy has raised concerns about its potential impact on the availability of acute care in border regions, particularly if these policy objectives are (partially) met through concentration measures forcing smaller regional hospitals to scale down or close their acute care services. These concerns have been raised for instance in the context of closure of emergency departments in Zuyderland Hospital in Heerlen<sup>62</sup> and in Gelre Hospital in Zutphen<sup>63</sup>. The concentration measures may lead to situations where patients have to travel long distances for (acute) healthcare. This is especially challenging in situations that require a fast acute care response, and in rural areas, where hospitals may not be easily accessible, especially for elderly individuals with limited mobility. Mayors of smaller cities such as Winterswijk, Geos, Zutphen, Gorinchem, have raised concerns about the proposed concentration of acute care in their municipalities.<sup>64</sup> Another example of such recent concentration debate regarded the closure of paediatric heart surgery centers. It was proposed to centralise such facilities to Rotterdam and Utrecht, that would have resulted in the loss of this specialized medical service in Groningen and longer travel distances for children in the North of the Netherlands.<sup>65</sup>

Despite these evident challenges for border regions in terms of healthcare services, it is worth noting that in such areas, there is a possibility that an acute care facility may be closer to a patient's home just across the border. Indeed, in some border regions such as in Limburg via the network of EMRIC and in Twente and Oost-Achterhoek via ROAZ Acute Zorg Euregio such cross-border collaboration practises in (acute) healthcare are facilitated with the neighbouring actors in Belgium and Germany.<sup>66</sup> The policy agenda also refers to the potential of cross-border cooperation in border regions. At the moment, consultation is on-going on the operational agreements regarding cross-border ambulance care between the Netherlands and Germany. This will result in the relevant regions coming together and compiling best practises in a handbook.<sup>67</sup> This raises the question: Could reaching these policy objectives on ensuring quality and accessibility of acute care be achieved in some border regions in collaboration with neighbouring countries, closer to the patient's home? What will be the result of the handbook, i.e., (how) will it promote and be used to implement these best cross-border practises?

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<sup>61</sup> Policy agenda for future-proof acute care (Kamerbrief over beleidsagenda toekomstbestendige acute zorg). 3 October 2022.

<sup>62</sup> NOS, 'Zorgen in Limburg over voorgenomen sluiting van spoedeisende hulp in Heerlen' 23 September 2023, accessed via: <https://nos.nl/artikel/2491595-zorgen-in-limburg-over-voorgenomen-sluiting-van-spoedeisende-hulp-in-heerlen>.

<sup>63</sup> See, for instance, news articles from RTV Ideaal 'Gemeenten geven noodsignaal af over ziekenhuis Zutphen' 9 June 2023, accessed via: <https://rtvideaal.nl/gemeenten-geven-noodsignaal-af-over-ziekenhuis-zutphen/> and Hart van Nederland 'Zutphenaren protesteren in Den Haag om niet alleen eigen, maar ook andere ziekenhuizen te redden' 22 June 2023, accessed via: <https://www.hartvannederland.nl/regio/gelderland/zutphenaren-protesteren-in-den-haag-om-niet-alleen-eigen-maar-ook-andere>.

<sup>64</sup> See written response to 'Grote zorgen van 29 burgemeesters over de concentratie van acute zorg' (2023Z05054), sent on 23 March 2023): <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2023Z05054&did=2023D11957>, and for instance, a news article from Skipr, 'Burgemeesters uiten zorgen over dreigende sluiting SEH's' 21 March 2023, accessed via: <https://www.skipr.nl/nieuws/burgemeesters-uiten-zorgen-over-dreigende-sluiting-sehs/>

<sup>65</sup> NOS, 'Tweede Kamer staat voor pijnlijke keuzes rondom sluiting kinderhartcentra' 16 February 2022, accessed via: <https://nos.nl/artikel/2417665-tweede-kamer-staat-voor-pijnlijke-keuzes-rondom-sluiting-kinderhartcentra>.

<sup>66</sup> See Euregio Maas-Rijn Incidentbestrijding en Crisisbeheersing (EMRIC) <https://emric.info/nl>, Netwerk Acute Zorg Euregio <https://www.acutezorgeuregio.nl/>.

<sup>67</sup> Policy agenda for future-proof acute care (Kamerbrief over beleidsagenda toekomstbestendige acute zorg). 3 October 2022, p. 29.

Could we consider providing acute healthcare services with a 360-degree perspective that expands beyond the national borders? Can we draw valuable lessons from the Covid-19 pandemic, particularly in terms of care coordination? It is interesting to consider whether sharing resources between cross-border regions could enhance provision of acute care. Indeed, similar discussions on healthcare reforms and challenges are ongoing in Germany.<sup>68</sup>

This dossier evaluates the cross-border effects of the policies, whether adequate attention is paid to the possibilities of cross-border cooperation to ensure that good quality of acute care remains accessible to citizens of border regions. Table 1 summarises these key research questions that the dossier addresses. Specifically, the dossier evaluates the policies impact on **European integration**: Do these policies promote the cross-border mobility of patients, healthcare professionals and services? On evaluation of theme **Euregional cohesion**, the dossier examines the potential for cross-border cooperation in border regions to support the realization of policy objectives related to improving accessibility to high-quality acute care. Finally, the dossier examines the broader impact of these policies on the **Sustainable socio-economic development** and prosperity of border regions.

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<sup>68</sup> Bundesministerium für Gesundheit, 'Krankenhausreform' 10 July 2023, accessed via: <https://www.bundesgesundheitsministerium.de/themen/krankenhaus/krankenhausreform>.



Table 1: Research themes, principles, benchmarks, and indicators for assessing the cross-border effects

Theme	Principles	Benchmarks	Indicator
European Integration	Free movement of patients Regulation 883/2004 Regulation 987/2009 Directive 2011/24  Public health Art. 168 TFEU Art. 35 EUCFR	Everyone has timely access to high- quality acute care	What does the future situation on acute care mean for a citizen of a cross-border region in relation to access to acute care?  Do the policies promote the cross-border mobility of patients, healthcare professionals and services?
Euregional Cohesion	Strengthening economic, social and territorial cohesion Art. 174 TFEU  Mutual assistance and cooperation between Member States Art. 4(3) TEU Art. 10 Directive 2011/24 Rec. 50 Directive 2011/24	Care in the cross-border territory is equal to that in the national territory	How can cross-border cooperation support in reaching policy objectives in quality and accessibility of acute care in border regions?  How does the policies effect cooperation with actors in acute care?  Is it possible and desirable to cooperate in healthcare delivery and information exchange cross-border?
Sustainable Development/Socio-Economic Development	Internal market Art. 114 TFEU  Sustainable development Art. 3(3) TEU  Free movement of persons and services Art. 21 TFEU Art. 56 TFEU	Well-functioning healthcare in border regions from the aspects of economic, social, and territorial development and sustainability	What effect will the policies have on the prosperity and social-economic development of border regions?

## **Dossier 5: Public Transportation in the Euregio Meuse-Rhine (student dossier)**

*Angelica Dumaya  
Guy Dumoulin  
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Behnam Lot  
Jenna van Roover*

### **Introduction**

Cross-border public transport (CBPT) within the European Union (EU) is a vital component for connecting people to jobs, services, and opportunities beyond their national borders. In 2017, nearly 80,000 individuals were commuting from Germany and Belgium into the Netherlands for work-related reasons. This flow of labour represents a significant portion of the workforce and underscores the importance of efficient CBPT for regional growth and integration. Recent studies have pointed out that regions like Limburg could gain significantly from a more integrated cross-border labour market. Improved CBPT can facilitate this integration, making it easier for people to work across borders and for employers to tap into a larger pool of talent.

This dossier assessed the current state of CBPT in the Meuse-Rhine Euroregion, identifying the gaps, challenges, and potential benefits of a more cohesive transport network. A mixed-methods approach was chosen. Quantitative data was gathered through a survey exploring user experiences and desires, while qualitative insights were retrieved from four interviews with experts from transport-related organizations and the public sector. They provided valuable context to the survey findings. The literature review helped identify key topics for the survey, which was informed by successful CBPT projects in other European regions. The survey reached respondents through various channels, including public transport locations, and collected 53 responses.

### **Current State and Potential Developments**

In the Netherlands, a robust train network connects to neighboring countries, with services like the Intercity from Brussels, Thalys from France, Eurostar from the UK, and regional services connecting Liège to Maastricht and Antwerp to Roosendaal. Plans are in motion to enhance these connections further, including the introduction of the new Regional-Express 18. The line, which is also known as the "Drielandentrein," is set to enhance connections between Aachen, Maastricht, and Liège. CBPT is also seeing growth with new market entrants, and the European Commission is working towards harmonizing access to national bus markets. In the Netherlands, regions like Zuid-Limburg and Zeeuws-Vlaanderen have significant percentages of their workforce commuting from Germany or Belgium, with the numbers being considerably higher for those coming into the Netherlands.

Germany's current approach to improving CBPT is characterized by a concerted campaign targeting services and recognizing the disparity in quality between cross-border and domestic transport. The mobility portal NRW highlights challenges in service and infrastructure, such as financing issues, planning processes that exclude existing domestic lines, and high entrance barriers like the Dutch OV chipkaart system that deter German passengers. Infrastructure challenges include less capacity in

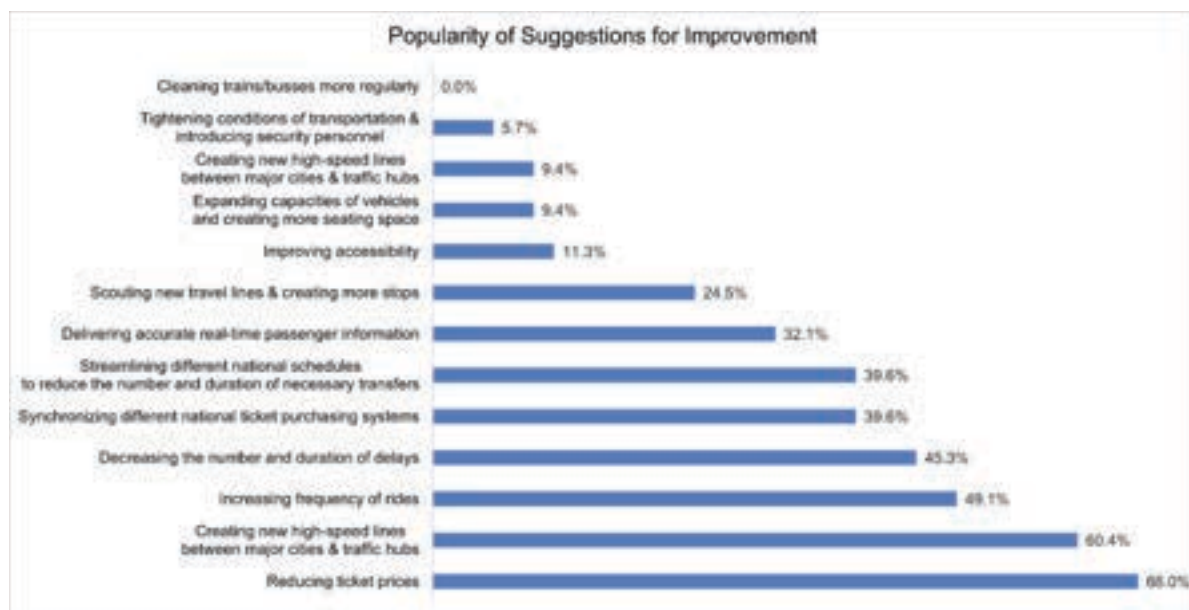
cross-border infrastructure, single-track railroads, and gaps in electrification. The "easy connect" pilot project by Aachener Verkehrsbund aims to address these issues, for instance with measures like a cross-border online ID-based ticketing system.

### Survey on Satisfaction, Challenges and Desires

The perspectives of both users and non-users can help understand the reasons behind the use or avoidance of CBPT and gather opinions on potential improvements. A survey highlighted a general satisfaction with certain aspects of CBPT, such as safety and the ticket purchasing process. Yet, it also pointed out critical areas needing improvement, particularly in terms of pricing, travel time, and reliability, which significantly influence the transportation choices of both current users and potential new users of CBPT

For the surveyed CBPT users, leisure emerged as the primary reason for using CBPT, followed by study and work-related travel. When it came to satisfaction, users expressed contentment with the ease of purchasing tickets and the safety of the transport system. However, there was notable dissatisfaction with the travel time, reliability, and cost of tickets. The users' feedback suggested a need for multiple changes, with an emphasis on better pricing and increased frequency of services. Non-users of CBPT shared similar demographic characteristics with users but were more likely to own cars. The high cost of tickets and longer travel times compared to car journeys were the primary reasons for avoiding CBPT. Significant improvements would need to be made in these areas for them to consider using CBPT more often. The survey concluded with participants indicating their most valued changes for enhancing CBPT. Reducing ticket prices was at the forefront, along with the creation of new high-speed lines to improve connectivity and travel times. Increasing the frequency of services and reducing delays were also among the top suggestions. Safety measures, however, were deemed less critical, with few participants prioritizing the introduction of security personnel.

Figure 1: Popularity of Suggestions for Improvement



## The Drielandentrein as Exemplary Case for the Expansion of CBPT in the Meuse-Rhine-Euregio

An in-detail examination of the CBPT project connecting Aachen to Maastricht and Liège revealed deficiencies in CBPT that initiated the project and the challenges faced during its implementation. The Drielandentrein, operated by Arriva, initially ran between Aachen and Maastricht, but expansion to Liège was hindered by Belgium's refusal to allow trains without the European Train Control System (ETCS). After installing ETCS and conducting tests, the service is expected to extend to Liège, offering hourly connections without the need for transfers at Maastricht.

The project involves multiple stakeholders from Germany, Belgium, and the Netherlands, requiring frequent coordination. The benefits of the Drielandentrein include more frequent service, direct connections, new trains with improved amenities, and increased safety due to the European Rail Traffic Management System (ERTMS). However, the project faced significant hurdles, such as the implementation of ERTMS, financial negotiations, and technical compatibility of trains with different national systems. Overcoming these challenges necessitated language training for staff, technical solutions for ticketing, and intergovernmental cooperation. A memorandum of understanding was signed to formalize the service's commencement, but integrating ticketing systems remains complex due to differing national systems.

Figure 2: Current state of the complexity of ticketing in the Drielandentrein. Source: Arriva



## Recommendations for a Euregional Perspective

The CBPT in the Euregio Meuse-Rhine is fraught with challenges that impede its efficiency. There is a noticeable disconnect in coordination among the numerous stakeholders involved, leading to operational inefficiencies. Public perception of international public transport is often negative, signaling a need for greater transparency and communication about the efforts to improve the system. The slow pace of decision-making and a lack of prioritization in regional development contribute to persistent delays and slow progress. Additionally, technical discrepancies, such as differences in voltage and signaling systems across borders, complicate the integration of transport

operations, highlighting a misalignment between EU directives, national policies, and their actual execution on the ground. Despite existing regulations and national laws, transport operators find it difficult to adapt and upgrade their systems to comply with these requirements.

To address these issues, a comprehensive approach is necessary. Establishing a standardized framework for CBPT projects, supported by EU resources, could significantly enhance coordination. This framework would include guidelines and regulations to ensure seamless cross-border operations, harmonized ticketing systems, aligned human resource planning, and compatible schedules and routes, thereby facilitating smoother administrative processes and operations. It is important to transparently communicate the benefits and progress of CBPT effectively to garner trust and support from passengers, businesses, and the broader community. Regular updates, public consultations, and awareness campaigns can help in building a more supportive environment for CBPT initiatives. Acknowledging and openly discussing the challenges faced in developing cross-border public transport can lead to a better understanding and support from the public. Adequate resources must be allocated for staffing, funding, and prioritizing CBPT infrastructure. Investments in infrastructure, technology, and human resources are vital to speed up processes, resolve capacity issues, and enhance the quality of service. Harmonizing infrastructure across borders can alleviate logistical challenges. Coordinating the development and maintenance of transport infrastructure, such as roads, railways, and terminals, is crucial for efficient cross-border connectivity. Standardizing signage, information systems, and facilities will improve the passenger experience and facilitate navigation.

By confronting these challenges and implementing these measures, the CBPT system within the Euregio Meuse-Rhine can be significantly improved, leading to enhanced coordination, efficiency, and regional integration. Such improvements are instrumental in promoting sustainable mobility across borders, economic growth, and an improved quality of life for residents and visitors alike.

## Summaries Cross-Border Impact Assessments 2022

### Dossier 1: European Health Data Space – Ex-ante analysis of the cross-border effects for the Euregio Meuse-Rhine

Joint research collaboration with Care and Public Health Research Institute (CAPHRI)

Susanne Sivonen (ITEM)

Timo Clemens (CAPHRI)

#### Introduction

Sharing health data has an extra dimension in border regions such as the Euregio Meuse-Rhine, where individuals, healthcare professionals and healthcare services move across the border more frequently.<sup>69</sup> For instance, hospitals in Aachen, Liège and Maastricht intend to have cooperate more closely in paediatric surgery, where in order to ensure quality and continuity of care, it is crucial that healthcare professionals can access the medical data of their patients.<sup>70</sup> Data is also essential in the provision of digital health services. One example is the cooperation between the university hospitals of Maastricht and Aachen on large vessel surgery, where surgeons operate on a patient at Aachen Hospital while a neurophysiologist in Maastricht monitors the patient's condition real-time from a distance.<sup>71</sup> In addition, health data is valuable for research, innovation and policymaking, particularly to strengthen the resilience of health care systems. Resilience is especially key in border regions with deteriorating socioeconomic conditions, a shorter life expectancy and an aging population.<sup>72</sup> Moreover, as the COVID-19 pandemic has demonstrated, health data plays also a crucial role in providing efficient crisis management in border regions. Indeed, the Euregio-Meuse Rhine was negatively affected by the lack of relevant cross-border data to ground policy decisions. The diverse monitoring systems on infection rates produced incompatible data, with each country applying its own definitions and indicators.<sup>73</sup> Although border closures as *ad hoc* crisis measure had a negative social and economic impact on the region, it was found to have no impact on infection numbers.<sup>74</sup>

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<sup>69</sup> Communication from the Commission to the European Parliament and the Council, "A European Health Data Space: harnessing the power of health data for people, patients and innovation" COM(2022) 196 final, p. 2.

<sup>70</sup> Find more at <https://www.maastrichtuniversity.nl/research/item/research/euregional-centre-for-paediatric-surgery>, Prof. dr. H. Schneider, Dr. N. Büttgen, Dr. L. Kortese R. Tans, LL.M. M. Unfried, M.A., 'De Weg Vrijmaken voor een Euregionaal Kinderchirurgisch Centrum Toekomstbestendige Grensoverschrijdende Zorgsamenwerking in de Euregio MaasRijn' October 2020.

<sup>71</sup> European Commission, Directorate-General for Health and Food Safety, Lupiáñez-Villanueva, F., Gunderson, L., Vitiello, S., et al., Study on health data, digital health and artificial intelligence in healthcare, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2875/702007>.

<sup>72</sup> For instance, see ITEM Cross-Border Impact Assessment 2021 Dossier 4: "Is the EU Patient's Rights Directive fit for providing well-functioning healthcare in cross-border regions? An ex-post assessment", European Commission, 'Boosting growth and cohesion in EU border regions' (SWD(2017) 307 final, p. 4.

<sup>73</sup> Covid-19 Crisis-management in the Euroregion Meuse-Rhine: Study on lessons learned of cross border cooperation in the field of healthcare during the Pandemic crisis (PANDEMERIC, 2021), retrieved via: <https://pandemic.info/wp3-studies-and-legal-advice/>.

<sup>74</sup> See for instance, *Onderzoek: Sluiten van grens had geen effect op coronapandemie en was vooral voor de Bühne*, retrieved via <https://www.gelderlander.nl/home/onderzoek-sluiten-van-grens-had-geen-effect-op-coronapandemie-en-was-vooral-voor-de-buhne~a1d73d08/>.

## New EU initiatives on data

The fragmented standards and specifications for storing and sharing data, legal and administrative rules, insecurity about the application of data protection provisions and limited interoperability pose obstacles to the exchange of health data. The European Commission addressed this issue at the EU level within the context of the European Strategy for Data in 2020, which was the first to propose the creation of *Common European data spaces*. With the data spaces, the EU intends to establish a single market for data in which data can freely flow within the EU and across sectors for the benefit of businesses, researchers and public administrations.<sup>75</sup> In light of the European Commission's priorities in the areas of health and building the European Health Union<sup>76</sup>, the European Commission published a proposal for Regulation on European Health Data Space ('EHDS') on 3 May 2022 as the first of these data spaces. The proposal addresses health-specific obstacles to electronic health data access and sharing and advances the development of a digital health single market. The purpose of the Regulation is to facilitate a more secure and safe exchange of health data without barriers.<sup>77</sup>

This dossier provides an *ex-ante* assessment of the possible effects of the proposed legislation on the European Health Data Space on the Euregio Meuse-Rhine (EMR). Under the themes of European Integration, Socio-economic Development and Euregional Cohesion (see Table 1), the dossier aims to assess current practices of health data exchange within national borders, as well as in the cross-border EMR context. By means of literature review, legal analysis and interview conducted with stakeholders involved in health data exchange, the dossier identifies the challenges and best practices involved in health data exchange. It also inquires whether or not the proposed EHDS Regulation could provide solutions for these.

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<sup>75</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A European strategy for data" COM(2020) 66 final.

<sup>76</sup> Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats" COM(2020) 724 final.

<sup>77</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Health Data Space, COM(2022) 197 final. The EHDS Regulation builds on the General Data Protection Regulation (GDPR), proposed Data Governance Act, draft Data Act and NIS Directive. However, for the feasibility of the research, focus is placed on the EHDS Regulation.

Table 1: Research themes, principles, benchmarks, and indicators for assessing the cross-border effects

Theme	Principles	Benchmarks	Indicator
<b>European Integration</b>	Public health Art. 168 TFEU Art. 35 EUCFR  Free movement of patients Regulation 883/2004 Directive 2011/24  Data protection Article 16 TFEU General Data Protection Regulation (GDPR)	Citizens have access to their personal health data (within national borders)  Healthcare providers may exchange patient data in order to ensure the continuity and quality of patient care	Do patients and their healthcare providers have access to health data in cross-border situations?  What are the current shortcomings and challenges in (cross-border) health data exchange?
<b>Sustainable Development/Socio-Economic Development</b>	Internal market Art. 114 TFEU  Free movement of services Art. 56 TFEU	Well-functioning healthcare in border regions from the aspects of economic, social, and territorial development and sustainability	Could the proposed European Health Data Space solve the shortcomings identified under the theme of European integration?
<b>Euregional Cohesion</b>	Strengthening economic, social and territorial cohesion Art. 174 TFEU  Mutual assistance and cooperation between Member States Art. 4(3) TEU Art. 10 Directive 2011/24 Art. 76 Regulation 883/2004	Organisation of well-functioning healthcare provision and data exchange in border regions supported by cooperation of the regional actors  Care in the cross-border territory is equal to the national territory	What are the benefits of the proposed European Health Data Space for border regions such as the Euregio Meuse-Rhine?

### Proposal for a Regulation on the European Health Data Space

Based on the legal basis of internal market (Art. 114 TFEU) and data protection (Art. 16 TFEU), the Regulation proposes a legal framework and a mandatory cross-border infrastructure for the use of electronic health data.<sup>78</sup> A distinction is made between primary and secondary use of such data. The Regulation refers to **primary use** when the data is used directly for providing healthcare at national and cross-border level.<sup>79</sup> **Secondary use**, on the other hand, refers to situations where health data is

<sup>78</sup> Articles 1(1)-(2) Proposal for a Regulation on the European Health Data Space.

<sup>79</sup> *Ibid*, Chapter II.



used for research purposes, for instance, to assess public health policies or to develop new medicines, medical devices or products.<sup>80</sup>

Table 2: The use of electronic health data as categorised by the proposed EHDS Regulation

Primary use of health data	Secondary use of health data
<ul style="list-style-type: none"> <li>• Improve access to and control by persons over their personal electronic health data</li> <li>• Sharing data with and among healthcare providers for treatment purposes</li> <li>• MyHealth@EU: central platform for digital health, facilitating exchange of health data between Member States</li> </ul>	<ul style="list-style-type: none"> <li>• Rules on the use of health data for the benefit of society as a large: research, innovation, policy-making, statistics</li> <li>• Data stored in a closed, secure environment where non-personal data can be accessed via data permits (only for limited use)</li> <li>• HealthData@EU: platform that creates a link between national access points for the secondary use of electronic health data</li> </ul>

**Regarding primary use**, the Regulation provides a set of rights and obligations for individuals and healthcare professionals in respect to use of personal electronic health data.<sup>81</sup> Individuals have the right to access one’s health data, in a readable, consolidated and accessible format.<sup>82</sup> Patients’ medical histories, image and laboratory results will be issued in an **European electronic health record exchange format**,<sup>83</sup> that is used and updated by the health professionals in the course of treatment of their patients, irrespective of the Member State of affiliation and the Member State of treatment.<sup>84</sup>

The Regulation also establishes a right for patients to transfer their data within and across national borders to their choice of healthcare professional, immediately and free of charge.<sup>85</sup>

To enable sharing of health data, the Regulation established common requirements and standards for interoperability, security and privacy. An infrastructure called **MyHealth@EU** will facilitate cross-border exchange of electronic health data for primary use. However, the Regulation does not propose a centralised European database, but rather the exchange of personal health data via **national contact points**, which are to be established in each Member State. Healthcare providers are directly connected to the national points. Pharmacies, for instance, may share and access e-prescriptions via these points.<sup>86</sup> Furthermore, the proposal requires each Member State to designate a **digital health**

<sup>80</sup> *Ibid*, Chapter IV.

<sup>81</sup> *Ibid*, Article 3.

<sup>82</sup> *Ibid*, Article 3(1).

<sup>83</sup> *Ibid*, Article 6.

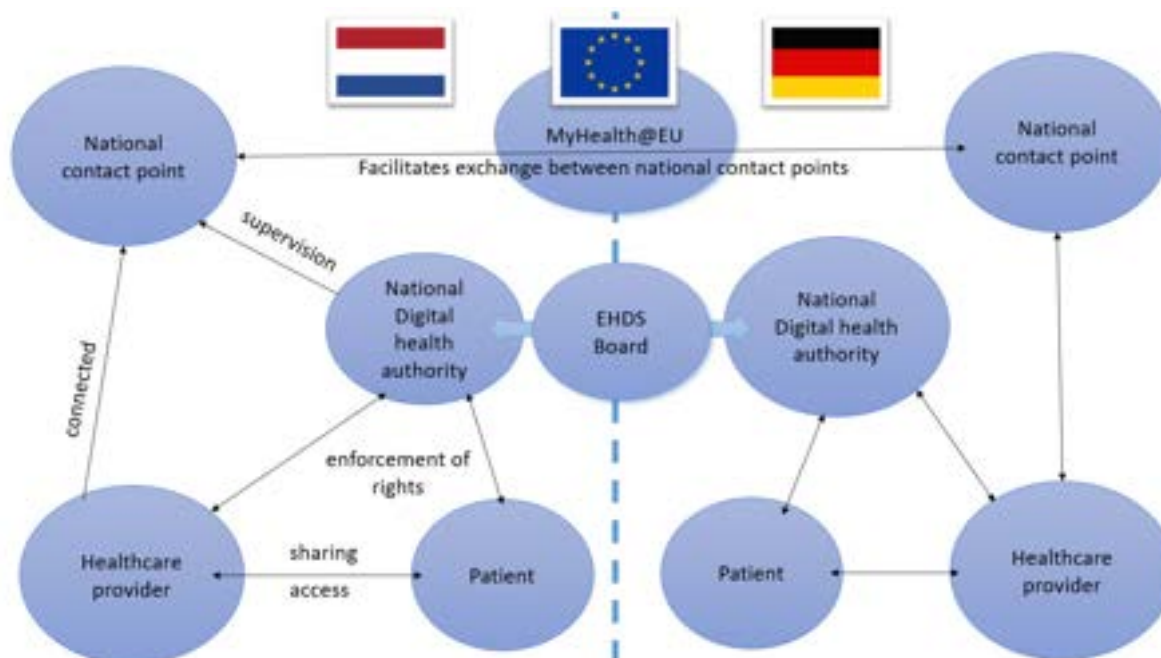
<sup>84</sup> *Ibid*, Article 4.

<sup>85</sup> *Ibid*, Article 3(8).

<sup>86</sup> *Ibid*, Article 12.

**authority**, which will supervise the national contact points and implement as well as enforce the Regulation at the national level.<sup>87</sup>

Table 3: Illustration of the governance system for primary use of health data



Health data **for secondary use** will be governed on the national level by **health data access bodies**, which are tasked with authorising and issuing data permits to data users. The data permit will specify for which purposes the data may be used. Furthermore, the data is always to be provided in an unidentifiable form that cannot be traced back to the data subject.<sup>88</sup> The proposal also entails the obligation for holders of health data (for instance, hospitals, authorities and research institutes), to make certain categories of data available for secondary use.<sup>89</sup> The health data access bodies are connected to an EU-infrastructure, **HealthData@EU**, which will facilitate the access to cross-border data for secondary purposes.

On the EU-level, cross-border cooperation between the established national authorities will be facilitated by a new **European Health Data Space Board**, that will be composed of representatives of digital health authorities and new health data access bodies from all the Member States, and the Commission.<sup>90</sup>

<sup>87</sup> *Ibid*, Articles 10(1)-(2).

<sup>88</sup> *Ibid*, Article 44: In anonymised or pseudonymised format.

<sup>89</sup> *Ibid*, Article 33.

<sup>90</sup> *Ibid*, Article 64.

## Health data exchange in the Euregio Meuse-Rhine

The interviews conducted in the context of this research confirmed that health data plays a crucial role in the Euregio Meuse-Rhine, both in healthcare delivery (primary use) and research and policy-making (secondary use). However, it became quickly clear that health data exchange is subject to several challenges, within and across the national borders in the Euregio Meuse-Rhine. These obstacles can be divided into three categories: legal, infrastructural and technical obstacles.

Overall, health data exchange was perceived as a time-consuming and complex process, subject to the General Data Protection Regulation (GDPR) and privacy laws. Depending on the nature of the data, the procedure frequently involves obtaining patient consent, approval from a medical and ethical review committee and a review of data management plans. Infrastructural obstacles were encountered because health data for research purposes had to be frequently extracted from fragmented data sources, in the absence of a centralised point of contact. Interoperability was also viewed as a barrier. Frequently, technical systems and interfaces were incompatible. However, primary obstacles of health data exchange are not only associated with data retrievability, but also on data quality. It was noted that especially in a cross-border context, inconsistencies may exist in the data's underlying indicators and terminology. Due to these differences in methodology and data collection, even when data can be accessed from a neighbouring country, it is not always comparable and useful for research purposes.

## Conclusions

In general, the proposal Regulation on the European Health Data Space was received positively: the interviewees indicated that the legal framework as well as technical infrastructure could provide many possibilities for them to overcome the obstacles that they are currently experiencing. Nevertheless, there has been scepticism about how far existing data exchange arrangements in a bi- or trilateral setting in the EMR (accommodating data infrastructures and legal provision from two or three jurisdictions) can be scaled and generalised to 27 Member States and remain practical implementable and meaningful at the same time. Furthermore, due to the sensitive nature of health data, concerns were expressed in relation to privacy and cybersecurity of the data. The interviewees' perception has been that if the Regulation were to be adopted, it would be essential that all relevant actors in cross-border healthcare be involved in its implementation, and that everyone's rights and responsibilities under the Regulation be made clear.

Due to a wide scope of the proposal, the Regulation will have an impact to various actors of healthcare in the Euregio Meuse-Rhine. The current state of health data exchange is indeed an impediment to **Euregional Cohesion** on healthcare. The European Health Data Space proposal could improve patient care, facilitate hospital, researcher, and government cooperation and reduce costs and bureaucracy. It could also be advantageous for the **Socioeconomic development** and economic position of the Euregion, creating more opportunities for cross-border development of (digital) healthcare products and services. Furthermore, the proposal could foster the mobility of patients and healthcare professionals from the perspective of the theme of **European Integration**. However, while the proposal can mitigate certain challenges in health data exchange, it may not be a solution for all

obstacles experienced. The impact of the Regulation on European Health Data Space on the Euregio Meuse-Rhine will be discussed in depth in the full dossier.

## Dossier 2: Cross-border effects of the EU proposal for a Directive on platform workers (ex-ante)

*Dr. Saskia Montebovi  
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### Introduction

On the 9<sup>th</sup> of December 2021, the European Union (EU) presented a proposal for a directive on the improvement of working conditions for digital labour platform work<sup>91</sup>. The overall aim of this directive is to improve the working conditions and social rights of people who are employed through digital labour platforms, while also supporting the opportunities, flexibility, and innovation of the digital platform economy.

Because of the absence of adequate European legislation, the fact that regulations sometimes differ (to a great extent) among Member States, and because the given professional qualification in many of the cases is, falsely, the status of self-employed, it happens (too) often that digital platform workers have no, or limited, protection regarding their labour and social security situation. This (incorrect) qualification subsequently also has harmful effects on their fiscal position. Moreover, digital platform work is pre-eminently a form of labour that can take place across borders, for example, by doing online work for a company based in another country, or by temporarily becoming a bicycle courier in one country without changing one's official place of residence in another.

The estimated effects of this proposed directive vary. Not only does it affect workers (employees and self-employed) and the digital platforms, but also the economy and the implementing bodies responsible for collecting social and tax contributions. Due to the new rules on the correct qualification of the employment status (objective 1), about two to four million workers are expected to be re-qualified as employees based on this directive. This will lead to higher pay for those who are currently working below the minimum wage, as well as increased employment protection for all digital platform workers. In the case of the self-employed platform workers, it is estimated that almost four million of them will be able to count on a reaffirmation of their self-employed status. The legal presumption of Article 4 of the proposed directive plays a crucial role in the professional qualification of a relationship between the platform worker and the platform. Indeed, if at least two of the five criteria of Article 4 are met, a relationship is presumed to exist between the worker and the platform. In many cases, this means that platforms must behave as employers rather than clients and are therefore bound by national and European law when it comes to employment protection.

The new rules on algorithmic management in digital labour platforms (objective 2) should lead to an improvement in working conditions for more than 28 million people in the EU, as well as more transparency on the use of artificial intelligence in these workplaces. More transparency and traceability of such platform work (objective 3) should lead to better enforcement, by national authorities, of existing rules on labour law, tax law and social security.

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<sup>91</sup> EC, 9 december 2021, COM(2021) 762 final: 'Commission Proposals to improve the working conditions of people working through digital labour platforms.'

Thus, what Member States do not, or insufficiently, regulate — namely, the creation and enforcement of a decent legal framework for digital platform work — has now been taken up by the EU. Moreover, it goes without saying that digital platform work is pre-eminently a form of labour that can be of a cross-border nature. Sometimes this is because the platform worker lives and works in different Member States. There are also examples where the platform, as client or employer, is established in a different Member State from where the platform worker is active. These cross-border elements justify the EU's devising of this EU-level legal instrument. Indeed, the cross-border mode of operation is carefully crafted by the platforms to evade, or profit from, certain national laws. Some Member States have already increased regulation on this kind of labour in recent years. However, the duration of setting up these regulations, and the form they eventually take, varies greatly. It also gives (too) much room for platforms to elevate their economic goals over corresponding worker protections. Therefore, the EU felt the need to address this lack of enforcement with a member state-level directive.

What is also included in this proposed directive is the formulation of certain terms when it comes to legal definitions, in Article 1. Standardised definitions on EU-level indeed facilitate debate about policy, as well as improving data collection and interpretation around platform work. Furthermore, Member States are also urged to organise an effective and impartial dispute resolution system on platform work (Article 13 et seq.). In its final provisions, this proposed directive explicitly states that it does not justify lowering the general level of protection of workers in the various Member States.

If the directive is adopted in its proposed form, Member States will have to transpose the directive into national law. Thus, among other things, the legal presumption of Article 4 and the obligation for more openness about algorithmic management will make their way into the national frameworks. The great advantage of a legal presumption is the clarity at the start of a relationship between worker and platform — whether it will be an employee status, a self-employed status, or any other possible type of relationship. In this way, going to a court after the start of the working relationship, in order to enforce a ruling in each individual case on the qualification of that particular working relationship, is largely avoided. This enhances clarity for both the workers and the platforms regarding labour and social security law, and the consequences these laws entail. For now, the proposal for the directive mainly deals with labour law protection and does not, or hardly, discuss the social security and tax effects.

Member States that have already introduced national legislation on platform work and ensure the enforcement of that legislation will probably not mind this EU-wide measure, as they have already created the framework for it and recognise the importance of proper enforcement. In contrast, Member States that have been too hesitant in recent years and either have not yet come up with specific legislation or are not enforcing it will have to start dealing with it, always keeping in mind the cross-border nature of this specific legislation. How workers, platforms, national policymakers, and legislators deal with this in the coming years will determine whether this proposal, which aims to give digital labour platform workers more protection under labour law, will succeed.

## Dossier 3: Energy transition and Energy Security

*Martin Unfried*

### Introduction

"Actually, I will myself take a cable and pull it over across the border to Germany. We will see who will remove it and for what reasons."

Roel Wever, chairman of the urban region Parkstad Limburg, was half joking when he made this comment at the conference on "Brede Welvaart" in May 2022. The background was his big frustration caused by the difficulties that border cities face when they try to establish renewable energy projects across the border. In this case, the project was between Kerkrade and its German twin city of Herzogenrath, where a photovoltaics field had been installed as the beginning of further ambitious steps. In concrete terms, the concept for a "CO<sub>2</sub>-free Herzogenrath" should include the cost-optimised combination of solar power plants, wind turbines, batteries, combined heat and power plants, and gas and steam power plants as well as heat and hydrogen storage.<sup>92</sup> The location of the already-installed PV plant is precisely at the border with the city of Kerkrade. There is no surprise that this seems to be the perfect project to get involved with, and join forces and benefit on both sides. In this sense, the project is a test case for the type of cooperation that is possible across the border, given current conditions.

This impact assessment deviates from the "normal" ITEM approach where we look at legislative proposals. Since many stakeholders wanted us to look into cross-border aspects related to the energy transition, we examine the broader picture: what effects does the current legal, spatial, and economic framework have on cross-border cooperation in the field of renewable energies and related climate change topics. This relates to the assumption formulated by many stakeholders that border regions have a massive disadvantage when trying to fulfill their obligations with respect to renewable energy targets and other objectives of the energy transition. The initial results show that indeed there is a lack of tailor-made solutions promoting cross-border projects (like cross-border wind parks or cross-border collaboration, as in the project in Herzogenrath), a lack of coordination of subsidy schemes, a lack of coordination of spatial planning with respect to wind and solar locations close to the border, a lack of joint efforts to stimulate the participation of citizens also across the border (in the planning process and with respect to financial participation), and hardly any attempts to tackle the problem of grid capacities in certain Dutch border municipalities by supporting local cross-border solutions.

### Focus on the German-Dutch border regions

The cross-border territory of this assessment was the cross-border regions at the German and Dutch border. This territory was chosen due to the fact that recently detailed studies were already conducted on different cross-border obstacles in the energy field which were used as a valuable input.<sup>93</sup> In

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<sup>92</sup> See Siemens Press release, "GREEN Solar und Siemens Energy unterzeichnen Kooperation zur Erstellung eines Konzepts für ein CO<sub>2</sub>-freies Herzogenrath", 3 July 2020.

<sup>93</sup> This assessment has been benefited from the research reports produced under the INTERREG project SEREH and the work package "Current Legal Framework for Cross-Border Local Energy Markets". See for instance: Lea

addition, the Dutch-German situation has been also selected since there are a few practical cases, where municipalities formulated the ambition to cooperate across the border. This is the case in the Smart Energy region of the two municipalities Emmen (NL) and Haren (DE), where an INTERREG project was set up to stimulate the cooperation. It is also the case in the already-mentioned ambition on the Dutch side to join the German project in Herzogenrath with the background of cross-border energy questions in the Euregio Meuse-Rhine. In Northern Netherlands, there are ambitious projects in and around Eemshaven and Delfzijl that are related to electricity connections and hydrogen.

### Evaluation of the three topics

Table 1: Research questions related to the three dimension of cross-border effects

Theme	Principles	Benchmarks	Indicators
European Integration	<p>Objectives in the new Fit for 55 strategy</p> <p>CO2-reduction/renewable energy</p> <p>Objectives in the old and in the proposal for revised Renewable Energy Directive COM(2021) 557 final</p> <p>European rules for Cross-border energy exchange (ACER coordination), rules for network and distribution operator</p> <p>Regulation 2019/943/EU</p> <p>Espoo Convention Environmental Impact</p> <p>Aarhus Treaty Participation/EU Directives</p>	<p>Effects of EU legislation in non-border regions</p> <p>Implementation of EU rules in other border regions in the EU</p>	<p>Translation of EU and national targets into objectives with a cross-border dimension</p> <p>Possibility to adapt subsidy schemes in the case of cross-border projects.</p> <p>Transposition of the aspect of citizens participants in national legislation related to border situations</p> <p>Innovative projects of cross-border connections in line with EU legislation</p>
Sustainable development, Socio-economic development	<p>Vision Euregio Meuse Rhine 2020/2030 EMR</p> <p>Realization of economic benefits related to the energy transition</p>	<p>Economic activities in the field of renewable energy in non-border region's</p> <p>Crisis management in non-border regions</p>	<p>Cross-border projects related to renewable energy</p> <p>Increase in renewable energy and business activities in the field</p>

Diestelmeier/Martha M. Roggenkamp (2020). Analysis of Current Legal Situation (WP4.I) and Design of Future Legal Framework for Cross-Border Local Energy Systems (WP4.II)



	Objectives of national and regional energy strategies in relation to the border region.		Implementation of climate change objectives  Economic and social solidarity in times of energy crisis
Euregional Cohesion	<ul style="list-style-type: none"> <li>- Euroregional approach to energy transition</li> <li>- Possibility of cross-border projects</li> <li>- Good coordination of spatial planning</li> <li>- Solidarity in times of energy crisis</li> <li>- Energy transition as a boost for the cross-border region</li> </ul>	<p>Situation in non-border regions</p> <p>Joint strategies in other border regions</p> <p>Implementation of cross-border projects in other border regions</p>	<p>Alignment of spatial planning</p> <p>Alignment of regional sustainable energy strategies</p> <p>Citizen participation in energy projects</p> <p>Cross-border solidarity in times of energy crisis and cross-border crisis management</p>

Own compilation

As in the case of our normal impact assessment, we looked firstly into the question of European integration. Does the situation in cross-border regions support the idea of an integrative energy region across the border stipulated by EU legislation?

### Effects on EU integration?

One essential finding: whereas the energy transition stimulated by the EU programme “Fit for 55” has a strong vertical integration dimension with EU objectives and legislation being transposed into national legislation and translated into national objectives, there is hardly any horizontal integration between neighboring Member States. For instance, there is no consistent cross-border strategy with clear objectives, either in the national or regional energy strategies. The Dutch Regional Energy strategies are the attempt to translate the national ambition into regional and local objectives and projects in the field of renewable energies. However, these regional energy strategies are not coordinated with regional strategies on the other side of the border. If any references to the neighbors are made, these are not materialized by the formulation of advanced cross-border planning or cross-border project development. A striking example is the transposition of the latest revision of the renewable energy directive. Either the Dutch nor the German government have fully implemented the possibilities to support citizens' participation and citizens' cooperatives in renewable energy projects. This played hardly any role in the initial transposition at both national levels. Not surprisingly, that there is no tailor-made instrument to stimulate such citizens cooperatives as joint initiatives

across the borders. Another example: for many years, the directive on renewable energies gives the Member States the possibility to coordinate their subsidy schemes to make cross-border projects possible. Neither the Dutch, German, nor Belgian governments have made use of this option. This means that cross-border renewable energy projects are faced with the complex situation of very diverging subsidy schemes. Subsidies from one side cannot be exported across the border.

### Effects on a sustainable economic development of the cross-border territory

As a second aspect, the research tried to assess the effects on a sustainable development of economic activities in a cross-border situation. The province of Limburg is a case in point. Its border location means that many municipalities have a border with Germany or Belgium. Grid capacity is limited to connections within the country at the distribution level. When looking at the grid capacities, grid operators announced in 2021 that feeding renewable electricity into the grid is hindered in Limburg and North Brabant by capacity problems. The situation is especially difficult in North Limburg, where economic activities are on hold.<sup>94</sup> The grid operator TenneT announced in June 2022 that there was a provisional pause for new companies requesting a connection to the electricity grid, both for large-scale off-take and electricity generation. According to TenneT, this was caused by a large increase in requests from industrial parties to electrify, battery initiators, and renewable energy producers.<sup>95</sup> In September 2022, TenneT published a study outlining several options to increase net capacities by congestion management. Cross-border options were not amongst them.<sup>96</sup> So far, there are no consistent plans to use grid capacities across the border in order to make room for a rapid installation of solar parks or very large roof top PV installations. Grid congestion problems make it difficult to reach the installation of renewable energies described in the regional energy strategies.

Another major problem is finding locations for wind parks. In this situation, it is shown in the study that there are no ambitious cross-border renewable energy projects. There is no common cross-border spatial planning process to coordinate the search for locations on both sides of the border. In the report, it is shown why cross-border economic activities in the field of renewable energy are difficult to implement, given the legal complexity shown in previous studies by the University of Groningen. This relates to the missing possibilities for local cross-border transport of electricity at the distribution level. With respect to the very ambitious climate change objectives, this is currently a relevant obstacle vis-vis to a low carbon economy and sustainable development in border regions. The difficulties in a cross-border territory has been documented in the case of the SEREH Interreg project of the German-Dutch border municipalities Emmen and Haren. It remains to be seen which of the very ambitious objectives (i.e. a joint cross-border energy market) can be realized. So far, the results are still modest.

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<sup>94</sup> See the map made by netbeheer that shows the restrictions in many border regions in the Netherlands with respect to grid capacities, <https://capaciteitskaart.netbeheernederland.nl/>.

<sup>95</sup> See the press release of grid operator TenneT from 9.9. 2022. <https://www.tennet.eu/nl/nieuws/grootverbruikers-van-elektriciteit-noord-brabant-en-limburg-kunnen-vanaf-nu-weer-worden>

<sup>96</sup> TenneT (2022): Congestieonderzoek Limburg Analyse naar beschikbare transportcapaciteit voor (duurzame) opwek van elektriciteit onder toepassing van congestiemanagement.

Apart from the field of renewable energy, joint cross-border questions related to hydrogen and an hydrogen economy have led already to joint agreements and associated projects stimulated by the national level in NL with, for instance, NRW.<sup>97</sup> In the north, the provinces of Drenthe and Groningen and the German state of Lower Saxony are entering into a cross-border cooperation agreement to develop hydrogen projects. Provincial ministers Melissa van Hoorn (Groningen) and Tjisse Stelpstra (Drenthe) came to an agreement with Birgit Honé, minister for Federal and European Affairs and Regional Development of Lower Saxony, on joint efforts in March 2022. This also involves the New Energy Coalition, H2 Region Emsland, and the German energy company EWE. The recent INTERREG-funded project NorthH2West prepares a feasibility study for hydrogen-based, CO<sub>2</sub>-neutral transport in the DE-NL border region. Its focus is on heavy goods transport along the TEN-T Core and Comprehensive networks. Other than in the renewable energy field, many single projects have been started. Nevertheless, even if there are many intended projects involving hydrogen, it is too early to assess the economic impacts on the border regions since the projects are still in an early phase.

### Effects on Euregional cohesion

In addition, there is also a brief assessment related to the third aspect of “Euregional cohesion.” As already mentioned, there are so far no big cross-border projects in renewable energy or other climate change-related activities in which regional or local stakeholders in border municipalities at the German-Dutch border are involved. One can speak about a lack of competences at the Euregional level. And the existing competences in the field of spatial planning did not lead to a joint approach. Cross-border renewable energy aspects have not been a prominent topic on the agenda of the regional and local stakeholders, for instance in the south in the Euregio Meuse-Rhine. There was no dedicated INTERREG project for a joint solar field or wind park project along nor in the Euregio Meuse-Rhine (nor along the entire German-Dutch border during the programming period 2013-2020). In the Euregio Meuse-Rhine, there were some projects in the field of innovation but not directly related to fulfilling objectives of regional energy strategies. Other than in the case of the Einstein Telescope (as a major common innovation project), there is no joint cross border project or ambitions other than vaguely formulated objectives. In this respect, the joint cross-border “narrative” is missing. This was different at the border further in the north between the municipalities of Emmen and Haren. As mentioned earlier, the joint project aimed at a cross-border “smart” energy region. However, it did not lead to a cross-border renewable energy project but at least to a direct electricity connection across the border for a specific company. For the Euregio Meuse Rhine, there are also some concerning developments. Incidents recently occurred where citizens living close to the border were not satisfied with energy-related projects in the neighboring municipality. In the near future, this could even have negative impacts on good relations across the border if citizens of a border municipality believe they were not involved in planning processes.<sup>98</sup>

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<sup>97</sup> The Hy3 project investigated in 2020 potentials for business models with green hydrogen between the Netherlands and North Rhine-Westphalia. The state of North Rhine-Westphalia, together with the province of South Holland and the ports of Rotterdam, Duisburg, Neuss/Düsseldorf and Cologne, agreed in 2020 to work with the cross-border project RH2INE on the development of an infrastructure for hydrogen supply in the Rhine ports.

<sup>98</sup> One recent case has been the planning process of a biogas installation in Lixhe/Visé (BE) close to the Dutch municipality of Eijsden. On the Dutch side, a protest group has been established that especially raised the question of lacking cross-

In the course of the research, the question of climate change and energy transition was overshadowed by concerns related to energy security and exploding energy prices. Especially the last aspect has dramatically changed the conditions for present and future renewable cross-border energy projects. Since the autumn of 2022, conditions are permanently changing, and research is ongoing after this summary has been written (beginning of October). The full report will also cover the up-coming questions of ad-hoc solidarity in times of energy crisis, the explosion of prices, and questions related to cross-border crisis management.



Source: Netbeheer Nederland, new installations cannot feed into the grid because of lacking network capacities – in red regions.

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border participation. See: Brief aan de Belgische Minister over bouw van Biomassa Centrale in Lixhe, pers mededeling Groen-Links Fractie Maastricht, 21 Oktober 2020. On the Belgian side, the project is set on halt (in the summer of 2022).

## Dossier 4: Cross-border exchange of information in the fight against organised crime (ex-ante)

Dr. Math Noortmann

### Introduction

As border regions are par excellence a territory that suit criminal entrepreneurs, the ending of physical border controls in the European Union is generally considered to have caused a scaling up and increase of transnational criminal activities. The questions as to (1) whether these regions are particularly effected, (2) what the EU and the governments of its member states have done to foster crime control and law enforcement on border regions and (3) are EU and national crime control policies the best option in border regions, are indeed justified.

The first question tends to be answered with a clear yes. National borders still function as a jurisdictional shielding for criminal activities.<sup>99</sup> In border regions criminals do not have to travel far to be able to (ab)use jurisdictional differences and/or escape 'the long arm of the law'. Evidence-based studies of the Euregion Meuse-Rhine have demonstrated the vulnerability of that specific border region.<sup>100</sup> It may be assumed that other EU border regions suffer from a similar increase in transnational criminal activities. For several reasons however, the Euregion Meuse-Rhine may be considered "a laboratory for police and judicial cooperation in the European Union"<sup>101</sup>, which brings us to our second question: what potential effects do the proposals of the Commission have on the police cooperation in the Euregion?

That question is informed by the apparent lack of effectiveness of harmonizing regulations, directives and policies, especially in border regions. In a 'message' to the European Union, Spapens and Fijnaut suggested in 2005 that the EU should adopt a differentiated policy towards the members states which would acknowledge the particular criminal problematic and collaborative issues that are specific to a given border region.<sup>102</sup> Whether the EU has received and understood that message is doubtful.

### New EU proposals – effective EU integration?

Most recently, the Commission submitted a proposal for a *Directive on information exchange between law enforcement authorities of Member States* and a proposal for a *Council Recommendation reinforcing operational cross-border police cooperation* (Brussels, 8.12.2021, COM(2021) 782 final). There is little evidence that the particularities of Euregions as transnational territories are taken into account. The Information Exchange directive still revolves around and fosters the concept of Single Points of Contact (SPC) and the reinforcement of Europol as an EU Institution. The *Council Recommendation reinforcing operational cross-border police cooperation* suffers from a similar deficit,

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<sup>99</sup> Spapens, A. C. M. en C. Fijnaut (2005). *Criminaliteit en rechtshandhaving in de Euregio Maas-Rijn. Deel I*, Intersentia nv.

<sup>100</sup> Idem. Fijnaut, C. en B. De Ruyver (2008). "Voor een gezamenlijke beheersing van de drugserelateerde criminaliteit in de Euregio Maas-Rijn: een rapport voor het Bestuur van de Euregio."; Spapens, T. (2021). "Druggerelateerde criminaliteit in de Euregio Maas-Rijn; fenomeen en aanpak."

<sup>101</sup> Fijnaut, C. en A. C. M. Spapens (2010). *De Euregio Maas-Rijn: Een laboratorium voor politie en justitie samenwerking in de Europese Unie. Internationale politieverwerking: opkomende kwesties, theorie en praktijk*. F. Lemieux.

Cullompton, Devon ; Portland, Or., Willan Pub. : 24 – 41, p. 101.

<sup>102</sup> Spapens en Fijnaut 2005, p. 250.

notwithstanding the reference to *cross-border* in its title. Operational cross-border police cooperation doesn't necessarily prioritize or focus on such cooperation in border regions. Nothing in the Recommendation warrants the conclusion that border regions were specifically considered, notwithstanding the assumption that such cross-border policing actions would predominantly happen in cross-border regions.

Notwithstanding the inclusion of the term 'operational' in the title of the recommendation, a critical analysis warrants the conclusion that this Recommendation focusses on operational strategies rather than operational actions. Structural reference to PCCCs and SPCs tend to indicate that the EU's decision-making bodies are unable to move away from the Europeanization of crime control and law enforcement. If one were to apply the subsidiarity principle in extremis, the question would be whether EU solutions would be more effective than bilateral solutions and whether bilateral solutions would be more effective than border regional solutions. It is not to be expected that this EU initiative will strengthen local cross-border police cooperation on the ground. Nor will there be any measurable benefits for the development of the Euregions.

The 2004 BeNeLux Treaty Concerning Police Cooperation demonstrates that EU member states are not relying on EU initiatives only. But the fact that the new, 2018 BeNeLux Treaty has not entered into force yet, shows the national preoccupation with cross-border cooperation in the field of policing. While the idea of cross-border cooperation in crime control and law enforcement carries substantial diplomatic weight in the (inter)national area, the actual implementation of that concept seems to require a pragmatic rather than a political approach.

On the basis of the above, the question of whether and in the EU and national policies and regulations find their way into daily police practice in the Euroregions is doubtful. Even when it comes to cooperation in crime control and law enforcement between national administrative bodies, it can be observed that there is a tension between the different social realities of structural, strategic thinking about cooperation at national level and operational thinking at enforcement level.<sup>103</sup>

### **Stimulating Cross-border cohesion from bottom-up in the Euregio Meuse-Rhine**

It is not surprising that numerous cross-border cooperation initiatives have been developed in the day-to-day practice of combating cross-border crime. In the Euregio Meuse-Rhine such initiatives date back to the establishment of the cooperations between chiefs of police (NEBEDEAGPOL) in the 1970s. The Euregio Police Information and Cooperation Centre (EPICC), the Euregional Cooperation Bureau for Criminal Law (BES) and the Euregional Information & Expertise Centre (EURIEC) are further examples. Official acknowledgement of and support for such local Euregional collaborative initiatives would boost operational cooperation. It would require the adoption of a more bottom-up oriented approach in cross-border crime control and law enforcement by the EU and its member states.

One must conclude that these EU instruments were not designed for the day-today problematic of Euregional cross-border law enforcement cooperation. Is the EU neglecting Euregional law

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<sup>103</sup> Schuilenburg, M. en W. van der Wagen (2011). "Samenwerking in de criminaliteitsbestrijding." Tijdschrift voor veiligheid 10: 16.

enforcement or are its civil servants and politicians simple not aware of what is going on in the periphery of the border regions?

## Dossier 5: Border effects of the Dutch fireworks prohibition (*ex-ante*)

Sander Kramer  
Pim Mertens

### Introduction

During the COVID-19 pandemic, a fireworks ban was introduced in the Netherlands to relieve the health care system in the years of 2020 and 2021. This ban prohibited buying and selling, possessing, transporting and setting off fireworks. The ban did not include so-called “F1” fireworks, the kind that include poppers, stars and fountains. Since December 2020, the sale and consumer use of fireworks has also been further structurally limited through a regulation on the designation of consumer and theatre fireworks, (*Regeling aanwijzing consumenten- en theatervuurwerk*, or “Ract”), which fleshes out the earlier fireworks decree (*Vuurwerkbesluit*). This tightening means that the category “F3” fireworks, single-shot tubes, fireworks with loud noise, and flares are no longer designated as consumer fireworks. Therefore, the sale and storage for private use, and setting off these fireworks by private individuals is no longer permitted. In doing so, the legislator states that neighbouring countries such as Belgium, Germany and Luxembourg have not allowed private consumers to get hold of “F3” fireworks for some time, and therefore there is harmonisation of legislation among these countries and the Netherlands from now on. Border effects were not expected.

On February 5, 2020, a bill was initiated (*Wet tot wijziging van de Wet milieubeheer en het Wetboek van Strafrecht en in verband met de invoering van een vuurwerkverbod voor consumenten*) to change the law and forbid consumers firework. There are concerns regarding this initiative about the expected border effects, as also raised by, among others, the Council of State, the Association of Dutch Municipalities (*Vereniging van Nederlandse Gemeenten*, or “VNG”), Members of Parliament and the media. Further plenary discussion on this has since been postponed and is expected to be taken up for further consideration by the House of Representatives in 2023.

Meanwhile, during the COVID years, valuable experiences have been gained around possible border effects in the event of a total ban on fireworks. With the pandemic, the epidemiological situation and the subsequent pressure on the health care system as arguments, several countries, including the Netherlands, Germany and Belgium, have restricted fireworks by and for consumers to a certain, and sometimes different, degree. These experiences are used in this report on the border effects to assess *ex-ante* effects of a legal fireworks ban for consumers, should the bill be adopted. Nevertheless, *ex-post* relevant experiences of neighbouring countries, and their temporary bans on firework for the sake of COVID-19 during 2020 and 2021, are used as well. Thus, there is an *ex-ante* assessment of the initiative, complemented by an *ex-post* analysis of the temporary fireworks bans. This involves secondary research into various (news) reports, articles and policy documents, as well as interviews with a number of experts.

### Current framework: EU, Netherlands, Belgium and Germany

At the European level, the European Parliament and Council Directive 2013/29 of June 12, 2013 (hereafter Pyro Directive) applies. The Pyro Directive sets requirements and standards for the use and



sale of pyrotechnic articles. In doing so, the Pyro Directive aims to harmonize these standards among the Member States, given the previously divergent provisions, and thus ensure the free movement of pyrotechnic articles in the internal market, as well as provide a high level of health and safety protection. The Pyro Directive also imposes restrictions on the offering of these articles to individuals. If the requirements laid down in the Pyro Directive have been met, Member States may not prohibit, restrict or hinder the free movement of pyrotechnic articles. Nonetheless, Article 16 states that 'The use of pyrotechnic articles and, in particular, the use of fireworks, is subject to markedly divergent cultural customs and traditions in the respective Member States. It is therefore necessary to allow Member States to take national measures to limit the use or sale of certain categories of pyrotechnic articles to the general public for reasons, inter alia, of public security or health and safety'. To this end, Article 4(2) of the Pyro Directive allows a Member State to take measures to prohibit or restrict the possession, use and/or sale, of "F2" and "F3" fireworks for reasons of public order, environmental protection, or health and safety.

In the Netherlands, the Pyro Directive has been implemented through the fireworks decree (*Vuurwerkbesluit*) and further details through regulations, such as the "Ract". In principle, it is forbidden to sell consumer fireworks to a private individual, except on December 29, 30 and 31. The use, or setting off, of fireworks is prohibited except between 6 p.m. on December 31, and 2 a.m. on January 1 of the following year. In addition, based on a local ordinance (*Algemene Plaatselijke Verordening*, or "APV"), municipal councils can establish a ban or a fireworks-free zone in the municipality. Several municipalities currently have a ban or a fireworks-free zone in place by means of an APV. As already mentioned, in the two years of 2020 and 2021, there was a general, nationwide, ban on fireworks.

In Belgium, at the federal level, the Royal Decree of October 20, 2015 regarding the offering of pyrotechnic articles for sale (KB October 20, 2015) implements the European Pyro Directive. It is permitted to sell consumer fireworks belonging to the categories "F1" and "F2" to individuals. In Flanders, a proposal for a decree was adopted by the Flemish Parliament on April 3, 2019, a derogation from the Royal Decree. In this decree, implemented on April 26, 2019, a total ban on fireworks is introduced for the Flanders region, thus a ban on "F2" fireworks. The decree allowed mayors to grant local derogations. However, on Dec. 17, 2020, the Constitutional Court overturned the decree and ruled that such a ban falls under federal jurisdiction. In 2020, it was decided at the federal level that a general ban on the sale and setting off fireworks should be in place; this decision was not made in 2021. However, it is possible for municipalities to declare local bans. Through local public order (*Plaatselijke Verordening*, or "PV"), fireworks can be banned by the municipality. In 2021, some fifteen municipalities in the province of Limburg (Belgium) had fireworks bans in place. In addition, governors can also impose a provincial ban on the setting off and possession of fireworks for the night of December 31 to January 1 for safety reasons.

Germany also had a sales ban (*Überlassungsverbot*) for the years 2020 and 2021 on the circulation of category "F2" pyrotechnic articles to consumers without an explosives license. Thus, this was not a total ban on using fireworks. However, a ban on using fireworks did apply to designated public places, e.g. churches, hospitals, nursing homes. Moreover, in the state of North Rhine-Westphalia (NRW), private use of fireworks was generally permitted except for crowded places (*publikumsträchtigen Plätzen*). According to the protection ordinance (*Schutzverordnung*), it is up to local authorities to determine exactly where these places were located. The COVID-19 protection ordinance

(*Coronaschutzverordnung*) was revised by the NRW state government on December 16, 2021. This allowed the competent (local) authorities – on the basis of general regulations (*Allgemeinverfügungen*) – to ban the setting off of any type of fireworks in certain parts of certain towns in North Rhine-Westphalia. For example, in 2021 the 15 largest cities in North Rhine-Westphalia were subject to a complete fireworks ban in certain areas.

Under the law on firework sale (*Erste Verordnung zum Sprengstoffgesetz*), the sale of “F2” fireworks is usually only allowed from December 29 to December 31, and the setting off by private consumers is permitted on December 31 and January 1. Here a minimum age of 18 years applies, for “F1” fireworks this is 12 years. It is possible to take stricter measures locally.

### Evaluation of research topics

In this report, the following principles, benchmarks and indicators were defined and examined, within the themes of European integration, socio-economic/sustainable development and Euregional cohesion.

Table 1: Central research themes, principles, benchmarks, and indicators for assessing the cross-border effects of a ban on fireworks

Research topic	Principles	Benchmarks	Indicators
<b>European integration</b>	<ul style="list-style-type: none"> <li>Harmonisation of laws, regulations and administrative provisions (recital 5 in the Pyro Directive)</li> <li>Free movement of goods and people</li> </ul>	<ul style="list-style-type: none"> <li>Harmonized rules on the sale and use of consumer fireworks</li> <li>No impediment to cross-border sales and transportation</li> </ul>	<ul style="list-style-type: none"> <li>Alignment of consumer fireworks rules?</li> </ul>
<b>Socio-economic/sustainable development</b>	<ul style="list-style-type: none"> <li>Free movement of goods</li> <li>Economic development of entrepreneurs in the border region</li> </ul>	<ul style="list-style-type: none"> <li>No impediment to cross-border sales</li> <li>Same rules for fireworks dealers in neighbouring countries</li> </ul>	<ul style="list-style-type: none"> <li>Cross-border "shopping"?</li> <li>Disadvantaging/favouring fireworks dealers across borders</li> </ul>
<b>Euregional cohesion</b>	<ul style="list-style-type: none"> <li>Cooperation in enforcement</li> <li>Consumer policy coordination</li> <li>Territorial cohesion</li> </ul>	<ul style="list-style-type: none"> <li>Good coordination in cross-border enforcement</li> <li>Similar measures</li> </ul>	<ul style="list-style-type: none"> <li>Joint enforcement?</li> <li>Alignment of measures locally?</li> </ul>

The Pyro Directive also aimed to further harmonise the legal frameworks. It can be observed that the national frameworks around consumer fireworks are almost similar at the moment. With the last legal amendment in the Netherlands, where “F3” consumer fireworks were banned, the Netherlands aligned with its neighbours Belgium and Germany. However, this new Dutch initiative to ban fireworks would again mark a diversion of the alignment, with initially no mention of border effects by the proposers. In fact, in several reactions, by the VNG and the Council of State among others, concerns are expressed about possible border effects, especially with regard to the enforcement of such a total fireworks ban. Nevertheless, the initiative is welcomed and supported by the VNG, as well as from border municipalities. Furthermore, in Belgium (more specifically Flanders) the discussion whether to introduce a similar fireworks ban is currently also prominent. There is also support from the Flemish

association of municipalities and cities (*Vlaamse Vereniging voor Gemeenten en Steden*), as well as the Flemish Parliament.

Because of the COVID-19 pandemic in the years 2020 and 2021, different rules have been agreed upon. In 2020, these measures were more or less similar in the Netherlands, Belgium (both a total ban) and Germany (a sales ban). In 2021, deviations did exist, as no restrictions were introduced in Belgium, while the Netherlands and Germany repeated their rules from the year before. The experiences from these deviations provide some insight into the possible border effects if policies were no longer harmonised in the future.

Regarding socioeconomic/sustainable development and Euregional cohesion, it is shown that such different policies around a border can cause problems. In the news during the last weeks of 2021, the topic of Dutch "fireworks tourism" in Belgium was cited more often. Border entrepreneurs on the Belgian side benefited greatly from the sales ban in neighbouring countries. Although exact data does not seem to be at hand, the expectation that a Dutch ban on fireworks could cause a relocation of fireworks retailers across the border, is justified. In addition, the "fluid" nature of the border, which means crossing the border frequently and easily in border regions, in this case does not contribute to one of the goals of a possible fireworks ban: the protection of the environment and thus the sustainability of the border region. Nevertheless, when it comes to the possible future bans, the most important issue constitutes enforcement and cross-border cooperation. For example, in 2021, in the border municipalities of Baarle-Hertog and Baarle-Nassau, it appeared impossible to effectively enforce the Dutch fireworks ban. These enclaves are a good example of how intertwined across borders border regions can be. Enforcing a national ban when the neighbouring country does not have a ban, has proven very difficult. Through several interviews and conversations, this dossier focuses particularly on this issue, and deals with the question of how neighbouring municipalities could better cooperate. An interesting option being explored in this report is the (im)possibility of local deviations allowed by the three legal frameworks.

## **Dossier 6: Border residents' perceptions of the 'border' and 'identity' after the COVID-19 crisis: how do we establish it? (opinion piece)**

*Sander Kramer  
Dr. Math Noortmann*

During the COVID-19 crisis, the (territorial) borders between EU member states became important once again. The residents' perceptions of the border tended to change. Especially in a cross-border region such as the Meuse-Rhine Euroregion, where a 360° perspective is promoted when it comes to cross-border cooperation, living and working, deeper insights into such perceptions are central to considering ideas such as a Euroregional identity. This report on the border effects (*Grenseffectenreportage*) comprises a commentary on these aspects, as a follow-up to the 2020 and 2021 cross-border impact assessments on the COVID pandemic. In addition to this, it will pave the way for future research on the identity of border residents.

The relationship between living in a border region and the existence of a border-regional or (trans)national identity has increasingly become the subject of academic debate. Border regions are, by definition, territorial areas, where similarities and differences between both sides of the border become more apparent. There are socio-cultural and economic differences; differences when it comes to history and religion; differences and similarities in language, architecture, infrastructure. Differences and similarities that lead to cooperation, tension, and conflict, to attraction and rejection, to mobility and immobility. The question how the border inhabitant perceives herself and her fellow inhabitants on the other side of the border, and what factors play a role in this, is complex and not easy to answer. With increasing globalisation, can one still speak of a single 'identity' given the increasing globalisation? What is identity? What is a border? How relevant is the possible establishment of a border identity? How should this concept be defined; as 'border identity', 'border region identity' or 'cross-border identity'? These questions, among others, are discussed in this report.

The concepts of 'identity' and 'border' seem to have manifested themselves as dynamic and multidimensional concepts. In this context, this report discusses the value of constructing an identity formation. It also highlights the dangers that are inherent in attempts to establish overarching explanations, or identities. Common ground among academics is the growing awareness that identity is marked by hybridity, i.e., identities do not allow themselves to be divided along rigid lines. That is to say, there is no single 'identity'. Hybridity exists not only between different geopolitical identities (local, regional, national) but also in terms of a cultural, ethnic or religious identity. This means that on the 'border' between two identities, a grey area emerges where two different identities overlap or merge into one hybrid identity, a so-called 'multiple identity concept'. Indeed, on relatively rare occasions does a territorial boundary constitute a clear dividing line between groups in terms of culture, ethnicity, religion or language. How, for instance, does someone born in Belgium with a (Dutch) Limburgian mother and a German father, living in the Euregion Meuse-Rhein, determine their identity? Given the above, a border-overarching, unified, conceptualisation of 'identity' seems particularly difficult. There are too many territorial, historical, political, ethnic, cultural, religious and social 'borders' in Europe and especially in its border regions, and these types of borders vary considerably and will continue to vary.

## Dossier 7: The cross-border effects of the Dutch Nitrogen policy (student dossier)

*Gabor Gyenes*

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### Introduction

Nitrogen emissions are a main concern of the Dutch government in the year 2022. It has in particular consequences for the future Dutch agriculture policy and the business opportunities of farmers, on the question how many new houses and other infrastructure can be built and how the quality of natural habitats can be improved. For the last decade, the Dutch government is struggling with different policy measures to cut nitrogen emissions but has been not able to meet legal European and national standards. The government implemented the Programme “Nitrogen Approach” (*Programma Aanpak Stikstof*) in 2015. Falling short of tangible results, this program was replaced by the “Nitrogen policy” (*Stikstofbeleid*) in 2019 with stricter regulations in four main sectors: agriculture, industry, construction, and traffic. Recently, new Minister of Nature and Nitrogen Christianne van der Wal (VVD) presented the targets for each region in June 2022, detailing how much percent nitrogen emissions should be reduced in the agriculture sector. This has led to unknown forms of protest by farmers associations.

### The territory of the research

This dossier investigates the cross-border repercussions of this new nitrogen policy on the Euregion Meuse-Rhine. By doing so, a look could also be taken on effects on German, Flemish, and Walloon territory. To inquire into this topic, semi-structured interviews were conducted with stakeholders in charge of environmental issues in the Euregion Meuse-Rhine (Flanders, North-Rhine-Westphalia, Dutch Limburg, and Wallonia). Then, the results were analysed using the three themes: European integration, socio-economic development, and Euregional cohesion for every region.

### The Dutch approach

In Limburg and the rest of the Netherlands, the maximum nitrogen deposition value, or the *Kritische depositiewaarde* (critical deposition value), is surpassed in many areas and the effects of novel activities with extra emissions have an enormous spatial scale. The *Stikstofbeleid* aims to reduce emissions below the critical deposition value and to determine the total area that should fall under this criterion. This strategy led to substantial measures within the different sectors. In particular, the livestock farming component of the agricultural sector close to Natura 2000-areas is facing major consequences, as it is the greatest contributor of nitrogen deposition in Limburg (and the rest of the country). Farmers that are affected have the choice to be bought out, switch to more sustainable farming, buy additional nitrogen emissions, or relocate their farm. This has socio-economic consequences for the Dutch agricultural sector and has led to a serious conflict where farmers have been organising intense protests in 2022. Among factions in the farmer’s organisations and among

political stakeholders, the use of the critical deposition value as a measure for nitrogen emission is under discussion.

This research compares the approaches taken by Wallonia, Flanders, and North-Rhine Westphalia when it comes to nitrogen emissions to abide by the European legislation.

### **Effects on the neighbouring regions?**

According to expert statements, the effect of the new Dutch nitrogen policy on Wallonia is, for now, limited. However, as the research shows, some effects are expected to take place in a scenario when Dutch farmers are moving across the border with their activities and the price of farming land is increasing. However, Wallonia is implementing some rather constraining laws. To some extent, the Walloon government has no interest in stimulating cross-border agriculture activities but tries to limit the mobility of Dutch farmers. This could be seen as a rather problematic development with respect to economic mobility in the Euregion. Moreover, it could have negative repercussions on the political relations. On the other hand, there is no interest at the Walloon side to get an import of nitrogen quantities and environmental problems from relocated activities across the border.

Similar to Wallonia, the outcome of our research in the Flanders points to a relatively limited impact so far of the new Dutch policy. Our findings show that the Flemish government has a positive opinion about the Dutch nitrogen policies, due to the fact that the Dutch situation put the urgency of the nitrogen issue also on the agenda of the Flemish Government. Moreover, it is expected by experts that any reduction of the nitrogen emissions in the Netherlands also reduces the amount of nitrogen that enters Flanders.

One critical aspect for future cross-border cooperation in the field (what could be a problem with respect to Euregional Cohesion) is that the Netherlands and Flanders have diverging goals for their nitrogen policies. Before the Flemish adopted the current stricter permit regime, it was easier for Dutch farmers to start a business in Flanders. The new permit policy means that the only way for Dutch farmers to be able to farm in Flanders is by buying up existing agricultural businesses. In sum, we can conclude that the effects of the new Dutch nitrogen policy on the Flemish situation is still limited, but the diverging systems are certainly not fostering cross-border activities.

Despite the impact of the *Stikstofbeleid* being limited in Wallonia and Flanders, the nitrogen emissions (and their potential cross-border fall-out) are a concern of environmental authorities of both regions.

### **The special situation on the side of NRW/Germany**

The case of North-Rhine Westphalia is again a bit different. One reason is that Germany also has a legal problem vis-à-vis EU legislation. The German Federal Government is currently still working on the transposition of the Nitrates Directive with a big delay. There are policies addressing the problems related to nitrogen deposition, but according to the experts, the capacity of the government is limited. There are measures introduced and under revision, but the country still lacks regulations including all the sectors and polluting components. As a consequence of insufficient capacities and policies that is absorbing all the resources of the government, there is a lack of communication with the neighbours.

Since cross border effects are not on the agenda, there is also no available data on the effects of the Dutch nitrogen policy and respective emissions.

In summary, effects of the Dutch *Stikstofbeleid* on the neighbouring regions in the Euregion Meuse-Rhine are today still uncertain. However, it is obvious that despite EU legislation, policies are not synchronised between the Netherlands, Belgium, and Germany. This also means that stakeholders in the neighbouring regions are faced with a difficult and complex situation where any form of cross-border coordination is difficult. Nevertheless, it remains unclear whether and how a harmonisation of national policies would be helpful and whether this should be supported by the revision of nitrogen legislation at the European level.

#### **Important aspects: differences in measurement**

While no concrete effects can be identified in connection to the Dutch nitrogen policy in the Meuse-Rhine Euroregion as a whole, some important points can be raised. Firstly, regard must be paid to the fact that measuring nitrogen emissions today requires different methods and approaches. This is a problem for the comparability of emission values. Inevitably, this creates difficulties, as the Euregion Meuse-Rhine covers three countries and two Belgian regions. Secondly, farmer mobility could be stimulated due to stricter Dutch rules. However, it is today not evident that this is also appreciated by the neighbouring regions and whether it could be coordinated across the border.

#### **Making use of existing Euregional initiatives**

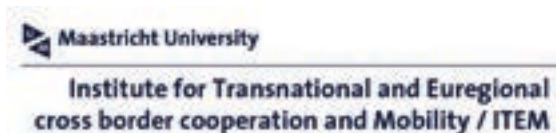
Experts from the Euregion suggested the possibility of more cooperation and cohesion between the regions. A more sustainable approach regarding agriculture would be desirable, and this could enhance further cross-border collaboration. One condition for a broader cross-border view would be solid data. In this respect, the already existing Geographic Information System portal of the Euregion Meuse-Rhine could provide data on nitrogen and related substances in the future. Also, the Three-Countries Park could be perceived as a platform and further instrument of cooperation also with respect to nitrogen emissions from farming activities.

Finally, the dossier puts forward policy recommendations regarding a bottom-up approach. For example, requests have been made for further cross-border research as well as exchange of already existing data and information between the different regions. Moreover, a standardised approach is also suggested, since the risk of undermining the different nitrogen policies by individual practices in the border regions was high. Overall, the complexity of the dossier indicates the demand for further communication and collaboration between the regions in question.

## Summaries Cross-Border Impact Assessments 2021

### Dossier 1: Ex-ante study on the cross-border effects of the EU's proposed Minimum Wage Directive (TEIN study)

Joint research collaboration with the Transfrontier Euro-Institut Network (TEIN)



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### General Introduction

This dossier studies the impact a binding common European framework for adequate minimum wages might have on cross-border regions in the EU and their inhabitants. With its proposal for a Minimum Wage Directive (October 2020), the European Commission aims to provide all workers in the Union with access to adequate minimum wages. Since the proclamation of the European Pillar of Social Rights (hereafter the Pillar) by the European Parliament, the Council and the Commission in November 2017, legislative action on strengthening “Social Europe” has been on the rise. After all, the Pillar is ‘to deliver on the EU’s promise of prosperity, progress and convergence, and make social Europe a reality for all.’ More precisely, the pillar postulates:

*‘Principle 6 of the Pillar on “Wages” calls for adequate minimum wages as well as for transparent and predictable wage setting to be put in place, according to national practices and respecting the autonomy of the social partners.’<sup>104</sup>*

Just recently, the European Commission has highlighted (once more) the need for ‘Vibrant cross-border labour markets’ as one of its four priority clusters, which it will focus future policy actions on

<sup>104</sup> Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, COM(2020) 682 final, Brussels, 28.10.2020. The Strategic Agenda for 2019-2024, agreed at the European Council in June 2019, called on the implementation of the Pillar at EU and national level.



to strengthen EU Border Regions.<sup>105</sup> The reality is, though, that many border regions continue to be characterised by socioeconomic asymmetries on both sides of the national border. For businesses (particularly SMEs), employees and job seekers to benefit from the advantages, which genuine cross-border labour markets may present, the Commission underlines that

*‘cross-border regions should be seen as a “single” territory when it comes to education and training, skills and competences, employment, and access to social security. This [however] is not yet the case [...]’<sup>106</sup>*

From this perspective, a vibrant cross-border labour market would – according to the Commission – provide businesses with access to a larger pool of skills and competences, facilitate the retention of (international) talent and enable job seekers’ access to more job vacancies.

Against this background, it seems timely to ask what effects the proposed EU Minimum Wage Directive may have on cross-border regions and their inhabitants. Minimum wages can be a sensitive topic in labour market policy (thinking back of the vivid discussions held in Germany before introducing the country’s first national statutory minimum wage in 2015). The topic implies important economic and social considerations. Given the European aim of connecting and ‘boosting’ border regions through cross-border labour markets and promoting Euregional development and cohesion, it is interesting to see if national minimum wages commonly aligned by a European framework for adequacy would play any role in this.

To gain insight into how that impact will be felt in different regions across Europe, the research has been conducted in close collaboration with several TEIN-partners. The analysis provides an ex ante assessment of the Directive’s possible effects on the cross-border territory between Belgium, the Netherlands and Germany (ITEM), the cross-border area between France and Germany (Euro-Institut) and the cross-border area between Germany and Poland (Leibniz/BTU-Cottbus/Viadrina), see figure 3 below.

## Methodology

Following up on the successful cooperation on the “Corona-dossier” of last year, the partners are pleased to continue the joint research initiative between ITEM and other TEIN-members. The 2020-dossier has offered thorough insights into sometimes far-reaching and dire border effects of policy and legislation, particularly accentuated by the crisis caused by the COVID-19 pandemic.

This year, for the first time, the collaborative study deals with a ‘traditional’ piece of EU legislation, albeit in preparatory stage. Hence, both the Commission’s proposal (October 2020) as well as the initial draft report of the European Parliament (April 2021) with potential amendments will provide the source legal texts for this analysis.

Minimum wage setting – which is, in principle, a national prerogative – makes for a potentially controversial topic and goes to the heart of socio-economic development and citizens’ social rights.

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<sup>105</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on ‘EU Border Regions: Living labs of European integration’, COM(2021) 393 final, Brussels, 14.7.2021. ‘Cross-border regions need tailor-made solutions and policies that can maximise their potential, remove existing barriers and boost their economic recovery and resilience.’ (COM(2021) 393 at 5).

<sup>106</sup> Ibid. at 9.

To consider the law’s potential (cross-)border effects, one must therefore first gain a picture of what the Directive’s implementation would mean for the concerned Member States individually. Would the minimum wage standards, as proposed by the Commission or the European Parliament, (have to) result in changes in national legislation? These Member States are Belgium, France, Germany, the Netherlands and Poland.<sup>107</sup>

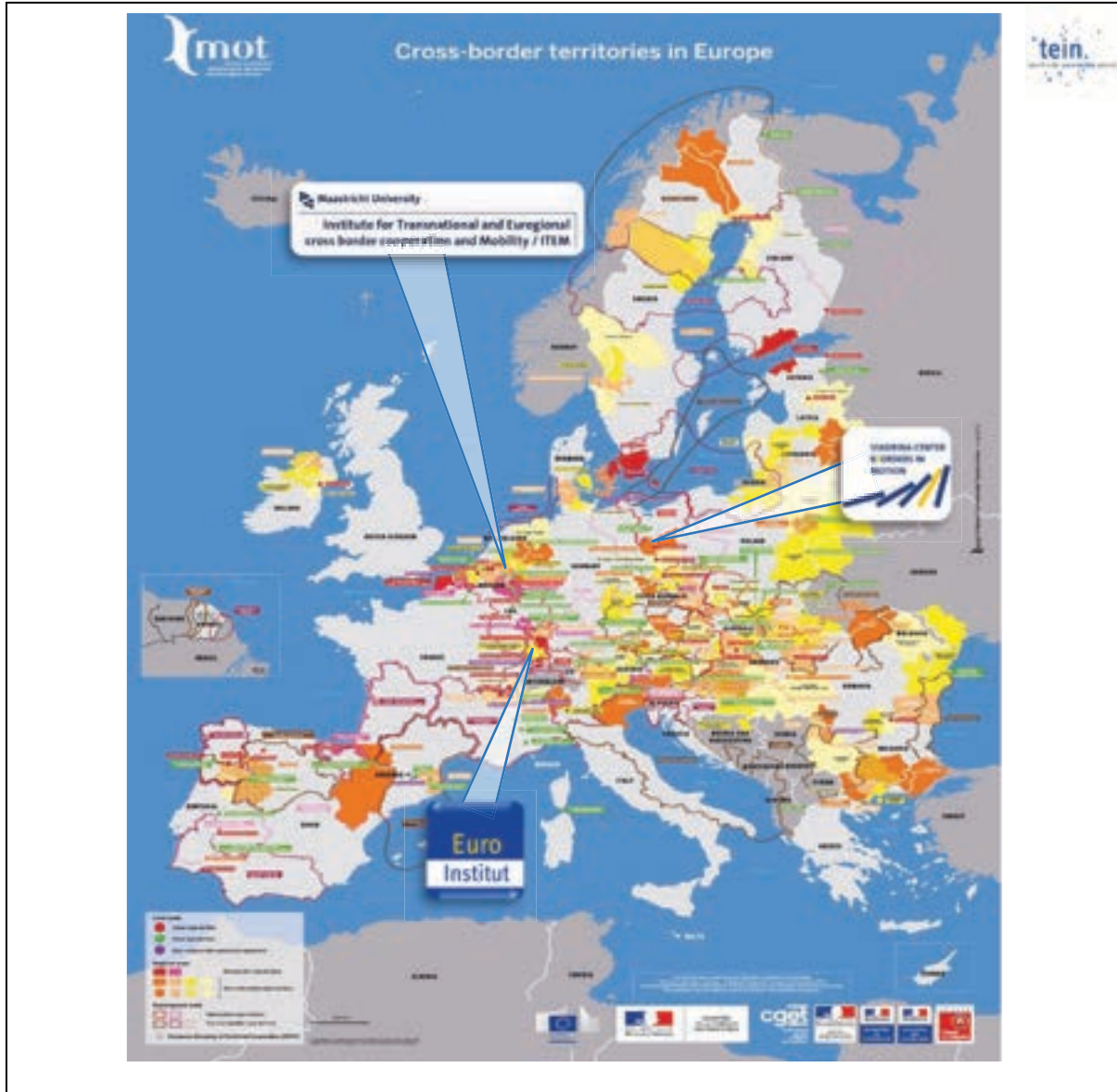


Figure 3: The three cross-border areas of Dossier 1, own indication in MOT’s illustration of cross-border territories (MOT, 2018 – [www.espaces-transfrontaliers.org](http://www.espaces-transfrontaliers.org).)

<sup>107</sup> So far (September 2021), 13 Member State Parliaments have submitted a contribution or a reasoned opinion. Among them were none of the countries under review. However, several Member States, such as Sweden, expressed fundamental concerns about the compatibility of the Commission’s proposal with the subsidiarity principle. Wage formation is an exclusively national matter and the Directive therefore conflicts with this principle. See Procedure File: [2020/0310\(COD\)](https://www.europarl.europa.eu/legislative-observatory/2020/0310(COD)) | Legislative Observatory | European Parliament ([europa.eu](http://europa.eu)).

Second, we examine the role of minimum wages in the three cross-border border areas mentioned above in general, including a sectoral perspective. Based on this, we analyse what would be the cross-border impact of the directive in those regions in particular. This includes questions such as how (many) cross-border workers and businesses/sectors would be affected on either side of the border (Socio-economic/Sustainable Development and European Integration). Last but not least, we conclude with an evaluation discussing the proposed concept of adequacy on which the views of Commission and Parliament diverge markedly. The discussion will illuminate this topic in the context of the theme of Euregional cohesion, i.e. the idea of creating an joined cross-border economic and social space.

Based on the experience of the ITEM Cross-Border Impact Assessment of previous years,<sup>108</sup> difficulties in data collection – particularly at the lower level or to highlight specific cross-border ‘flows’ – have been anticipated from the start. The authors will signal the specific limitations of data collection per region. When quantitative data are lacking, conversational evidence from ‘background talks’ with stakeholders is used to test qualitative indicators. ITEM and its TEIN-partners agreed to acquire relevant information in their respective regions. This has been used to fine-tune the analysis and narrative of the research report.

### Summary of the thematic approach

All three research themes of the ITEM Cross-Border Impact Assessment are covered in this dossier. Under the themes of European integration and Socio-economic Development, the Minimum Wage Directive and its expected effects will analyse the existing national legislation (or alternative manners of wage setting, e.g. collective labour agreements as in Belgium) compared to the standards established by the directive. Here, both the Commission’s proposal and the potential amendments as contained in the first draft Committee report of the European Parliament (April 2021) serve as standard of comparison.<sup>109</sup> For example, do the national legislations correspond to the indicated threshold of adequacy of the Directive, which according to the EP rapporteurs’ view would require the minimum wage to meet both 50% of the gross average wage in a country and 60% of the gross median wage? The comparison with the latest national values for median and mean gross wages reveals that only France has consistently met these thresholds. The rate of minimum wage in all other Member States studied has not even come close to the proposed rates in recent years.

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<sup>108</sup> J. van der Valk, ‘Dossier 5: Cross-border monitoring—a real challenge’, ITEM Cross-Border Impact Assessment 2019: <https://itemcrossborderportal.maastrichtuniversity.nl/link/id/U8rHnsyQU5BsF9bj>.

<sup>109</sup> The EMPL Committee was due to send its report to the General Assembly for first reading in November 2021, after the Committee vote on almost 900 amendments was scheduled for October.

Table 3: Overview of mean and median gross minimum wages compared to the thresholds demanded in the proposed Directive, as interpreted by the draft EMPL report of 6 April 2021. Own calculations.

<b>Country</b>	<b>Average (2014-2018) - Mean threshold</b>	<b>Average (2014-2018) - Median threshold</b>
<b>Belgium</b>	44%	49%
<b>France</b>	51%	61%
<b>Germany</b>	41%	47%
<b>Netherlands</b>	43%	49%
<b>Poland</b>	42%	52%

Under the theme of Euregional/Cross-border cohesion, the findings from the previous sections will be accumulated, compared and tested for the three (cross-)border regions. Here, the analysis considers if cross-border interaction/ relationships will be diminished due to changes caused by the Directive. The cross-border regions thus take centre stage here. In addition, will the EU Directive have an impact as a measure against income inequality across the border/in the Euregional context? To what extent are relevant administrative data (e.g. the type and extent of social and employment services) already collected at the Euregional/cross-border context?

In addition to studying the effects of the cross-border regions between Belgium, Germany, France, the Netherlands and Poland, this dossier continues the partnership established between ITEM and various partners of the Transfrontier Euro-Institut Network (TEIN), a unique network consisting of universities, research institutions and training centres dedicated to cross-border cooperation in Europe. In doing so, this study serves to further the fruitful cooperation of regional studies on border effects in the aforementioned countries.

## Dossier 2: Impact analysis of the future of working from home for cross-border workers after COVID-19

*Prof. Dr. Marjon Weerepas*

*Pim Mertens*

*Martin Unfried*

### Introduction

Working from home increasingly became the norm during the COVID-19 pandemic. With working from home being encouraged and in some cases made compulsory, the huge increase in people working in this way should come as no surprise. According to EU figures, employees worked approximately 40% of paid hours from home during the pandemic.<sup>110</sup> In the case of the Netherlands, 49% worked from home all or part of the time.<sup>111</sup> Cross-border workers were no exception to this phenomenon. It is expected that workers will continue to work from home to some extent after the crisis, and a large number of them also *want* to work from home to a certain degree post-COVID.<sup>112</sup> While employers are striving to facilitate working from home and adjusting their policies accordingly, politicians are vividly debating the topic of working from home and plans to legislate on it. Various initiatives have been developed to formalize working from home.

### Policy for the Netherlands, Germany, and Belgium

In the Netherlands, MPs Van Weijenberg<sup>113</sup> (D66) and Smeulders<sup>114</sup> (GroenLinks) submitted a private member's law entitled *Wet werken waar je wil* (Work Where You Want Act) on 21 January 2021.<sup>115</sup> By amending the *Wet flexibel werken* (Wfw, Flexible Work Act),<sup>116</sup> the proposed legislation aims to bring the right for an employee to change their location of work in line with their existing right to adapt their working hours. The potential impact of that law on cross-border workers was commented on during the internet consultation of the Council of State, with reference being made to the 'Leidraad Grenseffecten' (guideline on effects of Dutch central government legislation on border regions): '*Problems of this nature must also be sufficiently addressed as part of proper preparations for a legal amendment.*'<sup>117</sup> More specifically, such an amendment may affect tax and social security arrangements for cross-border workers if they choose to work from home. As a result, the initiators are calling on the Dutch government to enter into talks with neighbouring countries in order to relax the rules on tax and contributions.

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<sup>110</sup> Eurofound, *Report Living, working and COVID-19*, 2020, p. 59. According to TNO, 49% of employees in the Netherlands were working from home some or all of the time by March 2021.

<sup>111</sup> TNO, *De impact van de COVID-19 pandemie op werknemers*, TNO, Leiden: 2021.

<sup>112</sup> See also Eurofound, *Report Living, working and COVID-19*, 2021, p. 3:73%

<sup>113</sup> Replaced by De Jong (D66).

<sup>114</sup> Replaced by Maatoug (GroenLinks).

<sup>115</sup> *Parliamentary Papers II*, 2020-21, 35 714, no. 2, last updated in *Parliamentary Papers II*, 2020-21, 35 714, no. 5

<sup>116</sup> *Parliamentary Documents II*, 2020-21, 35 714, no. 3.

<sup>117</sup> *Parliamentary Documents II*, 2020-21, 35 714, no. 4, p. 8-9.

Also Members of the German Bundestag have recently proposed a new law to promote and facilitate mobile working at a federal level.<sup>118</sup> However, this initiative has been postponed until after the elections. In Belgium, instead, a Ministerial Decree has already made working from home during the COVID-19 pandemic compulsory, with employers having a duty to register the number of workers present at their workplace. With the entry into force of the final step of the Belgian 'Zomerplan 2021' (2021 summer plan), the joined governmental Consultation Committee of Belgium (*Overlegcomité*<sup>119</sup>) has called on all employers to adopt mobile working as a standard practice.<sup>120</sup>

### Socio-economic impact of working from home

Whether cross-border workers work from home on a full or partial basis, this has consequences for the question, which national regulations and legislation applies to them. This is because of relocating the physical place of work from the Member State of employment to the Member State of residence. This relocation primarily affects tax and social security allocation rules, but also has other consequences. It should be noted that bilateral (tax) or unilateral (social security) decisions temporarily neutralized these effects during the COVID-19 pandemic.

#### Tax

EU Member States designed their bilateral tax treaties in emulation of the OECD Model Tax Convention on Income and on Capital, with Article 15 of the Tax Convention Netherlands-Belgium, Article 14 Netherlands-Germany, and Article 15 Belgium-Germany largely following Article 15 of the OECD Convention. The allocation rules often assign the Member State of residence the right to levy tax when the employee is working from home, as that is the location at which the work is performed. Exceptionally, the Belgium-Germany Tax Convention has a protocol on cross-border workers under which the income of a cross-border worker who lives in a border area, works in the other Member State and returns to the Member State of residence on a daily basis is taxed in the Member State of residence.<sup>121</sup>

In many 'classic' cases of frontier work, working from home some or all of the time would therefore lead to a full or partial shift of the right to levy taxes from the Member State of employment to the Member State of residence.

#### Compulsory insurance

An important principle of Regulation (EC) No 883/2004 is that the worker is subject to the legislation of only one Member State.<sup>122</sup> If a person is working from home by choice or by requirement, they are performing work in fact in both the Member State of residence and the Member State of employment. This means that the worker performs work simultaneously in two or more Member States, a situation

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<sup>118</sup> Referentenentwurf des Bundesministeriums für Arbeit und Soziales eines Gesetzes zur mobilen Arbeit.

<sup>119</sup> The *Overlegcomité* is a body in which the minister-presidents and government members of the various Belgian governments consult each other in order to maintain a degree of coherence in policy and prevent or settle conflicts. As a result of the latest state reform, Belgium currently has six governments.

<sup>120</sup> Info-coronavirus.be, *Overlegcomité – Many restrictions will be lifted from 1 September onwards*, <https://www.info-coronavirus.be/nl/news/occ-2008/>

<sup>121</sup> Article 11, Final Protocol Belgium-Germany Treaty: 'The border area of each signatory Member State is defined on both sides of the common border of the two States by an imaginary line drawn twenty kilometres from the border, on the understanding that the municipalities intersected by this imaginary line are included in the border area.'

<sup>122</sup> For example in Article 11 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

regulated by Article 13(1)(a) of Regulation (EC) No 883/2004 in conjunction with Article 14(8) of Regulation (EC) No 987/2009. The allocation rules state that the legislation of the Member State of residence applies to the worker if they spend 25% or more of their working time in the Member State of residence or receive 25% or more of their salary in the Member State of residence. Therefore, for many ‘classic’ cases of cross-border workers, the applicable social security cover shifts again from the Member State of employment to the Member State of residence if the worker works from home for a considerable amount of time (for example, two out of five working days).

**Mismatch between tax and social security**

Working from home can result in a mismatch between tax and social security contributions, see table 4. For example, the right to levy taxes may be allocated to a Member State that is not the State in which the worker must take out compulsory social insurance.

Table 4: Allocation of the right to levy taxes and contributions dependent on how much the worker works from home.

<b>Working from home</b>	<b>Tax contributions</b>	<b>Social insurance contributions</b>
<b>100% working from home</b>	Member State of residence	Member State of residence
<b>100% Member State of employment</b>	Member State of employment	Member State of employment
<b>4 days/week working from home, 1 day in Member State of employment</b>	Member State of residence/ Member State of employment	Member State of residence
<b>4 days/week in Member State of employment, 1 day working from home</b>	Member State of residence/ Member State of employment	Member State of employment

This mismatch between tax and social security contributions can be either disadvantageous or advantageous depending on the differences in tax and contribution rates in different Member States. If contributions in the Member State of residence are higher than in the Member State of employment, this may also result in higher financial burdens for the employer. Additional consequences may occur in the form of an increased administrative burden, loss of tax credits, decoupling of non-statutory social security, and a shift in health insurance cover.

From a financial and administrative point of view, working from home can therefore have major consequences for both employer and employee. This is also reflected in table 5 below, which shows a simplified example of a single cross-border worker with an average income.<sup>123</sup>

<sup>123</sup> Derived from the work for the b-solutions report *Working from home*.

Table 5: Consequences of working from home (example of a single cross-border worker)

Social security in Member State of residence	Resident in BE Employed in NL 60% of time worked in NL, 40% in BE	Resident in BE Employed in BE 100% of time worked in BE	Resident in NL Employed in BE 60% of time worked in BE, 40% in NL	Resident in NL Employed in NL 100% of time worked in NL
Gross salary	€36,500	€36,500	€36,500	€36,500
Tax in NL	€77	€0	€0	€2,282
Tax in BE	€3,065	€7,299	€2,212	€0
Contributions	€4,771	€4,771	€6,661	€6,661
Rebate in compensation scheme	€0	€0	€0	€0
Net	€28,587	€24,430	€27,627	€27,557
Employer contributions	€9,125	€9,125	€6,290	€6,290
Wage costs	€45,625	€45,625	€42,790	€42,790
Social security in Member State of employment	Resident in BE Employed in NL 100% of time worked in NL	Resident in BE Employed in BE 100% of time worked in BE	Resident in NL Employed in BE 100% of time worked in BE	Resident in NL Employed in NL 100% of time worked in NL
Gross salary	€36,500	€36,500	€36,500	€36,500
Tax in NL	€2,282	€0	€0	€2,282
Tax in BE	€332	€7,299	€7,299	€0
Contributions*	€6,661	€4,771	€4,771	€6,661
Rebate in compensation scheme	€0	€0	€0	€0
Net	€27,225	€24,430	€24,430	€27,557
Employer contributions	€6,290	€9,125	€9,125	€6,290
Wage costs*	€42,790	€45,625	€45,625	€42,790

**Alongside the personal financial consequences, the increased costs and associated complexity of working from home can be an obstacle to working as a cross-border worker, employing cross-border workers, and facilitating working from home for this category of worker.** This has implications for the sustainable socio-economic development of the cross-border labour market as a whole.



### European integration: a ban on working from home?

In order to avoid financial consequences, employers could conceivably make a distinction between resident and non-resident workers and thereby deny cross-border workers the opportunity to work from home. The proposed laws raise the important question of whether employers are permitted to make this distinction. The Dutch act provides for an exception for a ‘compelling business or service interest’: the explanatory memorandum to the legislation refers to, among other things, serious problems of a financial or organizational nature. It is not known whether these cross-border effects of working from home fall under this category; however, this could impede the free movement of workers. In addition, the question arises whether, if working from home is qualified as a right, it should be considered a ‘social advantage’ under Regulation (EU) 492/2011. In that case, it is likely that the non-discrimination provisions would prevent such a social benefit from being conditional on residence.

### Cross-border policy on working from home

In view of both European integration and the socio-economic development of both cross-border workers and border regions, it is not desirable to allow the cross-border effects of working from home to occur or to deny cross-border workers the opportunity to work from home. Especially from the perspective of cohesion within the Euregion, these effects do not do justice to the equality between cross-border workers and their colleagues (or neighbours) who are not cross-border workers. It is therefore encouraging that a working-from-home tax protocol for cross-border workers is being explored bilaterally. The Netherlands and Germany are investigating such an arrangement, in line with an commitment undertaken by the Dutch state secretaries of finance towards the Dutch House of Representatives.<sup>124</sup>

In order to avoid mismatches, holistic action should be taken with regard to both tax and social security. The chances of success in the short term by reviewing Regulation (EC) No 883/2004 are minimal. More promising are the possibilities offered by Article 16 of Regulation (EC) No 883/2004 for cross-border workers as a group or by Article 8(2) of Regulation (EC) No 883/2004 via bilateral or multilateral treaties. Such solutions can be integrated into existing governance structures.

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<sup>124</sup> See, inter alia, the Spring Letter on Tax Motions and Commitments 2021 of the Dutch House of Representatives, Kst-35570-IX-45 (parliamentary paper) – Voorjaarsbrief fiscale moties en toezeggingen 2021 Tweede Kamer, kst-35570-IX-45.

## Dossier 3: The effects of national coronavirus crisis management on cross-border crisis management in the Euregio Meuse-Rhine (follow-up study)



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*Pim Mertens*

### Introduction

As in 2020, the effects of the coronavirus crisis have again been investigated as part of the ITEM Cross-Border Impact Assessment. This year, the investigation focused on the consequences of national crisis management on collaboration in the border region in the areas of the various local and regional crisis teams. It remains too premature to make any fundamental statements on the socio-economic effects in the border region. This became clear in 2020 due to a lack of data. After the first wave of coronavirus in spring 2020 was characterised by impairments to cross-border mobility with associated problems for residents in the Euregio Meuse-Rhine, national governments, together with the regional government of the State of North Rhine-Westphalia, succeeded in preventing similar impairments from occurring in subsequent waves. Consequently, fewer questions have since been raised regarding European freedom of movement rights and the potential discrimination of border residents, which is examined within the context of impact assessments in respect of EU integration. In terms of cross-border coordination of financial assistance for groups such as the self-employed, there has been no significant change since the first wave either. Accordingly, the focus of the investigation was, as stated, on the effects for Euregional crisis management. The report is based on a study carried out in 2020/2021 as part of the INTERREG project 'Pandemic'.<sup>125</sup> In this context, ITEM worked with colleagues from Leiden University and Ockham IPS to assess cross-border crisis management, particularly with regard to areas of tension between national governance and Euregional necessities.

### Effect on Euregional crisis management as an expression of Euregional cohesion

As in the first wave, it did not prove possible to coordinate national (regional) measures as the crisis progressed. In practice, this meant that there was no synchronisation in the closure and opening of shops, schools, and other facilities or in the rules regarding curfews in the cross-border region. Specifically, it was not possible to coordinate exceptions from certain regulations for residents in that region. This led to complexity with regard to the various rules, demonstrated by the fact that on 24 August 2021, the EMRIC Network<sup>126</sup> sent out the 111th edition of its regular overview of measures.<sup>127</sup> This meant that details or key principles underpinning Covid measures in the three Member States (or the corresponding regions of North Rhine-Westphalia, Flanders, and Wallonia) were changed every few days. Characteristic for this development is the statement by representatives of EMR and EMRIC

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<sup>125</sup> See [www.pandemic.info](http://www.pandemic.info).

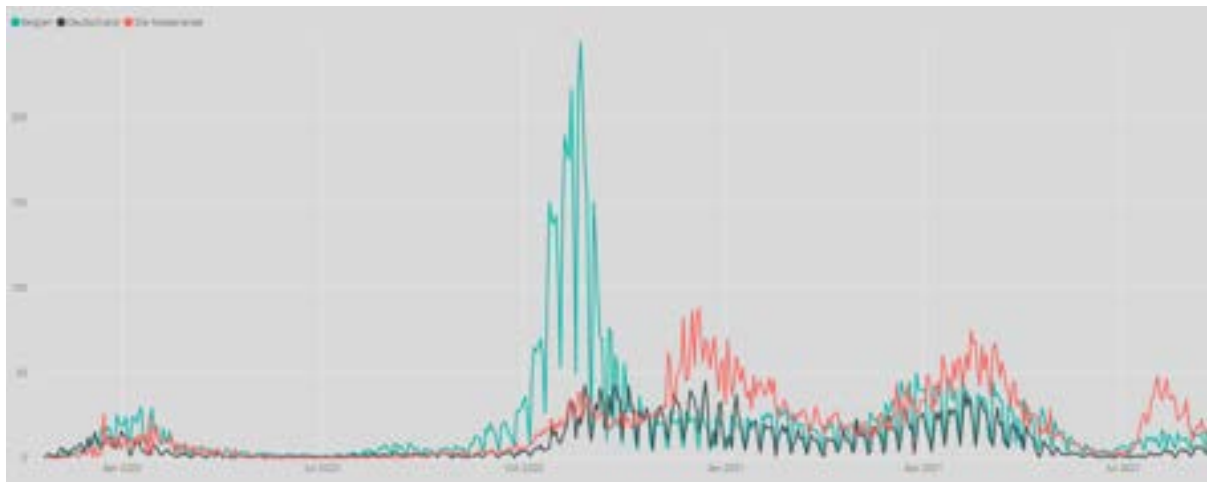
<sup>126</sup> See [www.emric.info](http://www.emric.info).

<sup>127</sup> See <https://pandemic.info/nl/maatregelenoverzicht-nl/> (only available in Dutch, German and French).

that there was so much to do to resolve the practical problems arising from the different measures that actual cooperation in the healthcare sector suffered as a consequence.

One indicator for the coordination of measures is the occurrence of infection. It could be assumed that cross-border coordination of policy and geographical proximity could cause some convergence in the progression of infections. The persistently differing infection rates for the sub-regions of the EMR, however, reflect the extent to which crisis management in the Euregio Meuse-Rhine was characterised by national measures. The respective regional figures (see Figure 4 below), in fact, attest to the fact that the occurrence (and recording) of infections was influenced national measures alone, whilst geographical proximity played a lesser role.

Figure 4: Covid-19, 7-day incidence for the Euregio Meuse-Rhine, March 2020 to August 2021 (Red – Dutch area, green – Belgian area, black – German area).



*Source: Pandemic*

In this respect, the national measures also dominated the regional progression of infections in the sub-regions of the EMR. For example, the noticeable spike in infections rates for Belgium around October 2020 are also reflected in the Belgian areas of the EMR. The same is true of the spike in figures for the Netherlands during the second and third waves when compared with North Rhine-Westphalia/Germany. The unique spike in July 2021 – following political decisions in the capitals in spring – when compared with Belgium and Germany again is visible in the Dutch areas of the EMR. We can, therefore, conclude that the sub-regions of the EMR follow the national figures over time.

A further indicator for integrated crisis management is the exchange of medical capacities, particularly intensive care beds. The alignment of national strategy to national capacities in the healthcare sector, as established in the first report issued in 2020, also manifested in subsequent waves. The exchange of patients in need of intensive care remained the exception in the second and third waves as well. It was dominated by national/regionally overarching agreements and coordination and not by structural cooperation between Euregional partners in healthcare (as represented in the EMR by the EMRIC Network). In effect, the relevant actors in the EMR viewed the overarching coordination of cross-border intensive care beds rather as a hindrance, as it was centrally coordinated from Münster in NRW, for example. This form of coordination was not designed geographically to ensure cross-border

care of patients closer to home in the EMR, but it was more emergency-oriented and designed to cushion national capacity problems. In the second and third waves, too, political agreements on the exchange of patients were motivated by concerns about national bottlenecks and much less by structural cooperation.

For this prolonged crisis, then, it is characteristic for cross-border solidarity to play a positive role only in emergency situations. When hospitals in the town of Liège were nearing their capacities in October 2020, it was possible to transfer patients to North Rhine-Westphalia, to Uniklinik Aachen, for example. This was made possible thanks to positive relationships between players at the political level of the EMR and existing cross-border cooperation between hospitals. Nevertheless, it cannot be said that there was any structural exchange of patients close to the border during the second and third waves.

### **Quality and responsibilities of cross-border crisis teams**

In terms of the organisation of crisis management, further questions addressed the quality and responsibilities of different cross-border bodies. Indicators here were their tasks, working methods, and the practical results.

As in the first wave, the Coronavirus Taskforce, set up at governmental level between Belgium, the Netherlands, and North Rhine-Westphalia (Lower Saxony and Rhineland-Palatinate were affiliated), was able to support the exchange of information. It became clear that the proactive coordination of national measures was not one of the responsibilities, but that information and consultation were in the foreground. In this respect, it was not possible to prevent the problems and uncertainties that arose for commuters, such as testing, quarantine, and registration requirements, because of the introduction of national measures at short notice. Most noticeable was how the introduction of obligations at short notice caused a lack of information and uncertainty among citizens and authorities alike. This in turn led to situations in which, as an example, cross-border information points (*GrenzInfoPunkte*) were unable to sufficiently inform border residents of which rules were in force and when. The reason behind this was an often uncertainty regarding applicable information. border information points and Euroregions were able to signal these problems through direct access to the Taskforce, but delays in the provision of information repeatedly caused uncertainty.

The unreliability of information provision clearly demonstrated the importance of the contacts in the EMRIC Network and EMR, which the partners had built up over many years. During the crisis, experts at crisis team level were therefore able to rely on the structures of EMRIC. Its office effectively turned into a headquarter for the exchange of information, also because the weekly overview of national measures represented a wealth of cross-border knowledge. In the process, EMRIC and the EMR Secretariat took on tasks in the area of local cross-border crisis management that were not actually provided for in their terms of reference. This was achieved mainly through informal contacts, due to a lack of formal authority. Consequently, there was informal crisis management at expert level.

What was missing, however, was a place for Euregional crisis management at the political level. The political leaders of the crisis teams (such as Dutch security region [*Veiligheidsregio*, NL] or the district/city crisis teams) did not have a platform of regular political exchange and anticipated coordination of measures. Accordingly, In this sense, there was also a lack of Euregional political coordination with regard to the work of the Taskforce. Likewise, the investigation revealed a lack of

vertical integration of the regional crisis teams with the Taskforce. This means that although EMRIC and EMR were able to communicate with the Taskforce at the technical level, there was no structural exchange within the Taskforce’s respective national framework to the respective regional or local crisis teams. This meant that politicians at regional level had little contact with the Taskforce. In short, there was both a lack of vertical connection from national to regional crisis management at national level as well as a lack of a political Euregional crisis team at Euregional level.

Surprisingly, further unprecedented complexity of rules, which were subject to frequent change, also characterised the second and third waves of the pandemic for residents in the cross-border region of the EMR, and particularly for cross- border commuters. As late as July/August 2021, the rules on border crossings changed weekly, and the quality of information provision on the part of the national authorities showed considerable deficits.

### Classification of the individual phases

The full report is dedicated to the different problem situations during the various waves of the coronavirus pandemic, as summarised below.

Table 6: Characteristics of the various waves in the Euregio Meuse-Rhine

	<b>TIME</b>	<b>CHARACTERISTICS</b>
<b>FIRST WAVE</b>	March 2020 to June 2020	Restrictions on cross-border mobility, especially along the Belgian border. Establishment of national processes. First (ad hoc) exchange of patients. Establishment of Coronavirus Taskforce at ministry level (NRW/BE/NL). Lack of harmonisation of national measures (time of shop closures, travel recommendations, enforcement, and fines). Resolution of some occurring problems and maintenance of cross-border mobility for cross-border commuters (e.g. in the healthcare sector), resolution of problems relating to cross-border mobility of families and in other cases.
<b>SECOND WAVE</b>	October 2020 to February 2021	Avoidance of cross-border restrictions. During the second wave, borders remained open, but neighbouring countries implemented many uncoordinated, restrictive measures such as mandatory negative test results, mandatory quarantine, and travel bans or negative recommendations for non-essential cross-border travel. The second wave was also marked by an extraordinarily high peak in infections in Belgium, which led to a critical situation in intensive care capacities in the province of Liège and to ad hoc exchange of patients from Eupen and Liège to hospitals in Belgian Limburg and Aachen. During the wave, misunderstanding arose around the different rules on curfews, etc.
<b>THIRD WAVE</b>	March 2021 to June 2021	Continued lack of harmonisation of restrictive measures such as mandatory negative tests for arriving travellers and quarantine regulations. Inconsistencies in the timing and legal framework of regulations. Inconsistencies in the rules on exceptions for short trips over the border (24-hour rule applied in Germany only). Quarantine requirements were also introduced in the Netherlands. Implementation of the regulations was not, however, regulated by law and enforceable until the legal regulations were amended in June 2021. A lack of information amongst cross-border commuters on the regulations when Germany classed the Netherlands as a high-risk country on 5 April and problems arose as a result of the costs of tests. Downgrade of Germany by the Netherlands from a high-risk country to a low-risk country with effect from 10 June. Starting on 27 June, Germany ceased to consider the Netherlands as a high-risk country. Later in July, the opening policy in the Netherlands did not match German or Belgian restrictions and at the

		end of July resulted in a rapid fourth wave of infections and in Germany again upgrading the Netherlands to a high-risk country with stricter measures, including quarantine and testing requirements. Infection rates in the Netherlands fell quickly at the beginning of August, resulting in a loosening of measures by Germany.
<b>FOURTH WAVE</b>	August 2020 to present	Figures for BE and DE began to rise steadily at the beginning of August. Figures for the Netherlands stabilised at the level of Belgian infection rates, with its downward trend coming to an end around 15 July. Infection rates in North Rhine-Westphalia were rising more quickly than in Germany as a whole. Higher figures in the German area of the Euregio Meuse-Rhine at the end of August when compared to Dutch areas. <sup>128</sup>

## Conclusions

As was the case with the investigation into the first wave, the follow-up study showed that the systemic national orientation of measures sometimes counteracted the Euregional solidarity. Euregional actors, such as the EMRIC Network, were not set up for a crisis of this scale and for this length of time, primarily because of a lack of protocols and detailed agreements for a pandemic crisis. Consequently, an important task once the crisis is over will be to develop cross-border protocols and agreements for pandemics in the Euregion, and to structure cross-border cooperation between players in the healthcare sector. This is the only way to ensure flexibility for cross-border cooperation in the future, in spite of national crisis management. This will only be possible with the full support of national and regional governments.

- The active role of crisis management was taken over by national authorities, overlaying the role of Euregional players.
- In the second and third waves, too, the joint NRW/NL/BE Taskforce did not contribute to joint decision making and coordination of measures, but served only as a point of information/advice. EMRIC/EMR supplied input for the Taskforce, but there was no direct vertical political coordination between the regional crisis management teams and the Taskforce.
- In many cases, regional and local players at political level often did not know their contact persons (responsibilities/mandate).
- There was also a distinct lack of a joint narrative/framework concept for cross-border pandemic management at national government level (except that, after the first wave, the borders remained open).
- EMRIC did manage to succeed in the exchange of information on national measures, but there was a lack of joint analysis and follow-up measures.
- With support from EMRIC and EMR, many practical problems that could be attributed to a failure to coordinate national measures were tackled and resolved ('repair efforts').
- Differences in data, data systems, and dashboards hampered communication.

<sup>128</sup> Positive tests per week and 100,000 residents on 24 August 2021: city region of Aachen 107, Heinsberg district 116, Düren district 93, South Limburg 70, Province of Limburg (BE) 70, Province of Liège 100. Source: <https://www.coviddashboard.nl/covid-19-in-nederland-belgie-duitsland/>.

- During the crisis, there was no joint reflection with respect to experiences (with the exception of the two Pandemic mini conferences).

### Key recommendations

- There was and remains a need for a joint, cross-border map/dashboard with joint definitions for the Euregio Meuse-Rhine.
- There is a need for a future cross-border Taskforce at government level with a genuine mandate for proactive coordination of national measures and with clear vertical integration with crisis management teams in different Euregions.
- There is a need for a current inventory of relevant contacts in each region/country in the respective crisis teams.
- There is a need for a Euregional crisis management structure, a location, a mandate, and personnel with a limited number of relevant experts and decision makers (under the umbrella of EMR or BENELUX).
- There is a need for an EMRIC unit with authority that can act as an information platform. Development of new agreements or protocols for cooperation in pandemic situations – e.g. cross-border solidarity mechanisms for intensive care capacities.

## **Dossier 4: Is the EU Patients' Rights Directive fit for providing well-functioning healthcare in cross-border regions? An ex-post assessment**

*Susanne Sivonen*

### **Introduction**

Although cross-border healthcare is essential especially for border regions, the differences among Member States and, in particular, among their health systems, may cause barriers to its citizens in accessing healthcare or other services in a cross-border setting. In the light of the objectives of Socio-economic/Sustainable Development, European Integration and Euregional Cohesion, this dossier examines the current challenges in cross-border healthcare and the mismatches of public health systems in the (cross-)border regions of Belgium, Germany, and the Netherlands. Since the Patients' Rights Directive 2011/24/EU provides legislation on the access to cross-border healthcare in the European Union, the analysis focuses on an ex-post assessment of this law's border effects. The underlying assumption is that cross-border healthcare is an essential element in cross-border regions to provide adequate living conditions for its citizens, since otherwise the individual national border regions suffer from shortcomings due to its remote geographical situation from national centres.

From this perspective, this dossier is an exploratory study and seeks to examine various obstacles arising in cross-border healthcare based on the benchmark of what amounts to well-functioning healthcare in cross-border regions. Under the objective of Socio-Economic Development, the dossier assesses which mismatches between the respective public health systems have an effect on the mobility of citizens of (cross-)border regions. In relation to the European Integration objective, this dossier examines the state of play of the EU-level framework on cross-border healthcare. The dossier will analyse whether Directive 2011/24 is fit for purpose in light of the special characteristics and needs of cross-border regions. Considering the Directive's potential for providing solutions to the border obstacles to the peculiar needs of patients' mobility in cross-border regions, the dossier will conclude with a discussion on cross-border cooperation under the objective of Euregional cohesion. It will thus identify best practises of organising healthcare in a cross-border context.

As regards the geographical delimitation of the analysis, it is relevant that healthcare is a national prerogative. Therefore, the relevant border region under examination here comprises all the border regions shared between Belgium, the Netherlands and Germany.

### **Socio-economic/Sustainable Development: Mismatches between the public health systems**

In these border regions, citizens often seek healthcare services across the border due to their geographical proximity. Access to well-functioning healthcare in cross-border regions not only contributes to the well-being of its population, but also is of essence from the aspects of economic, social, and territorial development and sustainability of these regions. However, due to their peripheral location and rising difficulties such as aging population, cross-border regions may be more



vulnerable and face additional obstacles than non-border areas. Moreover, the COVID-19 crisis has reaffirmed the importance of cross-border cooperation in healthcare.<sup>129</sup>

In the field of public health, the European Union has a mere coordinating role. The organisation, delivery and financing of healthcare remains the competence of EU Member States<sup>130</sup>, leading to diversity and differences between the respective health systems. The high mobility of citizens in border regions combined with the differences in health systems is nevertheless not always without obstacles. The casuistry of ITEM and the Border Information Points (GIP) is rich in examples that illustrate barriers to people's free movement in a cross-border fashion resulting from the structural mismatch of national public health systems. Therefore, this dossier seeks to explore which (type of) mismatches between those public health systems adjacent to the Dutch border may commonly cause obstacles to cross-border use of healthcare provision.

An illustrative example of these obstacles is provided by the region Zeeuws-Vlaanderen, located in the Netherlands on the border with Belgium. The shrinking and aging population of the region brings a unique set of problems causing the deterioration of (available) public healthcare. Habitually, Belgian inhabitants have been seeking care across the border in the Netherlands due to its territorial proximity. However, it has been reported that there is an obstacle hindering the cross-border access of Belgian residents to Dutch healthcare services. Often residents of and insured in Belgium are unable to receive reimbursements for their planned medical care in the Netherlands, for which they need a permission from their Belgian health insurance company. As a result, the cross-border access to healthcare for inhabitants of the border region is limited and may further contribute to the deteriorating availability of healthcare on that side.<sup>131</sup>

This example are among many daily situations that demonstrate the diversity of healthcare systems and the numerous challenges that can arise from them in a cross-border setting. It follows the question to what extent the EU's system of enhancing the free movement of patients addresses these challenges, which are peculiar to cross-border territories.

### **European Integration: Cross-border healthcare within the EU legislative framework**

Although the organisation of healthcare is the competence of the Member State, there is nonetheless EU level-legislation that deals with cross-border healthcare. One can find, on the one hand, the European social security coordination Regulations (Regulation 883/2004 and Implementing Regulation 987/2009), and on the other hand the Patients' Rights Directive 2011/24 (based on case law from the Court of Justice of the EU). These instruments both regulate a variety of situations, laying down rules and conditions under which cross-border healthcare may be sought and reimbursed.<sup>132</sup> In contrast to the Regulations<sup>133</sup>, the Directive furthermore strengthens co-operation in prescriptions,

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<sup>129</sup> Communication from Commission: Guidelines on EU Emergency Assistance in Cross-Border Cooperation in Healthcare related to the COVID-19 crisis, C(2020) 2153 final. See also Dossier 3.

<sup>130</sup> Article 168 TFEU.

<sup>131</sup> B-solutions: Final Report by the Expert, 'Cross-border healthcare and the reimbursement of cross-border healthcare costs – Provincie Zeeland' 2021.

<sup>132</sup> See Chapter 1 Regulation 883/2004, Chapter III Directive 2011/24.

<sup>133</sup> Compared to the Directive, the Regulations have a broader scope on facilitating free movement of persons. The Regulations coordinate also other benefits than those related to cross-border healthcare, such as unemployment and family benefits.

rare diseases and on health technology matters.<sup>134</sup> It, too, provides rules on complaint procedures and sets the rights of patients: the right to receive information and the right to medical follow-up.<sup>135</sup> As its main objective, the Directive aims to ensure patient mobility, facilitate access to safe and high-quality cross-border healthcare, and promote cooperation on healthcare between the Member States.<sup>136</sup>

Ten years after its adoption, the EU Patient Directive is currently under evaluation by the European Commission. Next to assessing whether the Directive operates efficiently, the Commission also focuses on mutual assistance and cooperation in healthcare in border regions.<sup>137</sup> In a similar vein, this dossier evaluates the effect of the Directive on patients' rights and cross-border cooperation between Member States. The practical cases under the theme of Socio-Economic Development provide useful examples to classify the type of border obstacles that affect cross-border regions in particular and compare them with the Directive's provision. It is important to evaluate whether these obstacles of cross-border healthcare arise from shortcomings of the EU legal framework: some do, whilst others occur in a purely national legal setting.

### **Euregional Cohesion: The EU Patients' Rights framework fit for purpose?**

Eventually, the dossier seeks to answer how the Directive could pay more attention to the needs of cross-border regions and furthermore promote the establishment of well-functioning healthcare in border regions. Are its provisions apt to meet the particular requirements of border regions' residents? Can it, in its current design, accommodate the special characteristics of cross-border regions? These questions go hand in hand with the question if and how the type of border obstacles, mentioned at the beginning, could be solved in a structural rather than the usual ad hoc manner, which is often dependent on the involved authorities' good will. More specifically, then, the dossier will also examine how these obstacles could be overcome by the regional authorities and identifies the best practises of organising healthcare in a cross-border context.

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<sup>134</sup> See Chapter IV Directive 2011/24.

<sup>135</sup> See Chapter II Directive 2011/24.

<sup>136</sup> Recital 10 Directive 2011/24.

<sup>137</sup> European Commission Roadmap: Evaluation of patients' rights in cross-border healthcare, 14 January 2021.

Table 1: Research themes, principles, benchmarks, and indicators for the evaluation of cross-border healthcare and the mismatches between the public health systems in border regions between BE-DE-NL

Theme	Principles	Benchmarks	Indicator
<b>Sustainable Development/Socio-Economic Development</b>	<p>Sustainable development</p> <p>Art. 3(3) TEU</p> <p>Internal market</p> <p>Art. 114 TFEU</p> <p>Free movement of persons and services</p> <p>Art. 21 TFEU</p> <p>Art. 56 TFEU</p>	<p>Well-functioning healthcare in border regions from the aspects of economic, social, and territorial development and sustainability</p>	<p>Which type of mismatches exists between the public health systems of BE-DE-NL that commonly cause obstacles to cross-border healthcare provision?</p>
<b>European Integration</b>	<p>Public health</p> <p>Art. 168 TFEU</p> <p>Art. 35 EUCRF</p> <p>Free movement of patients</p> <p>Regulation 883/2004</p> <p>Regulation 987/2009</p> <p>Directive 2011/24</p>	<p>Citizens of border regions have access to (cross-border) healthcare</p>	<p>When are persons entitled to receive healthcare in another Member State?</p> <p>Which are the most common obstacles of cross-border healthcare in border regions?</p> <p>Are these obstacles a result of shortcomings of the EU legal framework?</p>
<b>Euregional Cohesion</b>	<p>Strengthening economic, social, and territorial cohesion</p> <p>Art. 174 TFEU</p> <p>Mutual assistance and cooperation between Member States</p> <p>Art. 4(3) TEU</p> <p>Art. 10 Directive 2011/24</p> <p>Rec. 50 Directive 2011/24</p> <p>Art. 76 Regulation 883/2004</p>	<p>Organisation of well-functioning healthcare provision in border regions supported by cooperation of the regional authorities</p>	<p>Is the Directive fit for purpose in light of the special characteristics of border regions?</p> <p>What are the best practises of organising healthcare in a cross-border context?</p> <p>Could the obstacles identified in the themes above be overcome by cooperation of the relevant authorities?</p>

## Summaries Cross-Border Impact Assessments 2020

### Dossier 1: The impact of the Corona crisis on cross-border regions (TEIN study)

An ex-post assessment of cross-border coordination, or non-coordination, of crisis response

Joint research collaboration with the Transfrontier Euro-Institut Network (TEIN))

Martin Unfried (ed.)  
Dr. Nina Büttgen (ed.)  
Saskia Marks

#### General Introduction

The (continued) impact of the COVID-19 pandemic can hardly be overstated. As the virus spread (during the first wave), entire regions and countries were quarantined, and borders were closed overnight. This dossier focuses on what impact early crisis management has had on (cross-)border regions. To gain insights into how that impact was felt in different regions across Europe, the research has been conducted in close collaboration with several TEIN-partners.

The Dossier provides an *ex post* impact assessment of the various “Corona-measures” on cross-border regions, when the virus first ‘hit’ the European continent. Specific regard is had to the (non-) coordination of crisis management measures and border controls. To what extent did the focus on national figures, national capacities in healthcare and national measures influence the situation? How intensive was the cross-border coordination and what consequences did it have for the development and combating of the crisis? Such questions are key in reflecting on the extraordinary impact that the “Corona-crisis” has had on selected cross-border regions, when many basic European principles and freedoms seemed virtually thrown overboard from one day to the next.

Besides studying the effects on the cross-border region between Belgium, Germany and the Netherlands (Euregio Meuse-Rhine / EMR), this ITEM Cross-Border Impact Assessment will – for the first time – investigate the border effects on several European regions simultaneously. The COVID-19 research project is a collaboration between ITEM and various partners of the Transfrontier Euro-Institut Network (TEIN), a unique network consisting of universities, research institutions and training centres dedicated to cross-border cooperation in Europe.<sup>138</sup> This Dossier showcases the results of this fruitful cooperation between ITEM and the following TEIN-members: the Euro-Institut (Upper Rhine region covering the cross-border region between Germany, France and Switzerland), the Centre for Cross Border Studies/CCBS (the cross-border region between the Republic of Ireland and Northern Ireland/the United Kingdom (UK)) and the B/ORDERS IN MOTION Research Centre from European University Viadrina Frankfurt Oder (the German-Polish border region and the Twin Towns Frankfurt

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<sup>138</sup> See <http://www.transfrontier.eu/>. This research cooperation started off in early 2020 with the plan to conduct a joint cross-border impact assessment on the proposed EU Directive to discontinue the seasonal change of time (DSCT) (COM (2018) 639 final). However, as the Corona-crisis began to spread across the whole globe and the researchers involved in this cooperation were experiencing first-hand the impact of the nationally and even regionally diverging approaches towards containing the (further) spread of the virus, the research team quickly shifted its focus of investigation to the on-going crisis itself where it could be even more fruitfully employed.

Oder Słubice). In the following, each regional report will provide a more elaborate definition of the



respective cross-border area outlining the geographical scope of the particular investigation.

Figure 3: The four cross-border areas of Dossier 1, own indication in MOT’s illustration of cross-border territories (MOT, 2018).

## Methodology

This joint research initiative between ITEM and the TEIN-partners provides a welcome opportunity to apply the Cross-Border Impact Assessment-method, as developed by ITEM since 2016, in a broader setting for the first time. Hence, this Dossier serves to test the method’s applicability in other cross-border regions across Europe. Still, given its pilot character, the research collaboration has been kept deliberately limited to a small selection of cross-border regions. Meanwhile the unprecedented scale and impact of the Coronavirus crisis forms a very apt and intriguing subject for conducting Cross-Border Impact Assessment research in such a broad setting – especially, considering the great

variations in the gravity of the pandemic's impact throughout the EU. In fact, the European Commission has already informally expressed its appreciations for this type of joint research initiative, and encouraged the organisation to further such joint work to investigate pan-European cross-border issues within the context of the TEIN-network in the future.

The wide geographical scope and the relative recent effects of the COVID-19 pandemic have important consequences for the data collection. For practical reasons, the period for data collection has been set from 1 March to 30 June 2020. However, not all data necessary for assessing the impact of the COVID-19-pandemic may have been published by the time of writing (July 2020). Based on the experience of the ITEM Cross-Border Impact Assessment of previous years,<sup>139</sup> difficulties in data collection – particularly at the lower level or to highlight specific cross-border 'flows' – have been anticipated from the start. The authors will signal the specific limitations of data collection per region.

On the one hand because of these expected constraints regarding quantitative data but, on the other, also to test qualitative indicators, ITEM and its TEIN-partners agreed to acquire further relevant information through 'background talks' with stakeholders in their respective regions. This conversational evidence has been used to finetune the analysis and narrative of each research report. This approach, too, pays respect to potential (political) sensitivities pertaining to the problems discussed, highlighting that the informality of the provided information time and again lies in the interest of the respondent.

### Summary Thematic Approach

The multifaceted nature of this topic is reflected in the fact that all three central research themes – European integration, socioeconomic/sustainable development and Euregional cohesion – are covered extensively.

In light of the theme of European integration, the assessment focuses on the existence and duration of border controls and travel bans; considering the consequences for frontier workers, businesses, students and others. The impact the crisis has had on EU citizens' basic freedoms of movement will be analysed and, thus especially, on daily life in a cross-border region.

In respect of the socioeconomic/sustainable development of these regions, following the Corona-induced lockdown measures one of the greatest recessions since World War II is facing Europe (and the world).<sup>140</sup> Hence, it will be examined to what extent the Corona measures can be linked to a reduction of cross-border economic activities by companies or to worse economic difficulties. What has (lack of) coordination of these measures meant for the trade and economy in the selected cross-border territories? Possible repercussions for cross-border regions' economic development in the future will also be considered.

More critical questions arise when approaching the topic from the perspective of Euregional cohesion: if and how did cross-border cooperation function during the crisis? Were national measures coordinated in a way to avoid frictions for the border regions? How was cooperation in the health sector structured and how can it be structured in the future? What was the impact of the closing of

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<sup>139</sup> J. van der Valk, 'Dossier 5: Cross-border monitoring—a real challenge', ITEM Cross-Border Impact Assessment 2019: <https://itemcrossborderportal.maastrichtuniversity.nl/link/id/U8rHnsyQU5BsF9bj>.

<sup>140</sup> European Commission, Spring 2020 Economic Forecast, press release, 6 May 2020: (accessed 27 July 2020).

borders on the perception of citizens with respect to the cohesion of the cross-border territory? Accordingly, the analysis will focus on what lessons can be drawn for European/cross-border crisis-management in the future and for dealing with the recovery from the Corona-crisis. In the following, the main findings of each regional report will be summarised.

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## The effects of COVID-19 crisis management on the Euregio Meuse–Rhine

ITEM

*Martin Unfried  
Saskia Marks*

### Objective of the study

The Belgian border was closed to all residents in the border region on 20 March 2020. Only people with a reason explicitly stated on a list of exceptions – such as cross-border work, transport – were permitted to cross. For a Euroregion in the Germany, Netherlands, Belgium border triangle, this was a drastic measure. Blockades were suddenly erected across streets where previously people had lived ‘open Europe’ every day. Suddenly, even some family visits across the border were no longer permitted. On the German side too, such as at the Belgian-German border in Aachen, North Rhine-Westphalia imposed an entry ban on people without good reason to cross in accordance with federal legislation, which applied from 16 March 2020 until it was lifted on 15 June 2020. The Dutch government did not adopt official entry restrictions, although it did seek to prevent people crossing into the country from Germany and Belgium by making appeals and recommendations.

### Impact on questions of European integration

There appears to have been an imbalance in the Euregio Meuse-Rhine in terms of restrictions on border crossings and the rights of citizens and companies. This was owing to the different strategies used by the three countries to fight the pandemic using different national measures, which were not always coordinated in terms of timing or substance. The key difference was that while Germany and Belgium imposed a statutory entry restriction (and in Belgium, an exit restriction as well) for several weeks, the Dutch government opted merely for recommendations. While Belgium introduced structural checks of the restrictions at the border, this was not the case in North Rhine-Westphalia (Germany). Citizens in Belgium were also fined for violating (cross-border) travel restrictions, unlike citizens in Germany and the Netherlands. Consequently, the regulations in place at the Dutch-German border did not give rise to specific questions of discrimination, but instead to ambiguity about the difference between recommendations (Netherlands) and rules (Germany, NRW) relating to entry. At the height of the crisis, between March and June 2020, the Germany-Netherlands border was one of the most open internal borders within the EU. By contrast, the border with Belgium was one of the most strictly controlled.

There was a clear question of legal discrimination in respect of the Belgian measures concerning (cross-border) family visits, while these were judged differently in neighbouring countries. Cross-border commuters, however, were not affected by entry bans at any time. For those in the group of cross-border commuters who were required to work from home, national governments agreed

bilateral exemptions on tax liability at different times. In terms of social security contributions, the competent authorities in the three countries promised exemptions after just a few weeks – for some combinations more clearly than for others.<sup>141</sup>

In terms of certain national financial support measures, the question of the extent to which these (e.g. the Dutch temporary bridging regulation for the self-employed, *Tozo*, or the payment restriction of the German reduced hours compensation to an available workplace in Germany) did not lead to discrimination of cross-border commuters and business people remains contentious. In both cases, the question is whether the German and Dutch practices were in accordance with Regulation (EC) No 883/2004. According to ITEM analyses, the matter is considered questionable and requires clarification before the courts.

### Impact on the Socio-economic Development of the Euregio Meuse-Rhine

What has proved to be a problem in many ITEM impact assessments is also apparent in the light of the Coronavirus crisis – for the cross-border region of the Euregio Meuse-Rhine: there is no consistent monitoring of economic data. Data are available at national level and, in some cases, at regional level. Economic development is still being surveyed at regional/local level in different sectors by chambers of industry and commerce in the form of surveys and evaluations. However, the fundamental difficulty becomes apparent when attempting to evaluate the border-related effects, which cannot be separated from the general effects of national measures, such as the shutdown of parts of public life. In some areas, such as public transport, the size of the overall decline in revenue domestically indicates that the restriction on the few cross-border routes had only a marginal role.

For the Netherlands, initial studies have been released which show that the structure of the respective regional economy is a decisive factor for the effects of the crisis. As an example, the Dutch province of Limburg is expected to suffer particularly negative effects not because of its border location, but because of the high proportion of trade, transport and catering in its economic output. In terms of employment, national measures such as reduced hours (short-time working) and financial support for businesses have prevented a mass wave of redundancies. However, even if those redundancies were to come in autumn, it is scarcely possible to determine the effects of restrictions in cross-border travel on account of the figures. In addition, there is a lack of regularly collected cross-border data on employment by businesses operating cross-border in the Euregio, or surveys of businesses on the conditions and barriers to cross-border activities. Indications of the economic effects of border restrictions tend to come from evaluations by chambers of commerce and industry in Belgium and Germany: in spite of the border restrictions, they do not consider that the free movement of goods and services was particularly hindered during the crisis. Furthermore, obstacles to the movement of goods caused by lengthy traffic jams were also avoided in the Euregio Meuse-Rhine. In this sense, the Belgian border controls did not have any serious negative effects.

### Impact on Cross-border, Euregional Cohesion

Perhaps the most interesting impact arises from the question of what the crisis means for the quality of future cross-border cooperation and Euregional cohesion. The results indicate that the existing cross-border governance structures were insufficient for crisis management. At the onset of the crisis

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<sup>141</sup> An accurate observation of the dynamic development can be found in the ITEM Cross-Border Portal. See: <https://itemcrossborderportal.maastrichtuniversity.nl/p/news/50946970784628837>.



in particular, cross-border structures and instruments were found to be lacking considering the cross-border nature of the health crisis.

Background discussions with stakeholders suggest that the stricter entry and exit restrictions on the part of the Belgian government were a consequence of the lack of coordination of national measures, especially with those of the Netherlands. In addition, the Belgian federal government emerged as a stakeholder that had not previously been represented in the various committees dedicated to cross-border cooperation. Conversely, the Benelux Union, in view of those cross-border aspects where it usually plays a crucial role, was not used by either government as an organisation for coordination. A lack of coordination meant that when stricter rules were already in force in Belgium in March, they were – in the eyes of stakeholders in Belgium – thwarted in the Euregio by the open border. One result of the study is that the irritation and disgruntlement between Belgium and the Netherlands could have the potential to create negative effects on the Euregio Meuse-Rhine as a whole. This would be particularly true if political support for compromises on cross-border matters were to be damaged in the longer term as a result.

#### No protocol for pandemics – health policy hardly cross-border

Unlike in areas of civil protection (accidents in industrial plants close to the border), there were no protocols or agreements in place for mutual assistance in the border region or between the neighbouring countries in the event of a pandemic. This was in spite of the fact that, when compared to other border regions, the Euregio Meuse-Rhine has a functioning network of cross-border emergency care facilities (EMRIC). The limited extent to which this area was harmonised in the EU or coordinated binationally was illustrated by the problem of different monitoring systems in neighbouring countries of the Euregio Meuse-Rhine (no uniform counting method). There was also a lack of available data to evaluate cross-border infection rates. Euregional stakeholders could not, therefore, use Euregional data to argue against entry restrictions. Since there were no overarching bilateral or trilateral agreements on the exchange of medical capacity or patients, policy was nationally oriented. Although a small number of Dutch patients were treated in German hospitals, this was largely down to ad hoc cooperation and less to do with advance agreements between governments.

The study has shown that systemic national orientation occasionally even jeopardised Euregional solidarity. Cross-border networks were slowed down by national regulations, rather than promoted. Consequently, an important effect of the crisis has been to emphasise the need to develop cross-border protocols and agreements for pandemics in the Euregio, and to structure cross-border cooperation between stakeholders in the healthcare sector. This will only be possible with the active support of national and regional governments.

#### Task Force had positive effects on the Euregio Meuse-Rhine

As it was politically impossible to coordinate the national measures in advance, a trinational Task Force was established during the crisis as an initiative of the North Rhine-Westphalian state government (with effect from 20 March 2020) to resolve pending problems. Representatives of the Belgian federal government, the national government of the Netherlands, their embassies, police forces, and North-Rhine Westphalia's state government began meeting in April. Lower Saxony was also represented and, later on, Rhineland-Palatinate. This had positive effects on the Euregio Meuse-Rhine. Together with other Euroregions and cross-border information points (*GrensInfoPunten*), the Euregio Meuse-Rhine

participated as one organisation and provided problem analyses and recommendations for action. This ensured that anticipated problems, e.g. the legal issues of cross-border workers working from home, could be identified and alleviated early on. Another positive was that the Euroregions and cross-border information points were taken together as one stakeholder by the Task Force and were able to speak together. In the future, this could strengthen political lobbying to the advantage of the Euroregions.

#### Negative public perception of cross-border cooperation

A major problem in the period that follows crisis management will be a negative public perception of cross-border cooperation in the Euregio Meuse-Rhine. Obstacles to freedom of movement, barriers at the border, border controls, and fines could potentially damage trust in a future of ‘open borders’ and, in turn, the belief in a ‘Euregio’ as common living space. Consequently, it is conceivable that promoting cross-border work and business will become much more difficult. For example, the problems surrounding financial support have been widely publicised and could give rise to a reduction in cross-border activity. Systemic national reflexes in pandemic management in particular have hampered cross-border thinking. As such, healthcare also appears to be a key sector: robust structures for cooperation in healthcare already exist in the Euregio Meuse-Rhine. A pilot model for cross-border pandemic management could, for example, be forward-focused and trigger positive effects.

#### Summary conclusions

The current pandemic has highlighted the urgent need to provide citizens with timely, clear and accessible information on the cross-border dimensions of public health measures introduced in the two jurisdictions, with a particular emphasis on the implications of any differences between those measures. It has also, once again, revealed the economic fragility of the border region to external shocks, and the crucial importance of ensuring that this time sufficient attention is given to the region in order that it does not take longer than other regions to recover. However, the Coronavirus crisis has also shown that institutions and organisations experienced in cross-border cooperation are not only resilient, but also capable of quickly addressing the needs of citizens in the border region. Above all, perhaps, the crisis has underlined the need to “border-proof” proposed measures or legislation to be introduced by one or other jurisdiction, thereby giving legislators a clearer cross-border understanding of their impacts.

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### The effects of Corona-crisis management on the German-Polish border region

Viadrina Center B/ORDERS IN MOTION

*Dr. Peter Ulrich*

#### Objective of this (sub-)report of the file and summary

This summary provides an overview of the effects of the Coronavirus crisis and how the crisis was handled in the Germany-Poland border region. In more concrete terms, this territorial impact assessments assesses short-term and medium-term effects of the Coronavirus crisis management in

the border area along the 470-km German-Polish border in relation to the border closures between March and June 2020. The territorial focus is on the entire Germany-Poland border, with particular focus on the ‘centre section of the border line’, namely the regions of Brandenburg, Germany and Lubuskie, Poland and the German-Polish twin city of Frankfurt an der Oder and Słubice. The cross-border impact assessment is ‘gauged’ using various factors relating to European integration processes, socio-economic and sustainable development, and Euregional cohesion.

In the German-Polish context, the sudden border closures not only hit the economic sector hard. They also exposed economic interdependencies (such as congestion by heavy goods vehicles on the motorway, absence of staff, and shop closures) and impacted cross-border, social, and interpersonal relationships, while at the same time (in)directly strengthening social cohesion.

### **European Integration in the German-Polish border area**

The Germany-Poland border was closed in mid-March and remained closed until mid-June. Therefore, the border was partially closed for almost exactly three months, with its ‘permeability’ changing over time: in response to the Coronavirus pandemic, the Polish government introduced temporary health and passenger checks at the border on 15 March 2020. Germans and other foreign nationals without permanent residence in Poland were turned away at the border. Polish nationals arriving from abroad were required to go into quarantine for fourteen days. At the beginning, cross-border commuters who crossed the border on a daily basis were exempt, but the exemption was scrapped on 27 March, making the border an impenetrable barrier.

It was not until 4 May that the Polish Ministry of Health reopened the border, partially, to commuters and students, before opening it in full on 13 June. Consequently, there were two different border closure processes: 89 days between the two countries (excluding commuters and residents of the border area) and a tightened border closure of 37 days, which included residents of the border area. During those 37 days, exemptions with certificates of employment were not possible, so for 37 days, neither private nor professional border crossings were permitted. Waiting times at the border were as much as four hours at the height of the closure, resulting in traffic queues from Berlin towards Poland of up to 60 to 70 km. Many students and employees were unable to go to work or attend school/university for more than one month.

### **Socio-economic Development**

The socio-economic situation in the German-Polish border region deteriorated significantly during the Coronavirus crisis. In economic terms, the border area is highly interconnected, which is evidenced by the numerous businesses that have been established at the border and with cross-border operations, such as in logistics. The lengthy queues on the motorways showcase the strong economic ties and trade links between the two countries. As a result of the border closures, many businesses had to cease operations in the border area and were unable to employ their staff in the short-term. In addition, many cross-border traders, such as those in Polish markets in the immediate border area, as well as retail businesses on the German side of the border (for example, in the major border towns of Frankfurt an der Oder, Schwedt, and Görlitz), had to survive without customers from the other country. Another relevant economic factor is seasonal work, such as in agriculture, catering, tourism, and the healthcare sector. German businesses operating in these industries were without many of their staff from Poland for a considerable period of time. Statistical information on these economic

effects was not always available. Accordingly, it also seems likely that the economic effects of the Corona-crisis on businesses and employees in this border region will only be measurable and noticeable in the long-term.

### **Euregional Cohesion**

Euregional cohesion in the Germany-Poland border region, such as in the four Euroregions (e.g. the Pro Europa Viadrina Euroregion) or the Frankfurt-Słubice Cooperation Centre, proved to be highly robust, cooperative, and integrated with citizens throughout the Coronavirus crisis and in terms of border closures. The cooperation centre became something of a control centre for cross-border cooperation between the two cities and a point of contact with a bilingual hotline where citizens at communal and regional level could report cross-border issues.

The cooperation centre proactively encouraged support in cross-border economic, social, and private matters and itself received more than 500 enquiries to its citizen hotline. Many other cross-border institutions, such as Euroregions, set up bilingual citizen hotlines. The East Brandenburg Chamber of Industry and Commerce received more than 600 enquiries in Polish and German from businesses or Polish employees. Enterprise Europe Network Brandenburg also received more than 150 enquiries specifically relating to border entry conditions during the COVID-19-related closures.

During the crisis, the Polish side reoccupied the long-orphaned position of Special Representative for relations with Germany to the Polish national government. This shows that in spite of limited national and, at the beginning, sub-national cross-border coordination during the pandemic, the political link between the two sides should be maintained.

Several civil-society, cross-border institutions and networks were involved in organising protests against the border closures (e.g. on 24 April 2020) between the two countries at different locations on both sides of the border. These were also an expression of 'living' Euregional social and interpersonal cohesion. Ultimately, these demonstrations were a likely contributing factor to the partial re-opening of the border for a few groups of people, such as students, on 4 May. The final opening of the border from 12 to 13 May occurred a few days before border openings in other EU countries and is hopefully linked to the future development of Euregional and regional strategies for cross-border coordination of pandemic management.

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### **The impact of the Corona-crisis on the Upper Rhine region**

Euro-Institut, Kehl am Rhein

*Clarisse Kauber  
Eva Dittmaier  
Louise Weber*

### **Objectives**

Following an increase in COVID-19 cases in the French region of Alsace, mutual border controls or entry conditions were imposed in the border region between Germany, France and Switzerland from

mid-March until mid-June. Suddenly bridges over the Rhine were closed, by crossing them people normally live the idea of an “open Europe” in practice every day. After a moment of surprise and helplessness, the actors of cross-border cooperation on the Upper Rhine<sup>142</sup> jointly organised themselves to reduce the impact of border controls and to preserve territorial cohesion.

This impact assessment examines the deviations from the free movement of persons, mobility in the socio-economic environment and cohesion in the common living area, as well as cross-border crisis management.

### **Effects on European Integration**

Even though Switzerland is not part of the European Union, freedom of movement and fundamental rights apply there within the framework of the Schengen Agreement and the bilateral agreements between the EU and Switzerland. Regarding the term European integration, we understand above all the equality between the citizens\* and the freedom of movement in the trinational area.

After the borders closed, between mid-March to mid-May, national restrictions on entering and leaving a country (Lock-Down and reduction of contacts, border controls) were in force everywhere, temporarily restricting the movement and freedom of movement of services. Meanwhile 97,100 commuters were still able to cross the border in principle exclusively for work-related purposes and to retain their social security cover.

At a later point, for all other citizens crossing the border for valid reasons was often left to the discretion of the police, not seldom causing a sense of discrimination amongst those affected. In practice, it was often easier for nationals to enter their country of origin, although the rules were based on residence. Free movement of goods remained guaranteed, but there were restrictions on the provision of services in the neighbouring country.

The border closure was most felt by families who were literally torn apart for up to two months, so that, for example, shared custody could no longer be exercised, unmarried couples of two nationalities could not meet each other, or relatives in need of care in the neighbouring country could no longer receive visits or assistance (at least to the extent/during those times when this was permitted for the general population).

Furthermore, access to education was legally possible, but in some cases, there was no public transport available for pupils and students. Regulations for medical treatment in the neighbouring country were unclear, while access to culture, sports, post office and bank was only possible in the country of residence.

### **Effects on Socio-economic Development**

The main issue identified by employers’ representatives was the restrictions on cross-border commuting. Commuters are an indispensable economic factor, especially in Switzerland and for certain employers. Even professions that were considered to be of systemic importance during the crisis are partly carried out by cross-border commuters. Although there were only isolated cases of border congestion on the Upper Rhine, the presentation of a large number of necessary papers on

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<sup>142</sup> The Upper Rhine region includes Alsace (FR), the Rhine districts of Baden-Württemberg (DE), the districts of Rhineland-Palatinate (DE), the five cantons of north-western Switzerland (CH).

entry and exit was considered disturbing, as was the interruption of cross-border public transport. Until the end of June, however, cross-border commuters were not affected by short-time work or unemployment to a greater extent than other employees.

For the future, negative economic effects on the Upper Rhine region are feared. Most figures refer to regional or state levels at the start of the crisis. Particularly affected sectors are therefore tourism, gastronomy, retail and industry (in Germany and Switzerland). In the border region, the loss of turnover in retail, gastronomy or trades of craftsmanship due to the restricted freedom of movement has not yet been documented.

It is too early (July 2020) to measure the final impact of the COVID-19 crisis on the economy of the Upper Rhine region. However, it is already known that financial state aid played an important role in mitigating the economic losses.

Moreover, cross-border mobility was severely restricted, so that traffic across the border decreased sharply during the crisis.

### Effects on Cross-Border Cohesion

Coordination between states and (sub)regions began mainly in response to the reintroduction of border controls, but not as a joint effort to control the pandemic. After the lock-down, different regulations applied. Existing legal frameworks and agreements were not applied. Instead, need induced innovative solutions to achieve a joint response quickly and outside the existing legal frameworks (e.g. in the form of intergovernmental agreements or verbal arrangements). The political executive, members of parliament and cross-border bodies and their experts, as well as the newly established Franco-German Committee on Cross-Border Cooperation showed great commitment. In fact, the use of existing networks proved to be particularly helpful.

In addition, successful transfer of patients from France to Germany and Switzerland helped to build trust and strengthen mutual solidarity. The existing 'EPI-Rhin' working group organised cross-border tracing of infection chains from the third week of May onwards.

Cross-border crisis management was characterized by the institutional networks and the intensification of personal contacts at political level. The mixture of ad hoc and digital working methods initially began as an experiment and was continued and further developed in the ongoing cooperation from May onwards. In the case of national subjects, there was a need for bilateral agreements concerning one border. Here the area of the Upper Rhine region was not always as relevant. The bodies in contact with citizens (Infobest, European Consumer Centre, Eurodistricts, Frontaliers Grand Est...) also do an excellent job of providing information, analysing the specific obstacles and demonstrating the need for action.

Since life in the Upper Rhine region is strongly interwoven in all areas and can rightly be considered a "*basin de vie commun*" (common living space), it was essential to take the realities of life into account in overcoming the crisis in the common living environment. This aspect ought to be taken into account through adequate preparation for a joint and more integrated crisis response in the event of a next pandemic.

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## The impact of the Coronavirus crisis on the Northern Ireland-Ireland border region

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### Objectives

This report offers an initial assessment of the impact of the Coronavirus pandemic on the Northern Ireland-Ireland border region, and of the extent and effectiveness of cross-border collaborative approaches in addressing the spread of the virus. It does so in order to highlight what this tells us of the degree of integration of the Northern Ireland-Ireland border region in terms of its functionality as a cross-border territory, how socio-economic development has been affected by the pandemic, and whether it has had any impact on cross-border cohesion.

### Integration of the Northern Ireland-Ireland cross-border territory

There have been no effective closures of the border between Northern Ireland and Ireland during the pandemic, although there have been instances of police checking on the purposes of movement of traffic at or near the border, particularly during holiday periods. Nevertheless, the “open” border regime could neither prevent a significant fall in cross-border traffic nor could it be interpreted as an intentional move on the part of the authorities towards treating the cross-border territory as a functional or integrated region. The geographical reality of the island of Ireland has not necessarily resulted in close and ongoing coordination between the two governments. This has left an estimated 23,000 to 29,000 cross-border commuters, citizens and businesses in the border region in the front-line in terms of negotiating differences in the introduction and lifting of public health measures by the governments in Dublin and Belfast, while neither set of measures could be enforced on a cross-border basis. Fractures between the introduction and subsequent lifting of public health measures in the two jurisdictions on the island of Ireland presented citizens in the border region with unintended opportunities to access services in the other jurisdiction that were no longer or not yet available in their own. However, in the absence of significant cross-border enforcement of measures, it has generally been left to citizens to police themselves and to refrain from exploiting fractures between the approaches taken by the authorities in the two jurisdictions. Moreover, differences in approaches have also at times led to resentment among certain communities in the border region as citizens from the other jurisdiction continued to travel across the border. They, too, have sometimes provoked confusion and feelings of being unfairly treated as cross-border workers made unemployed as a result of the pandemic have found that they are not entitled to certain financial supports.

### Socio-economic Development

The nature of the business demography of the Northern Ireland-Ireland border region means it is likely to be economically impacted by the Coronavirus pandemic to a significant degree. Sadly, this would represent a repetition of previous external shocks, such as the international financial crisis of 2008, which affect the cross-border region more deeply than many other parts of the island of Ireland, and from which the region takes longer to recover than elsewhere. While the three Regional Assemblies

in Ireland have concluded that the Border sub-region is the most exposed to economic disruption caused by Covid-19, Ulster University's Economic Policy Centre has estimated that two of the four local government districts in Northern Ireland to see the sharpest decline in terms of both gross value added (GVA) and employment are located in the border region. With the significant presence of economic activities such as accommodation and food services, construction, retail (non-food), and manufacturing at a higher risk of disruption due to social distancing measures, the labour market in the Northern Ireland-Ireland border region will undoubtedly be negatively affected. Businesses in the border region have also been particularly sensitive to differences between the two jurisdictions in terms of the easing of public health measures and of the level of detailed timings contained in the two governments' roadmaps to recovery. The ability of businesses on one side of the border to reopen is seen by businesses on the other side who are unable to do the same as offering them a competitive advantage, and as evidence that their own government is not offering them the same levels of support.

### **Cross-border Cohesion**

While the pandemic provoked a significant reduction in levels of cross-border traffic and cross-border public transport services, thereby denoting a fall in cross-border commuting for the purposes of work or study, it did not necessarily lead to an equivalent reduction in the frequency of meetings of cross-border institutions and organisations involved in cross-border cooperation activities. Indeed, cross-border institutions reported that the frequency of meetings increased in order to consider the pandemic's operational impacts, although meetings were carried out online. A number of such institutions and cross-border organisations were also able to rapidly divert their activities, particularly those involving health and social care, in order to directly support citizens in the border region in dealing with effects of the pandemic. Arguably, this would indicate that intermediate and lower level institutions and organisations already involved in cross-border cooperation activities (a significant proportion of which are in receipt of EU funding) have demonstrated significant resilience in terms of maintaining their cross-border channels of communication, as well as their capacity to offer practical support to communities in the border region. However, while the Departments of Health of the two jurisdictions signed a Memorandum of Understanding to provide a framework for cooperation in addressing the pandemic, there has been little evidence of examples of successful joint procurement of medical equipment, nor did the two governments consider it necessary to call a plenary or sectoral meeting of the North South Ministerial Council.



## **Dossier 2: Implementation and possible effects of the Dutch Strategy on Spatial Planning and the Environment (NOVI) from a Euregional perspective**

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### **Introduction**

The Dutch Environment and Planning Act is an integral law bringing together and modernising 26 existing regulations and laws concerning the physical environment (*leefomgeving*). The environmental strategy (*omgevingsvisie*) is an important tool that gives expression to this law. The environmental strategies that ought to be drawn up by the central government, provinces, and municipalities must ensure greater coherence in policy with regard to the physical living environment. The national government has been developing a National Strategy on Spatial Planning and the Environment (*Nationale Omgevingsvisie*, NOVI) since 2017 and delivered a draft version in June 2019. The NOVI concerns spatial planning in the Netherlands in the long term and was created in an open process, in which civic participation played an essential part. The final NOVI is expected to be published after the summer of 2020.

Although the NOVI is a national strategy, thinking about the living environment does not stop at the national border. Cross-border spatial planning is an important theme in the NOVI, partly because changes in the physical living environment in the border regions can have consequences for the physical living environment in the neighbouring country. It, too, is relevant because cooperation can lead to qualitatively better solutions when it comes to themes such as infrastructure, energy, nature, and water.

### **Purpose and method**

Based on the current state of affairs, this study evaluates to what extent the NOVI and the related implementation instruments, such as the regional “environment agendas” (*omgevingsagenda’s*) and designated “NOVI areas”, create opportunities for improved cross-border cooperation within the physical domain. Several indicators were considered, such as participation from neighbouring countries (as a strengthening of European integration), existing cross-border governance structures within spatial planning), common spatial tasks on both sides of the border (to strengthen socio-economic competitiveness, and the scope for the formation of integrated cross-border strategy (as a prerequisite for Euregional cohesion).

Since the Province of Limburg is nestled between the two neighbouring countries, the investigation focused on the cross-border area of the Euregio Rhine-Meuse-North and the Euregio Meuse-Rhine. By means of document analysis and in-depth interviews with German, Dutch, and Belgian stakeholders, data were collected on the current challenges in the physical living environment in these border regions and the possible effects of the NOVI on these regions.

## Results and conclusions

All layers of government are involved with the design of the physical living environment. At the European level various types of spatially related guidelines have been developed in recent decades. This includes guidelines related to nature conservation and agricultural policy. This 'spatial' European policy is implemented vertically, meaning that, depending on the differences between the objectives pursued and the current situation, each Member State implements policy according to its own requirements. However, there is a lack of horizontal coordination between the Member States. Moreover, European directives often come with an 'assessing' disposition, which is not directly in line with Dutch development planning.

In addition, the cross-border networks along the Dutch-German and Dutch-Belgian borders pay little attention to the theme of spatial planning. This theme is especially relevant to Interreg projects, such as the construction of a cross-border cycling route. When it comes to spatial planning, interview partners quickly refer to concrete area development plans, such as the redevelopment of a business park. However, joint activities to develop a cross-border spatial strategy are virtually non-existent and only a limited number of examples can be given. A cross-border approach to economic developments such as housing or the spatial dimension of the energy transition are not yet part of the process. Economic clusters such as agriculture or industry/chemicals have not yet been described in terms of a cross-border approach.

One of the possible causes of the limited cross-border cooperation is the mismatch between the spatial planning culture of the Dutch planning system and that of North Rhine-Westphalia. The Dutch system, and certainly the NOVI, is characterised by its integral, informal, and participatory character. In contrast, the planning system in North Rhine-Westphalia is sectoral, hierarchical, and formal, and formulating a long-term strategy is not part of the approach to spatial planning in Germany, let alone thinking about it in co-creation with citizens. Instead, everyone is restricted to their own jurisdiction and territories.

However, this does not mean that there is no horizontal cooperation at all. Various cross-border cooperation meetings, such as about the catchment areas of rivers, take place mainly at the sectoral level. Still, a clear connection between sectoral cross-border cooperation (GROS) consultations and the existing cross-border spatial planning bodies, such as the German-Dutch Spatial Planning Committee (DNLKRO) and the Euregions does not (yet) exist. Moreover, the consultations within the German-Dutch Spatial Planning Committee do not take place on a structural basis, despite the fact that this was agreed when the Committee was established in 1967. This forum is therefore also being insufficiently used for a structural exchange between those involved on the German and Dutch sides of the border.

Since the planning systems differ considerably and the existing cross-border spatial planning forums are not used optimally, we regard NOVI primarily as an opportunity for better cross-border cooperation within the spatial domain. The formulation of a joint strategy might still be a step too far. The designation of the NOVI area South Limburg could be an interesting pilot for this purpose.

Nevertheless, the NOVI currently appears to be relatively unknown in the neighbouring countries. Only sporadically were representatives from the neighbouring countries involved in the development of the NOVI in the preliminary phase, during which, for example, various workshops were organised

to share ideas and input for the NOVI. For example, a one-off workshop was organised for Dutch stakeholders active in cross-border cooperation, and a one-off workshop was organised for both German and Dutch stakeholders, as well as Dutch and Belgian stakeholders. During the development phase of the NOVI, the Dutch Ministry of the Interior and Kingdom Relations informed the State Chancellery of North Rhine-Westphalia about progress and the draft plans. Through the State Chancellery, this information was further distributed to the *Bezirksregierungen* (district governments) in North Rhine-Westphalia. Despite these attempts and the long preparation process of the NOVI, which does not even compare to the even longer preparation processes of many German plans, we note that the NOVI is not yet a generally known concept in our neighbouring countries. Above all, also the citizen participation process pertaining to the NOVI has so far failed to take into account the citizens across the border.

Our research furthermore shows that, despite the cross-border ambitions, there is no clear vision on the further implementation of the cross-border cooperation theme, including governance. Different environmental agendas are being drawn up for the implementation of the NOVI, including for the provinces of Noord-Brabant and Limburg. However, it is not yet clear what actions will be taken concretely in the area of cross-border cooperation. Possibly the cross-border dimension will be included more actively within the various NOVI areas along the border, including South Limburg. This ambition has been declared – nonetheless, in essence there seems to be a national focus on priorities regarding the Dutch physical living environment. In fact, the definition of a clear role for cross-border working groups or organisations is missing. To date, existing structures such as the German-Dutch Spatial Planning Committee have not been able to play a special role in this. Similarly, the Euregions have so far had a very limited role in the field of spatial planning, although they are the only stakeholders that formulate strategies for the cross-border area.

In short, the NOVI is still a strategy in the making, in which attention is paid to cross-border cooperation but neighbouring countries have only had limited involvement so far. The potential opportunities of the NOVI for cross-border cooperation on both sides of the border have yet to be recognised. Meanwhile, also the strategic objectives contained in the various implementation instruments have yet to be specified. The question is whether the NOVI will be a catalyst for better cross-border cooperation. On the one hand, relating to the different approaches to the physical environment represented by the NOVI and the planning system in North Rhine-Westphalia and, on the other, regarding the major issues at stake, such as sustainability, economic growth, and population shrinkage, which are being approached from a national perspective.

## Dossier 3: Ex-ante evaluation of the (potential) cross-border impact of the structural reinforcement programme to end coal-based power generation in Germany (*Kohleausstieg*)

Folkert de Vries

### Introduction

On July 3rd, 2020 the German Bundestag adopted the Act on the Structural Reinforcement of Coal Regions (*Strukturstärkungsgesetz Kohleregionen*) formalizing the beginning of the end of German coal-based power-generation.<sup>143</sup> Accordingly, significant subsidies have been made available for the structural socio-economic transformation of four regions in Germany that are economically and socially dependent and environmentally affected by brown coal, its extraction and usage.

One such regions is the border-region of the “*Rheinisches Revier*” (the Rhenish mining district) situated between the metropolitan areas of Aachen, Köln and Düsseldorf. It is formed by the municipalities of Düren, Euskirchen, Heinsberg, Rhein-Erft-Kreis and the Rhein-Kreis Neuss, the Städteregion Aachen and the city of Mönchengladbach.

The Rheinisches Revier Programme (RRP) is managed through the “Innovationsregion Rheinisches Revier GmbH” (IRR) and its executive agency, the “Zukunftsagentur”. On 12 December 2019 the IRR, published the overall vision, *Wirtschafts- und Strukturprogram für das Rheinische Zukunftsrevier 1.0*.<sup>144</sup> On the basis of this vision the RRP’s focus will be on specific thematic clusters that are organised under six so-called “*Revierknoten*” (nodes).<sup>145</sup>

These clusters base their policies and selection of projects on a two-pronged participation approach. That approach entails consultation rounds with experts on selected themes from governmental organizations, knowledge centres and the private sector. These expert consultations will translate the overall vision into more concrete proposals, some of which are then put to the region’s citizens through different platforms such as public meetings and online consultation. In order to launch the entire programme, a first wave of 83 projects has already been approved.<sup>146</sup>

### Cross-Border Rheinisches Revier?

#### Approach

Within the framework described above, the proximity to the Dutch border and the size of the RRP (compared to other investment programmes in the region) the main research question is: what influence will the RRP have on cross-border cooperation such as joint special planning, joint economic specialisation, better coordination of investment programmes and better governance?

This dossier will focus on the influence of the RRP on the border region with the Dutch Province of Limburg, in particular Zuid Limburg. The research conducted for this analysis is qualitative of nature

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<sup>143</sup> This Structural Reinforcement Act accompanies the Federal Act on the Phasing-out of Coal-Based Power Generation (*Kohleausstiegsgesetz*). See: <http://dipbt.bundestag.de/extrakt/ba/WP19/2525/252514.html>

<sup>144</sup> See: [https://www.rheinisches-revier.de/media/wsp\\_1-0\\_web.pdf](https://www.rheinisches-revier.de/media/wsp_1-0_web.pdf)

<sup>145</sup> These themes include: agrobusiness and resources; energy; industry; infrastructure and mobility; spatial planning and infrastructure; innovation and education. See for more information: <https://www.rheinisches-revier.de/themen/uebersicht>

<sup>146</sup> See: <https://www.rheinisches-revier.de/projekte>

due to the maturity of the RRP. In that sense the dossier presents an ex ante evaluation of possible border effects of the RRP. Therefore, it will mainly focus on the different interviews conducted with stakeholders on both sides of the border. This analysis will cover the design phase, the selection of the first projects and the programme's future. In relation to the three themes of the ITEM Cross-Border Impact Assessment, mainly aspects of socio-economic/sustainable development and Euregional cohesion, with a focus on cross-border cooperation will be discussed.

### Currently

To date the RRP's stakeholders have steered clear from any cross-border ambitions in their vision, participation process and selection of projects. The RRP's visionary document<sup>147</sup> mentions the international context of the RRP. However, those few references mostly do not specifically pertain to the border-region as such<sup>148</sup> except for a mention of mobility as a cross-border theme and a mention of the strength of the network of Euregional universities.<sup>149</sup> During the different public consultations the IRR did not involve actors from networks from the border region and it is barely mentioned in its communications. This is also reflected in the current list of 83 projects selected in this first phase. None have a truly cross-border component.

During interviews with different stakeholders who were involved in the process of designing the vision, setting-up and accompanying public consultations and selecting projects it was clear that, during those early stages of the RRP, any reference to cross-border collaboration needed to be avoided in order to not jeopardize its fragile public support. This is emphasized by the fact that municipal elections will be held in the Rhenish District in September 2020. Within this context, the perception of money floating away to other regions, especially across the border, is to be avoided.

Another argument used to exclude cross-border components from the RRD is the complexity of including stakeholders from across the border. This is a recurring issue in cross-border collaboration. Public authorities and project initiators generally find it difficult to identify the relevant stakeholders and to understand how to activate their participation. Besides, the perception and fear of those interviewed from within the IRR is that adding partners from across the border, especially governmental organizations, might slow-down the programme's pace.

### The future

On several occasions those interviewed within the IRR mentioned that, in the longer term, some themes that the RRD focuses on will inevitably have cross-border components because of their nature and effects or because expertise from across the border is necessary.

A very concrete example concerns spatial planning, infrastructure and mobility. Those in charge of this cluster have planned an extensive spatial planning research on Zuid-Limburg with the specific aim of linking it to a mirror-research on the Rhenish mining district. The aim is to ensure that the vision on these subjects and the ensuing projects will always be placed in the wider context. To that end, certain Dutch governmental organizations have joined the research concerning Zuid-Limburg and will therefore be (indirectly) involved in the RRD.

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<sup>147</sup> See: [https://www.rheinisches-revier.de/media/wsp\\_1-0\\_web.pdf](https://www.rheinisches-revier.de/media/wsp_1-0_web.pdf)

<sup>148</sup> Idem: p. 14, p. 37, p. 49, p. 50, p. 77.

<sup>149</sup> Idem: p. 115 (mobility) and p. 96 (universities).

This cross-border component also includes other themes such as those covered by the energy and industry clusters. These are fields in which Zuid-Limburg possesses certain unique strengths (Chemelot, for instance) or fields in which Dutch border municipalities can serve as living labs (exchanging excess energy and heat from one border town to another, for instance).

At this stage, through interviews with Dutch stakeholders, it is worth noting that these stakeholders, especially the Province of Limburg and the main municipalities in Zuid-Limburg, are struggling to find a common strategy towards being involved, influencing, seeking cooperation and adapting their own policies and visions towards the RRD. The initial research on this topic shows a clear lack of efficient cross-border governance. Future research could focus on its development and whether common socio-economic visions and strategies ensue.

## Dossier 4: The (im)possibility of cross-border training budgets to tackle long-term unemployment?

Pieter van Goinga

Dr. Nina Büttgen

### Problem definition

This dossier assesses the impact of European and Dutch legislation and policy with regard to the use of training for cross-border job placement in the Dutch-German border region. It focuses on the role of SGAs (service desks for cross-border job placement, *Servicepunt Grensoverschrijdende Arbeidsbemiddeling*), which are located in the Dutch-German border region (in South Limburg). This dossier therefore differs somewhat from other cross-border impact assessments. It evaluates legislative impact in the context of the 'SGA-policy' and 'its' demand for implementing 'activation measures in kind' (training) in a cross-border setting. Accordingly, it analyses the presence of factors that may hinder cross-border access to training for jobseekers in a Euregion. The analysis is structured on the basis of the three common themes.

### The 'SGA-policy'

#### Promoting service desks for cross-border job placement

The creation of a Euregional labour market is a central objective in the long-term strategy of the Euregio Meuse-Rhine.<sup>150</sup> Local, regional, and supra-regional authorities and partners have a strong interest in seeing their geographical location at the border not as a constraint but as an opportunity to match supply and demand on the labour market. Since 2016, the cooperation within the SGA-setting has been supporting better match-making on both sides of the border. In the Euregio Meuse-Rhine, two Cross-border Job Placement Services are currently operational – “SGA Kerkrade-Herzogenrath” has been since 2016 and “SGA Maastricht” since 2018.<sup>151</sup> The SGA-approach has provided a framework of cooperation between all relevant partners from the Euregion and the subregions – namely the municipalities, employer service desks, the Dutch Employee Insurance Agency (UWV), the Flemish Service for Employment and Vocational Training (VDAB), the German

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<sup>150</sup>See EMR 2020. In the context of the EMR, 'when we add North Rhine-Westphalia, Flanders, and Wallonia to South Limburg, there are no fewer than four million residents and some 2.2 million jobs within an hour's travelling time'. With reference to L. Soete, *Strategische Agenda Zuid-Limburg, ESZL*, 2018, pp. 13-14; quoted in D. Schneider and R. Corsius-Corvers, 'Grenzarbeit/Grensarbeid - Euregionale Dienstverleningstructuur inbouw - AANZET VANUIT Zuid-Limburg', Position paper Toekomst SGA Euregio Maas Rijn, Round table discussion permanent committee for Home Affairs, The Hague, 4 March 2020, p. 3.

<sup>151</sup> 'Both projects [SGA Herzogenrath-Kerkrade and SGA Maastricht] have each demonstrated in their own way that they are able to break down the boundaries of the Euregional labour market. This is to the benefit of employers and their demand for competent employees, the residents of the Euregion – including in terms of benefits or assistance – and the international business climate. [...] Since the start of the SGAs, some 3,000 'citizens' have been informed about job opportunities across borders through activities such as workshops. As many as 550 jobseekers have entered into an employment contract in the neighbouring country.' Position Paper Toekomst SGA EMR, p. 2. Since 2019, a third SGA is being set up on the Belgian-German Border between Kelmis-Aachen in the framework of the Interreg-EMR VA youRegion project.

Agentur für Arbeit and Jobcenter, as well as the knowledge partners of EURES and the Cross-Border Information Points (*Grensinfopunten* / GIP).

The basic assumption behind this SGA-policy is that a transparent, Euregional labour market leads to an internationally attractive business climate and socio-economic benefits. Practice shows an important first step is that a good cross-border information and advice structure helps reduce the barriers that borders present. Next to the Cross-Border Information Points (*GrensInfoPunten* / GIPs), the SGAs thus represent a logical next step as they help allocate and match labour supply and demand in a regional, cross-border setting.<sup>152</sup> It is therefore not surprising that there are plans for further strengthening and deepening the structural cooperation between the Public Employment Services (PES) in the (cross-)border regions along the Dutch and North-Rhine Westphalian border in that way.<sup>153</sup> Moreover, this policy is in line with the common European objective of a high level of quality employment.<sup>154</sup>

#### Obstacles to cross-border training measures

To strengthen SGA cooperation structures, it is particularly important that cross-border job placement can make use of the regular instruments of active labour market policy.<sup>155</sup> Successful placement would then also include the allocation of adequate training measures. However, due to differing national legislations cross-border access to training and education is proving rather problematic in the day-to-day work of the

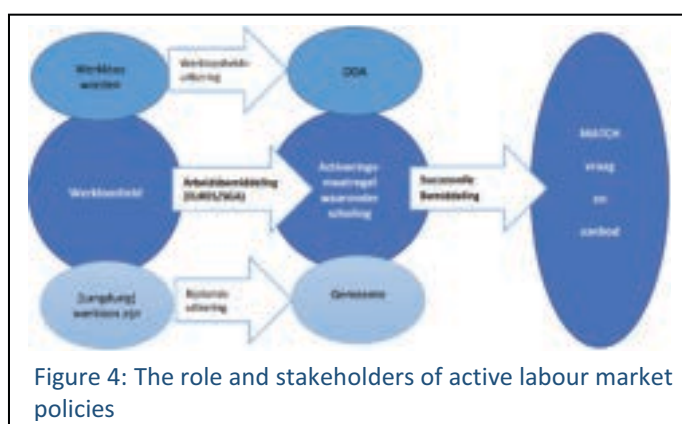


Figure 4: The role and stakeholders of active labour market policies

SGA-service desks. It appears to be particularly difficult to make national training funds available to finance training in a cross-border context. Figure 4 provides a simplified overview of the various levels where (national) legislation plays a role in the process of job placement as a public service.

In fact, resolving the impending legal and administrative conflicts could help rendering these Euregional labour market services (even) more effective and the cooperation structures more durable. However, as the project leaders of the Maastricht and Kerkrade SGAs have observed, in particular:

*'an important instrument that combines national training funds into Euregional and regional training funds is lacking. As a result, cross-border labour market projects (PPPs) aimed at Euregional and regional sectoral development do not stand a chance*

<sup>152</sup> Position Paper Toekomst SGA, 2020, p. 3.

<sup>153</sup> Also see 'Grenslandagenda 2019-2020'.

<sup>154</sup> The EU is also striving for increased cooperation 'to facilitate the exercise of the right to free movement of workers within the Union in accordance with Article 45 TFEU.' See Article 1 of the EURES Regulation (EU) 2016/589. Also see the EaSi Regulation (EU) 1296/2013 and the European Pillar of Social Rights.

<sup>155</sup> cf. European Commission, European semester thematic factsheet – active labour market policies, 11 November 2017. [https://ec.europa.eu/info/sites/info/files/file\\_import/european-semester\\_thematic-factsheet\\_active-labour-market-policies\\_nl.pdf](https://ec.europa.eu/info/sites/info/files/file_import/european-semester_thematic-factsheet_active-labour-market-policies_nl.pdf)



*of succeeding, even though they do have an important strength in terms of sustainability.*<sup>156</sup>

It would be necessary to better align the different working methods of the various national employment services involved to facilitate access to employment opportunities (allocation function) in the neighbouring country further. Regarding the currently deteriorating labour market situation following the Coronavirus crisis and lockdown, a boost to this allocation function could be particularly desirable.

### Research results

Within the chosen regional delimitation – the cross-border region between the Netherlands and Germany in South Limburg, the study is (further) limited to jobseekers receiving unemployment benefits<sup>157</sup> and the role of the PES'es in coordinating cross-border training. The research methodology included literature research and interviews.

The component of socio-economic development plays an important role in this dossier. After all, stimulating inter-regional mobility of (future) cross-border workers/training placements could contribute effectively to the common European goals of a high employment rate and combatting poverty and unemployment – especially in cross-border areas (e.g. Euroregions). Cross-border coordination and inter-regional allocation of vocational training measures therefore provide the benchmarks for the assessment of Dutch and German regional labour market figures and cross-border data (to the extent they are available in this specificity). This initial analysis could naturally only provide a snapshot/first impression of labour market potential to be gained by enabling an efficient “allocation function”, i.e. placing jobseekers into available training measures across the border. It provides a fruitful basis for further research.

In view of the European Integration-objective, the free movement of workers (including the right to cross borders for finding work) is a central principle in this dossier. It is one of the fundamental freedoms constitutive of the EU system/Internal Market and must therefore not be restricted, save for exceptional public policy reasons. It is also constitutive of the idea of matching labour supply and demand in a Euregional labour market. By extension, then, the ideal situation for such a cross-border labour market – and for the effective use of the right to move freely to look for work (jobseeker's perspective) – would be that access to activation measures (such as job training) across the border would also have to be unimpeded. On the one hand, such access ought not be frustrated by obstacles created unintentionally by (impact of) national activation provisions. On the other, gaining access to training across the border must not lead to the loss of social security rights, in particular of former frontier workers (impact of Regulation (EU) 883/2004). The dossier assesses to what extent these criteria can be regarded as fulfilled (or not) in the Dutch-German context, including references to pertinent EU case law (*ITC case*, C-208/05). A range of legal factors and administrative practices seem to stand in the way currently of achieving this ideal of “cross-border labour market *activation*”.

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<sup>156</sup> D. Schneider and R. Corsius-Corvers, 'Grenzarbeit/Grensarbeid – Euregionale Dienstverleningsstructuur in opbouw - AANZET VANUIT Zuid-Limburg', Position paper Toekomst SGA. Euregio Maas Rijn, Round table discussion permanent committee for Home Affairs, The Hague, 4 March 2020, p. 4.

<sup>157</sup> Further research into the target group of jobseekers with social assistance benefits goes beyond the scope of this research. This does not exclude the possibility that some general conclusions about cross-border access to training in the job placement process may not also apply to this target group.

With respect to Euregional cohesion – last but not least – the dossier analyses the nature and extent of cross-border coordination of activation measures in kind. A well-functioning coordination of jobseeker/training allocation requires close cooperation between the competent PES, local and regional authorities on each side of the border. The discussion also touches upon issues of certification and the bodies authorized with such certification and the qualification of trainers. Based on a number of informal interviews with experts in the field (EURES, SGA), the examination could finally also bring to light delicate aspects regarding the (politically) more sensitive topic of financing cross-border access to activation measures/training.

## Dossier 5: The cross-border effects of the proposed German "basic pension" (*Grundrente*)

Dr. Bastiaan Didden  
Pim Mertens

### Introduction

International, European, and Dutch lawmakers are currently addressing the theme of a decent provision for old age. This is also the case in Germany, where various measures have been taken in recent years to strengthen old-age provision. The most recent measure that can be mentioned in this context is the legislative proposal adopted by the German parliament in July 2020 that will make the *Grundrente* possible with effect from 1 January 2021.<sup>158</sup> The *Grundrente* can be seen as a supplement to the German statutory pension benefit (part of the *Rentenversicherung*). The amount of the German statutory pension benefit is based on the insured period (contribution years) and the contributions paid by an employee, which partly depend on the amount of the salary.<sup>159</sup> This system may result in employees with a long employment history but a low earned income receiving a low statutory pension benefit.<sup>160</sup> With the *Grundrente*, which was one of the key points of the coalition agreement of 2018, the German government aims to achieve a *stärkere Anerkennung der Lebensleistung*, freely translated to mean a better recognition of work performance.<sup>161</sup>

### Structure of the dossier: European integration is key

This dossier constitutes an ex ante assessment of the *Grundrente*. To this end, both its conditions in general and the cross-border aspects have been specifically taken into account. European integration is the central theme in this context, which means that it has been examined to what extent the cross-border impact of the *Grundrente* was taken into account when the legislative proposal was drafted. On the basis of an initial assessment of the conditions for eligibility for the *Grundrente*, it was examined what the *Grundrente* could possibly mean for socio-economic development and cohesion in the border region. In this dossier, the border region is fairly broad and concerns former cross-border workers who live in the Netherlands or Belgium and have worked in Germany.

### The *Grundrente* in a nutshell

The *Grundrente* and its conditions are implemented in the *Sechsten Buch Sozialgesetzbuch* (SGB VI) by means of the *Grundrentengesetz*. This emphasises the fact that the *Grundrente* is not a separate payment, but a supplement to the *Rentenversicherung*, as the aforementioned SGB VI also regulates

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<sup>158</sup> Entwurf eines Gesetzes zur Einführung der Grundrente für langjährige Versicherung in der gesetzlichen Rentenversicherung mit unterdurchschnittlichem Einkommen und für weitere Maßnahmen zur Erhöhung der Alterseinkommen (Grundrentengesetz), *BT-Drs. 19/18473* (Gesetzesentwurf).

<sup>159</sup> This is reflected in the calculation of the level of the German statutory pension benefit by means of the *Entgeltpunkte*. For the sake of completeness, it should be noted that if there is an income below the subsistence level, a social assistance benefit in the form of the *Grundsicherung im Alter* can be used. The legislative proposal regulating the entry into force of the *Grundrente* also includes a concession regarding the *Grundsicherung im Alter*, see Gesetzesentwurf, *BT-Drs. 19/18473*, p. 25.

<sup>160</sup> It is important to note that the first pension pillar, namely the statutory pension, is the 'dominant pillar' in Germany, which means that most German residents depend on the German statutory pension for their old-age provision.

<sup>161</sup> Gesetzesentwurf, *BT-Drs. 19/18473*, p. 1.

the *Rentenversicherung*.<sup>162</sup> One of the most important conditions to be able to claim the *Grundrente* is the requirement of long-term insurance. This means that at least 33 years of *Grundrentenzeiten* are fulfilled in Germany. In order to qualify for full *Zuschlag*, 35 years of *Grundrentenzeiten* must have been fulfilled. In addition to the necessary duration of the insured period, the objective of the *Grundrentenzeiten* is also linked to both earned and current income. In order to be entitled to the *Grundrente*, the value of the *Entgeltpunkte* must be at least 30% and at most 80% of the average gross income.<sup>163</sup> Upon final payment of the *Grundrente*, it will also be considered whether there is any other income, which may lead to a deduction on the amount of *Grundrente* received. It goes beyond the scope of this summary to go into more detail about the *Grundrente* calculation system, although it is worth mentioning that the *Grundrente* can, depending on the situation, lead to an increase in income of more than 400 euros per month.

### European Integration: taking borders into consideration?

The *Grundrente* is thus aimed at long-term insured persons – especially women – who, as a result of a low average employment income, receive a low statutory pension benefit.<sup>164</sup> A cross-border worker must therefore also meet the conditions briefly outlined above. From the point of view of European law, no specific details can be identified here. This also applies to the question whether the *Grundrente* can also be received across the border. At a relatively early stage in the legislative process, a study of the *Fachbereich Europa* of the German parliament investigated whether the *Grundrente* is exportable. On the basis of the aspects of the *Grundrente*, the study indicates that because of the *Beitragsunabhängigkeit* (not being dependent on contributions), the *Grundrente*, as well as the German statutory pension benefit, falls within the material scope of Regulation (EC) No 883/2004.<sup>165</sup> The *Grundrente* can therefore be received across the border. However, the final explanatory memorandum to the legislative proposal does not explicitly address this issue.

When receiving the *Grundrente*, the application of a tax treaty also comes into play. The explanatory memorandum to the legislative proposal pays no attention to treaty application, despite the likelihood that the *Grundrente* will receive the same treatment as the German statutory pension benefit. For the application of the tax treaty between Germany and the Netherlands, this means that the state of residence has tax jurisdiction on the basis of Article 17(1). As regards the tax treaty between Germany and Belgium, the source state has jurisdiction under Article 19(3).

The number of cross-border workers who will receive the *Grundrente* is difficult to estimate. Whether and to what extent a cross-border worker will receive *Grundrente* obviously depends on whether the conditions of the *Grundrente* are met while the final amount paid in *Grundrente* also depends on the income of the former cross-border worker. This requires very detailed statistics, which are not yet available. Nevertheless, an initial estimate can be made (see Figure 5 below) on the basis of the

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<sup>162</sup>To this end, § 76g is added to the list of benefits in the SGB VI.

<sup>163</sup> Gesetzentwurf, *BT-Drs.* 19/18473, p. 23.

<sup>164</sup> This target group is explicitly mentioned in the Gesetzentwurf, *BT-Drs.* 19/18473, p. 27.

<sup>165</sup> Fachbereich Europa (Bundestag), *Ausarbeitung; Nationale Maßnahmen zur Bekämpfung der Altersarmut im Lichte des unionsrechtlichen Exportgebots von Leistungen der sozialen Sicherheit*, 2019,

<<http://www.bundestag.de/resource/blob/669656/d02032ebbe6d4e08a525f3f9de4c123d/PE-6-047-19-pdf-data.pdf>>, p. 32.

The characteristics of the *Grundrente* have been examined in the light of Article 70 of Regulation (EC) No 883/2004, which refers to a 'special non-contributory cash benefits'.

German government's estimates in the *Grundrentengesetz*<sup>166</sup>, the Border Data from Statistics Netherlands (CBS)<sup>167</sup>, and the *Rentenatlas* of the *Deutsche Rentenversicherung* (DRV) for 2019<sup>168</sup>.

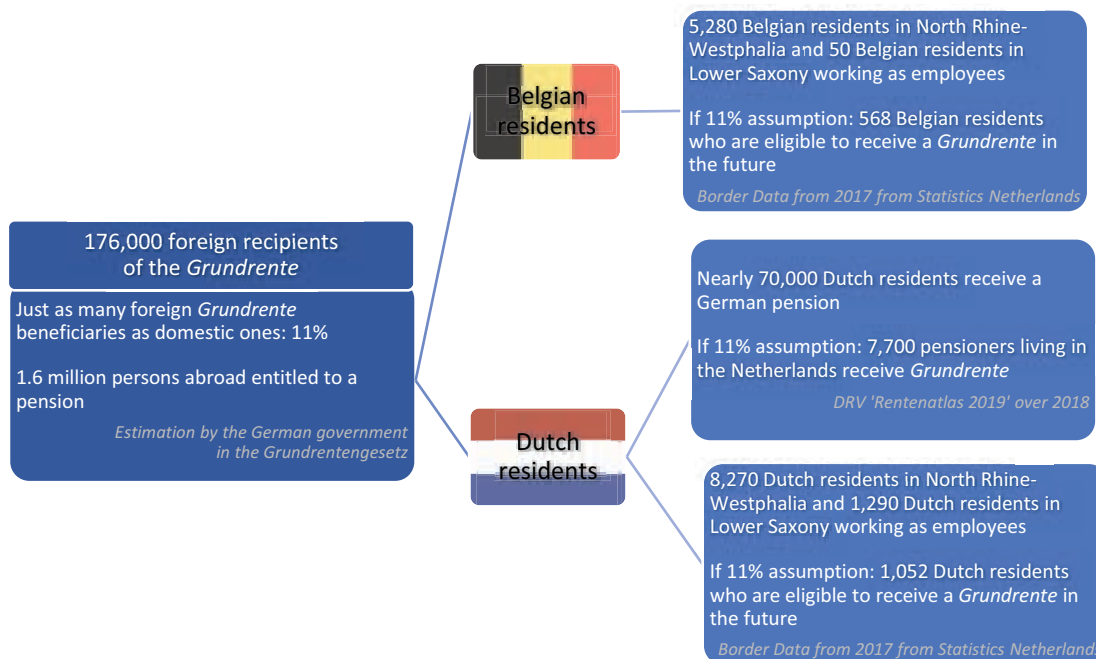


Figure 5: estimation of current and potential foreign *Grundrente* beneficiaries

It is important for the former cross-border worker that their income is also known to the DRV, which acts as the administrator of the *Grundrente*.<sup>169</sup> The question that can be raised with regard to the administrative burden is whether the former cross-border worker should take action to this end and proactively inform the DRV. An information website of the DRV about *Grundrente* appears to indicate that the DRV will be the first to take action in this respect.<sup>170</sup>

### Does *Grundrente* contribute to socio-economic development in the border region?

In the German government's decision of November 2019 initiating the legislative process, it was stated that combating *Altersarmut* should be an important primary objective of the *Grundrente*.<sup>171</sup> The legislative proposal adopted in July 2020 no longer explicitly includes this objective and states that the main purpose of the *Grundrente* is '(...) *das Vertrauen in die Leistungsfähigkeit der gesetzlichen*

<sup>166</sup> Gesetzentwurf, BT-Drs. 19/18473, p. 29, and p. 59. However, no distinction has been made for cross-border workers.

<sup>167</sup> Can be consulted via the 'Border Data' (Grensdata) data bank of Statistics Netherlands: <https://opendata.grensdata.eu/#/InterReg/nl/dataset/22027NED/table?ts=1594905725337>.

<sup>168</sup> Deutsche Rentenversicherung, *Rentenatlas 2019; Die Deutsche Rentenversicherung in Zahlen, Fakten und Trends*, <[http://www.deutsche-rentenversicherung.de/SharedDocs/Downloads/DE/Statistiken-und-Berichte/Rentenatlas/2019/rentenatlas\\_2019\\_download.pdf?\\_\\_blob=publicationFile&v=6](http://www.deutsche-rentenversicherung.de/SharedDocs/Downloads/DE/Statistiken-und-Berichte/Rentenatlas/2019/rentenatlas_2019_download.pdf?__blob=publicationFile&v=6)>, p. 14. Data relating to Belgium are unfortunately not included in the *Rentenatlas*, which may be due to the fact that relatively few recipients of a German *Rentenversicherung* benefit live in Belgium compared with the other countries mentioned in the *Rentenatlas*.

<sup>169</sup> See § 97a, third paragraph, SGB VI.

<sup>170</sup> For the information page of the DRV, see <[http://www.deutsche-rentenversicherung.de/SharedDocs/FAQ/grundrente/grundrente\\_faq\\_liste.html#d6607877-2849-469d-9f00-54f97a14706f](http://www.deutsche-rentenversicherung.de/SharedDocs/FAQ/grundrente/grundrente_faq_liste.html#d6607877-2849-469d-9f00-54f97a14706f)> and more specifically the question 'Wird auch das angerechnet?'.

<sup>171</sup> See: Koalitionsbeschluss 10. November 2019, can be consulted at <[http://www.portal-sozialpolitik.de/uploads/sopo/pdf/2019/2019-11-10\\_Grundrente\\_Koa\\_Beschluss.pdf](http://www.portal-sozialpolitik.de/uploads/sopo/pdf/2019/2019-11-10_Grundrente_Koa_Beschluss.pdf)>

*Rentenversicherung und den Sozialstaatsgedanken bei einer Zielgruppe zu stärken* (freely translated: '... to strengthen confidence in the efficiency of statutory pension insurance and the idea of the welfare state among a target group').<sup>172</sup> With the shift in emphasis in the objective and the strict conditions of the *Grundrente*, the first expectation is that the *Grundrente* will not be able to contribute significantly to the income of the former cross-border worker and thus neither to the socio-economic development in the border area. In order to properly analyse this cross-border impact, an ex post assessment by means of monitoring should take place.

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<sup>172</sup> Gesetzentwurf, BT-Drs. 19/18473, p. 56.

## Dossier 6: The cross-border effects of decentralisation in social security: case study on Dutch youth care<sup>173</sup>

Dr. Nina Büttgen  
Aleyna Hezer  
Pim Mertens

### Introduction

This dossier is an ex-post assessment of the impact of the Dutch Youth Act (*Jeugdwet*) of 2015 on the border region between the Netherlands and Germany. More precisely, it studies what consequences the decentralisation triggered by this Act, has had for cross-border child protection and cooperation. The legislative impact will be assessed in the light of the objectives of European Integration, Sustainable/Socio-economic Development and Euregional Cohesion. In the latter case, the area covered by the Euregio Meuse-Rhine (cross-border area between Germany, Netherlands and Belgium) serves as a case study.

### Decentralisation of Dutch youth care

The Youth Act has been in force in the Netherlands since 1 January 2015 (*Bulletin of Acts and Decrees*, 2014, 105). This act has been designed to solve the problems of its predecessor. From 2005 until 2014, the Dutch system of youth services was based on the Youth Care Act (*Wet op de jeugdzorg*), whereas various other components of youth care were also covered by the Healthcare Insurance Act (*Zorgverzekeringswet*) and the Exceptional Medical Expenses Act (*Algemene Wet Bijzondere Ziektekosten*). The 2015 Youth Act was to simplify the youth care system by bundling the various components, which had been spread out over different sorts of regulations, into a single legislation to render it more effective and efficient. This was to put an end to the fragmentation of Dutch youth services (including access to these services, provincially financed youth and educational assistance, care for youth with a mild learning disability, youth mental healthcare, youth protection, and youth rehabilitation).<sup>174</sup>

The entry into force of the Youth Act in 2015 initiated a step-by-step approach towards shaping a more integrated system by means of decentralisation.<sup>175</sup> Municipalities would receive a single budget from the Dutch government's Municipalities Fund to promote *participation* in society.<sup>176</sup> Nonetheless, soon new criticisms arose – this time as a result of the decentralisation (such as financial deficits at the municipal level and persistently long waiting lists). Following a report about the insufficiencies of

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<sup>173</sup> Each year, the research for the ITEM Cross-Border Impact Assessment also involves students. The youth care-dossier has benefitted from the support of and been co-authored by A. Hezer, a third-year BA Legal Studies-student from Zuyd University of Applied Sciences, who completed a six-month internship at ITEM in spring-summer 2020.

<sup>174</sup> It also included youth protection and youth rehabilitation into the single Youth Act. Friele et al., 2019, 10.

<sup>175</sup> 'Decentralisation of youth aid to municipalities is, according to the explanatory memorandum, seen by the legislator as one of the conditions for remedying the shortcomings.' Friele et al., 2019, 10. Explanatory Memorandum to the Dutch Youth Act, 1 July 2013.

<sup>176</sup> Next to youth care, the decentralisation put municipalities also in charge of social welfare, and care of the long-term sick and elderly.

youth care provisions by the Inspectorate for Health and Youth Care (2019), the Dutch government recently initiated the amendment of the Youth Act.

### Cross-border impact research

Repeated citizens' requests received by the Cross-Border Information Points (GIPs)<sup>177</sup> – a network of information points for cross-border commuters along the Dutch border – and ITEM's own casuistry show that problems with access to youth care facilities in the neighbouring country do occur.<sup>178</sup> The dossier therefore examines the role of legislation in cross-border problems with access to youth care services in the neighbouring country. In line with pertinent case requests, the focus is on the situation at the Dutch-German border.

Moreover, it is important to look what consequences the transfer of responsibility for the implementation of youth care to the municipalities has had for cross-border cooperation. This question, however, presupposes that a certain form of cross-border cooperation must already have taken place before 2015 between the Dutch competent authorities and their colleagues across the border. That is why the Euregio Meuse-Rhine (EMR) makes for a useful case study where structured cooperation in the form of the "Euregional Youth Cooperation" (*Euregionale Samenwerking Jeugd*) has been taking place already since 1999. Based on literature research, a questionnaire, and informal discussions with members of the Euregional Cooperation working group, the authors thus investigated what impact the Dutch Youth Act has had on the cross-border cooperation in the youth field in the EMR.

### Effects of the Dutch Youth Act on European Integration

As a result of the 2015 Youth Act, the legal situation for the provision of youth services in cross-border cases has certainly not become any easier. This complexity often seems to obscure the fact that, in many cases, the issue at stake is who is carrying the costs. With respect to the principles of European integration, the benchmark for assessing cross-border impact is the 'extent that families living in border regions can have unrestricted access to adequate youth (health)care services (including the reimbursement of treatment costs) regardless of which side of the border they are living on'.

For a better understanding of the legal entanglements, it helps to distinguish between different components of youth care (see table 3 below). In fact, the definition of youth care (and what services it implies) differs from country to country. Depending on which interests are being studied (e.g. those of concerned families or those of competent/cooperating authorities) the analysis warrants a different emphasis on which legal aspects are at stake. Accordingly, it is helpful to make the analytical distinction between youth aid (for children in emergencies, neglect, abuse, etc.), on the one hand, and youth 'health' care or, more precisely, youth mental healthcare (psychological treatment of children) on the other. From a legal point of view, youth aid services form part of private international law (such as the Brussels IIA Regulation<sup>179</sup>), meaning that national law plays a predominant role, save for the

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<sup>177</sup> See [www.grenzinfo.eu](http://www.grenzinfo.eu).

<sup>178</sup> See Adamsky (2019): [https://ec.europa.eu/futurium/en/system/files/ged/adamsky\\_winterswijk\\_municipality.pdf](https://ec.europa.eu/futurium/en/system/files/ged/adamsky_winterswijk_municipality.pdf).

<sup>179</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (known as the 'Brussels IIA Regulation'), Article 61 regulates the relationship between this Regulation and the 1996 The Hague Convention on parental responsibility and protection of children.



determination of which national law applies. Youth mental healthcare, i.e. the psychological treatment of children and young people, instead forms part of healthcare.<sup>180</sup> In this case, two pieces of EU legislation (Regulation (EC) 883/2004<sup>181</sup> and Directive 2011/24/EU<sup>182</sup>) may apply. This means that access to healthcare is in principle available in the course of exercising one's European fundamental free movement rights, including for cross-border workers and their family members.

Table 3: Selection of applicable legislation related to cross-border youth care along the Dutch-German border

	<b>Youth services (private international law)</b>	<b>Youth healthcare (social security)</b>
<i>EU &amp; international</i>	Brussels IIA Regulation The Hague Convention on parental responsibility and protection of children <sup>183</sup>	Coordination Regulation (EC) 883/2004 Patients' Rights Directive 2011/24/EU
<i>Germany</i>	<i>SGB VIII Kinder- und Jugendhilfe</i> (German Social Code, book VIII, child and youth care)	<i>SGB V – Leistungskatalog gesetzliche Krankenversicherungen</i>  (German Social Code, book V, benefits catalogue of statutory health insurance companies)
<i>Netherlands</i>	<i>Jeugdwet</i> (Youth Act)	<i>The Dutch Youth Act does <u>not</u> fall under the scope of Regulation (EC) 884/2004.</i>

The right to access health treatment in the competent State (here: country of employment), however, depends heavily on the way social security cover is structured in the individual case and the actual intention to make use of it (i.e. obtaining the treatment in the neighbouring country).<sup>184</sup> It is therefore determined by the individual circumstances of any particular cross-border family situation (and their respective health insurance coverage) whether or not access rights and benefits can be granted across borders. In addition to this factual dependency, the recent legislative change in the Netherlands seems to have added an additional hurdle: the Dutch Youth Act falls outside the scope of the EU regulation on social security coordination (No 883/2004). The families of cross-border workers may therefore face particular difficulties in (or rather the lack of) obtaining access to (i.e. reimbursement of expenses of) appropriate care if the Netherlands is the competent Member State in a cross-border situation.<sup>185</sup> In effect, the existing European coordination rules, which are intended to clarify access to care services in another Member State, remain inapplicable – at least when it comes to youth mental healthcare, since they have practically been abrogated by the change in Dutch youth care legislation.

<sup>180</sup> The World Health Organization defines primary healthcare as 'a whole-of-society approach to health and well-being centred on the needs and preferences of individuals, families and communities. It addresses the broader determinants of health and focuses on the comprehensive and interrelated aspects of physical, mental and social health, and wellbeing.' See: <https://www.who.int/news-room/fact-sheets/detail/primary-health-care>

<sup>181</sup> REGULATION (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ('EU Coordination Regulation').

<sup>182</sup> DIRECTIVE 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare ('EU Patients' Rights Directive').

<sup>183</sup> For a comprehensive overview of the European and international obligations of Member States (UN, Council of Europe, EU) in the field of child protection, see European Union Agency for Fundamental Rights and Council of Europe, Handbook of European Law Relating to the Rights of the Child. Luxembourg, 2015, pp. 263-271: [https://www.echr.coe.int/Documents/Handbook\\_rights\\_child\\_NLD.pdf](https://www.echr.coe.int/Documents/Handbook_rights_child_NLD.pdf) (5 August 2020)

<sup>184</sup> Adamsky (2019).

<sup>185</sup> In some cases, the EU Patient Directive might offer an alternative solution but only if the child is insured in Germany.

## Impact on Euregional Cohesion

Besides this, no notable cross-border legal effect has been detected for now. Instead, practical/administrative gains have been reported *as a result of* the decentralisation. In the last section, the dossier analyses what impact the Youth Act has had on the Euregional Youth Cooperation in the EMR, which exists for more than 20 years.

Since 2015, the municipalities bear the financial responsibility and ultimate responsibility for the well-being of young people. The municipality has thus promoted to a primary care provider/ 'first line service provider', also taking over the role of case reception from the Youth Care Office (*Bureau Jeugdzorg*).<sup>186</sup> Consequently, new actors from the municipal level (responsible for youth aid provisions in South Limburg) joined the framework of the Euregional Youth Cooperation.

Already before 2015, the members of the Euregional Cooperation had recognised that the existing legal differences between the three youth systems were too big or too complex to be resolved.<sup>187</sup> To arrive at a *modus operandi* nonetheless, *goal-oriented pragmatism* (the goal of child protection is paramount to every case) and *mutual learning* have grown within the cooperation structure.<sup>188</sup> These are key reasons why the working group members very much appreciate the Euregional Youth Cooperation and overall consider it to be working well. In fact, the recent legislative changes and the resulting shift in authority on the Dutch side have apparently resulted in an even more pragmatic *content-driven* approach towards/common procedure for dealing with cross-border cases in the EMR built on personal relationships and trust: 'Nobody left, but new [stakeholders] did join. [...] Decision-making has become easier as a result.'<sup>189</sup> For the Dutch side, it was emphasised that the current predominance of 'tailor-made solutions' is very much owed to the fact that there are only a few cross-border cases per year. The Euregional partners also welcome practical solutions in cases where it is felt that more is possible in Dutch border municipalities with a larger budget than in border municipalities with a smaller budget.

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<sup>186</sup> Throughout the Netherlands there are several certified youth protection institutions (mostly former Youth Care Offices), among which a new organisation called "Safe Home" (*Veilig Thuis*) created by merging the former Child abuse counselling and reporting centre (AMK) was merged with the Support Centre for Domestic Violence (SHG). Access to youth care is by means of a registration via the local district team or via the court.

<sup>187</sup> In 2015, though, apparently there was an attempt to draw up a covenant between the Netherlands, Belgium, and Germany laying down some basic agreements for the cross-border cooperation in the youth field. A member of the Euregional Cooperation working group reported that this attempt failed apparently because eventually the legal differences proved too big to be bridged by such covenant.

<sup>188</sup> Regular exchange of knowledge/experiences and mutual workshops characterise the Euregional Cooperation, which holds biennial expert conferences and regular working group meetings, at different administrative levels, throughout the year.

<sup>189</sup> Interview with the representative of the South Limburg municipal youth care.

## Summaries Cross-Border Impact Assessments 2019

### Dossier 1: The qualifying foreign taxpayer obligation (“90% rule”): A preliminary ex-post impact assessment

*Johan van der Valk  
Myrte ter Horst  
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The qualifying foreign taxpayer obligation (kwalificerende buitenlandse belastingplicht, hereafter: KBB), which entered into force on 1 January 2015, establishes that non-resident taxpayers in the Netherlands may benefit from the same deductions and tax credits as resident taxpayers only if they earn at least 90% of their worldwide income in the Netherlands. They are excluded from this rule if their income is below this threshold. The KBB may affect the labour mobility and housing mobility of cross-border workers who earn less than 90% of their worldwide income in the Netherlands and do not have sufficient taxable income in their country of residence.

In the ITEM Cross-Border Impact Assessment 2018, a preliminary ex-post impact assessment was carried out to analyse whether there were significant changes in the number of non-resident workers in the Netherlands after the introduction of the KBB. This analysis for the period 2013-2016 showed that no departure from the trend was visible. In the current edition of the Cross-Border Impact Assessment, the analysis is extended with two new elements in order to carry out a better ex-post impact assessment. In this edition we used a longer time series, namely from 2012 to 2017, to identify any delayed effects and to establish any departures from the trend more accurately. The second new element concerns a longitudinal analysis, in which each employee is examined to see how their living or employment situation changes over time.

Figure 1 shows the number of non-resident employees by country of residence over the years 2012-2017. The number of non-resident employees living in Poland and in other countries increased over the period 2012-2017. The numbers of non-resident employees living in neighbouring countries Belgium and Germany remained more or less the same over the period 2012-2017. Figure 2 shows that this is the case for both Dutch nationals living in Belgium or Germany and Belgians living in Belgium. However, the number of German non-residents living in Germany clearly decreased between 2012 and 2017. Figures 1 and 2 do not show any striking changes in the number of non-resident employees between the period before the introduction of the KBB (2012, 2013, 2014) and the period after the introduction of the KBB (2015, 2016, 2017).

Figures 3 and 4 summarise the analysis of labour and housing mobility. As the focus of this dossier is on estimating the possible effects of the KBB on the border regions, in this analysis we focus on non-residents living in the neighbouring countries Belgium and Germany. Both figures show that more people started working in the Netherlands year on year from 2012 to 2017 while they lived in Belgium or Germany in the year they started working. In addition, fewer non-residents living in Germany have stopped working in the Netherlands year on year. There are no noticeable changes in the number of people working in the Netherlands who moved to and from the Netherlands. The analysis therefore

shows that labour mobility is greater than housing mobility, and that no striking changes took place after the introduction of the KBB.

Figure 1: Number of non-resident workers, by country of residence, 2012-2017 (x 1 000)

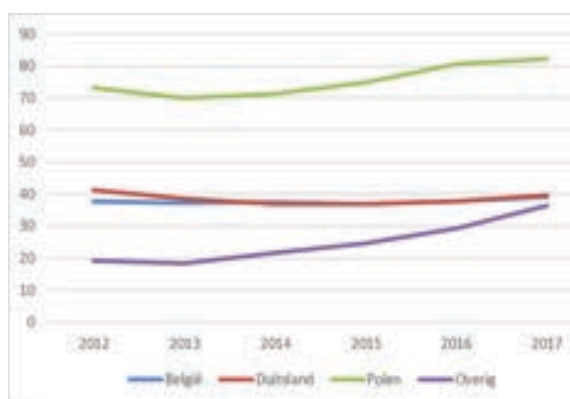


Figure 2: Number of non-resident employees by country of residence and nationality, 2012-2017 (x1,000)

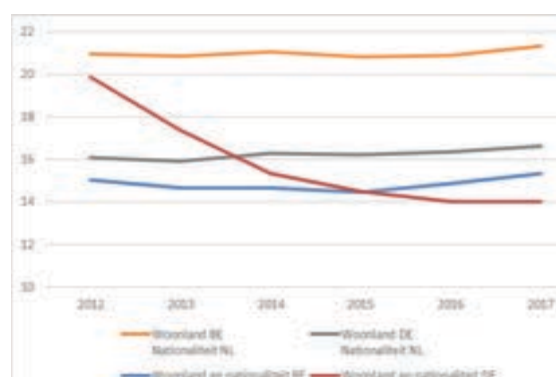


Figure 3: Labour mobility and housing mobility of number of non-resident employees with Belgium as the country of residence, 2012-2017 (x1,000)

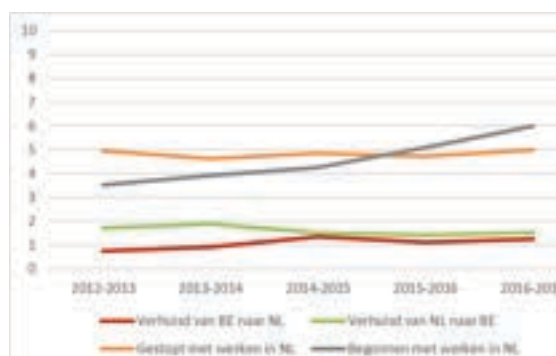
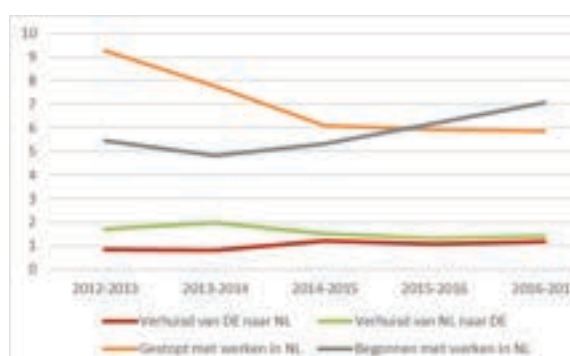


Figure 4: Labour mobility and housing mobility of number of non-resident employees with Germany as the country of residence, 2012-2017 (x1,000)



The analysis therefore gives no indication that the KBB influences the number of non-resident employees in the Netherlands. The number of people living in Belgium or Germany and working as employees in the Netherlands has been fairly stable since 2015. The longitudinal analysis also does not indicate that more foreign employees are suddenly moving back to the Netherlands since 2015 or that the Netherlands has suddenly become less attractive as a working country for people living in neighbouring countries. We therefore do not see any noticeable changes in housing and labour mobility since the introduction of the KBB.

Although we do not find any evidence that the KBB has an effect on the number of non-resident workers and their behaviour in terms of housing and labour mobility, this does not alter the fact that individuals may be burdened by the legislation. As a result of the KBB, non-resident employees may be faced with administrative burdens that they would not have been burdened with in the absence of this law.

We recommend continuing to monitor figures on cross-border commuting over a longer period. It is, of course, possible that effects do not occur immediately but require more time to become visible. A longer time series would therefore be required to investigate this.

## Dossier 2: Cross-border effects of the Dutch Act on the Legal Status of Civil Servants (Wnra)

*Professor Dr. Marjon Weerepas  
Charlotte Conjaerts*

### 1. Introduction

As of 1 January 2020, the Public Servants (Standardization of Legal Status) Act (Wet normaliseren rechtspositie ambtenaren, Wnra) is likely to enter into force. As a result of this law, several groups of employees will no longer be classified as public servants. At the same time, new public servants will be added to this list, such as employees of the Dutch Employee Insurance Agency (UWV) and the Social Insurance Bank (SVB). The new Central and Local Government Personnel Act 2017 (Ambtenarenwet, AW) will also be implemented. For employees working in the education sector, another law will enter into force in addition to the Wnra, namely the amending legislation to the Wnra for public servants in education (Wet tot wijziging van enige wetten in verband met de normalisering van de rechtspositie van ambtenaren in het onderwijs), as it is no longer considered desirable to distinguish between private education and public education.

International legislation decrees that cross-border workers may only be insured by the social security system of one country. For 'ordinary' employees the country-of-employment principle generally applies as the main rule. For public servants, instead, an exception applies subjecting this group to a priority rule. This determines that the obligation of social insurance usually rests with the Member State where the public service is established. In concrete terms, the law and legislative proposal may have important consequences for staff in the education sector who carry out cross-border work (i.e. working in two or more countries).

This study examines the possible consequences of the Wnra as of 1 January 2020 in the event of the allocation of the social security obligation in a cross-border context being changed as of 1 January 2020. It should be noted that only the consequences with regard to the obligation to pay compulsory social contributions are described here. The consequences that this may have on social security benefits are not included. This study also expounds the possible consequences of the Wnra with regard to the right to levy taxes on pensions in international situations.

### 2. Lack of correct figures

Regrettably, it is unclear how many people will be affected by the Wnra, as no exact figures are available. According to the website of the Dutch Ministry of the Interior and Kingdom Relations, more than half a million public servants will move from a public-law appointment to a private-law employment contract as a result of the Wnra. The question is how many public servants who live abroad and work in the Netherlands are affected by the amendment of the law. Maastricht University Medical Center+ (MUMC+) alone employs approximately 800 cross-border workers: 740 from Belgium and 60 from Germany. One of the questions that follows is how many of these employees work outside the Netherlands in addition to their jobs in the Netherlands. In mid August, a questionnaire was sent to employees at Maastricht University to gain more insight into their living and working situation. Statistics Netherlands only has figures on the total number of frontier workers who live in

the Netherlands or abroad and who carry out cross-border work abroad or in the Netherlands. These data, however, make no distinction between public servants and employees.

An initial recommendation could be that Statistics Netherlands should provide more insight into how many of the frontier workers have a public servant status.

### 3. Consequences of the Wnra

#### 3.1. Obligation to insure

The social security obligation may change as a result of the Wnra if the employee also performs work abroad. This is due to the European coordination rules of Regulation (EC) No 883/2004 concerning the pursuit of working activities in two or more Member States. One of the rules is that if a cross-border worker works in Member State A as a public servant and in Member State B as an employee, the cross-border worker is insured in the Member State where they work as a public servant. If, in this case, the status of the public servant changes to an employee status, the main rule for determining the applicable legislation applies instead of the exception. This means, it must first be determined whether the employee performs or acquires 25% or more of their working time and/or remuneration in their State of residence. If this is the case, the insurance obligation is assigned to the State of residence. If the 25% criterion is not met, the insurance obligation is assigned to the State of residence or to another Member State, depending on the facts and circumstances.

The report offers several sample calculations to provide more insight into the consequences of a cross-border shift in the insurance obligation, i.e. duty to pay social security contributions. These examples are based on the year 2018, as this is a full year for which holiday allowances and end-of-year bonuses can also be taken into account. For the sake of illustration, an example of frontier work situation with Belgium has been chosen (Table 1). This example presents a person who lives in Belgium and who works in the Netherlands for 0.9 FTE and for 0.1 FTE in Belgium.

Table 1: Exemplary calculation of the possible consequences (difference in compulsory contributions) following the entry into force of the Wnra on 1 January 2020 regarding the change in insurance obligation when working in two countries.

Employee 0.9 FTE in NL, 0.1 FTE in Belgium												
Belgian wage for the purposes of wage tax	Gross salary	Part-time factor	National Social Security contribution standard salary	National Social Security contribution holiday pay only	National Social Security contribution benefit	Special contribution to social security	Employee's share of social security	Employer's contribution for social security	Reduction of employer's contribution	-	Employer's share of social security	Total social security
Total 12 months	57,399.30	90%	7,553.08	531.38	614.86	607.47	9,306.79	17,069.98	0	-	17,069.98	26,376.77
Dutch national insurance (SV) contributions	Wage for social insurance purposes	Part-time factor	National insurance contribution (payroll tax table)	National insurance contribution ('bijzonder tarief' [special rate])	-	-	Employee's share of social security	Work and Income (Capacity for Work) Act contribution (WIA)	Healthcare Insurance Act contribution (ZVW)	Public Sector Social Security Implementation Fund contribution (UFO)	Employer's share of social security	Total social security
Total 12 months	63,848.05	90%	9,685.67	850.72	-	-	10,536.39	3,698.31	3,768.31	425.87	7,466.62	18,003.01
TOTAL DIFFERENCE							1,229.60				-9,603.36	-8,373.76

This example indicates that the employer's costs will increase if the insurance obligation is assigned to Belgium instead of to the Netherlands. This is mainly because, unlike the Netherlands, Belgium does not have a ceiling in terms of the contributions to be paid and the bulk of the social security contributions to be paid in Belgium lies with the employer. If an employer has many of such cases, the increase in employers' contributions can be considered substantial.

### 3.2. Pension

In the case of a private pension, the power to tax is, in principle, assigned to the State of residence. The question is whether, after the entry into force of the Wnra, the pension should be divided into a public and a private pension. After all, an employee builds up a state pension (overheidspensioen) until 1 January 2020 and after that date will be working as an employee. However, this matter has led to problems in the past. In the case of state pensions, the Netherlands has the right to levy taxes on wage or pension payments for services rendered to the Dutch State, a political subdivision thereof, or a local authority governed by public law. This is the application of the cash-base system ('kasstaatstelsel').

In practice, a public service appointment is generally a prerequisite for this Dutch prerogative on taxing rights. According to the Minister of Social Affairs and Employment, this criterion will no longer work effectively after the entry into force of the Wnra. The treaty criterion of employment with a Dutch public-law body will be applied more directly to the interpretation of the concept of 'public administration post', irrespective of whether it concerns an appointment as public official or an employment contract. In principle, according to the Minister, the distribution of the right to levy tax does not change and the Netherlands will continue to be allowed to levy taxes on pensions. It is clear, however, that a dialogue needs to be started with Belgium and Germany in order to avoid ambiguities about the taxing rights of state pensions. The question arises as to whether Belgium, Germany, and the other foreign authorities will accept this opinion.

### 4. Conclusion

It is clear that, prior to the adoption of the Wnra, hardly any cross-border impact assessment has been carried out. This study therefore expressly recommends it desirable for the concerned cross-border workers, concerned (public sector) employers and bodies involved that the necessary clarity be provided even before the actual implementation of the Act.



### Dossier 3: Evaluation of the proposed European Cross-Border Mechanism (ECBM)

*Dr. Hannelore Niesten<sup>190</sup>*

*(With support of  
Dr. Nina Büttgen  
Martin Unfried)*

*Intention* – This dossier contains a multidisciplinary, ex ante analysis of the cross-border impact of the European cross-border mechanism to remove legal and administrative obstacles in a cross-border context, as based on a proposed EU regulation. The main objective of this cross-border impact assessment is to examine the legal and practical possibilities of the European cross-border mechanism for the border regions of Belgium, Netherlands, and Germany.

*Objective* – The EU's internal border regions contribute significantly to Europe's socio-economic wealth. Within the framework of a specific cross-border project, the proposed EU regulation envisages scope for the adaptation of national and regional legislation. In cooperation with Member States, regions, and other stakeholders, the European cross-border mechanism can be a tailor-made instrument at EU level to better exploit the potential of border regions. The mechanism aims to contribute to the removal of border obstacles through commitments or declarations to be made by the responsible authorities, including, if necessary, through amendments to national legislation. EU Member States can opt for this mechanism or use existing national methods to overcome legal border obstacles hampering cross-border cooperation. Minimising the negative effects of the continuing lack of territorial, legal, and administrative coherence in border regions will have a positive effect on the European integration process.

*Content* – The European cross-border mechanism offers positive initiatives to local actors to promote cross-border opportunities. It offers, in fact, a new, streamlined, and clear procedure (regarding time frame/application procedure) to project stakeholders and (potential) applicants dealing with border obstacles in the context of conducting of border projects. At the same time, the horizontal border mechanism is to prompt Member States to recognise the (project) initiators and identified addressees of the request, and provide a well-defined timetable for the national cooperation instruments that already exist. Ultimately, obstacles hampering cross-border cooperation will be removed in an efficient way.

*Added value* – The added value of the European cross-border mechanism for Benelux countries with an extended governance system seems somewhat more limited than for other Member States.

The members of the Benelux Union already have a whole range of tailor-made and effective border instruments in place. The added value of the EU cross-border mechanism for the Benelux countries and border regions therefore lies mainly in an incentive to improve the current Benelux governance system. At the Benelux level, there is no horizontal legal instrument for legal adaptations outside the sectoral agreements in a cross-border context. The current Benelux governance system can therefore

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be supplemented by a tailor-made, horizontal Benelux mechanism. For border regions where the current set of instruments is less equipped to remove obstacles to cross-border cooperation (mainly Eastern and South European countries and border regions) due to the absence of multilateral or multilevel cooperation, the border mechanism could have a very beneficial effect. As such, it would be useful for local actors who are currently thinking up ad hoc solutions on a case-by-case basis for border regions without bilateral agreements or an effective infrastructure.

Under the proposed European cross-border mechanism, the border regions (e.g. Flanders with Germany and Dutch border regions with Germany, but also Wallonia with France) could cooperate more efficiently on the basis of an extension of the Benelux instruments. If, for example, the obstacle to cross-border cooperation cannot be solved by regional or national cooperation, a horizontal Benelux instrument could be set up in a multilevel context (Benelux) to tackle and remove the obstacle. Moreover, the collection, discussion, and agenda of legal cross-border problems could be organised more systematically by the Benelux in an institutionalised way (e.g. by converting the inspiration of the Norwegian Council of Ministers/FMC into a 'European Council for Free Movement' for the Benelux). Such an organisation could complement the current Benelux governance system, so that cross-border cooperation can be further developed and obstacles to this cooperation can be removed more efficiently.

*Instrument* – The border mechanism imposed from the EU in the form of a regulation can be supported. A directive would cause transposition problems for decentralised countries (e.g. Belgium and Germany) and could lead to divergent national implementation laws. The choice for a regulation is innovative, as it offers a choice between the European cross-border mechanism, enabling national legislative adaptation through a commitment or a declaration, or the use of a proprietary mechanism, i.e. an existing national instrument that would produce a comparable result (obstacle removal). Despite the nature regarding the choice of instruments, the regulation will impose direct obligations on Member States to remove obstacles to cross-border cooperation based on legislative conflicts within a concrete time frame. The choice of the legal form of a regulation would, in principle, make the objective of removing these obstacles legally enforceable. Once an obstacle is identified, the political responsibility of a Member State is strengthened. The obligations imposed on Member States by the regulation would mean that a Member State could be held legally liable if, for example, its refusal to sign an obligation or statement is not accepted as objectively justified. The new legal status of the cross-border mechanism under a regulation would ultimately make the removal of obstacles to cross-border cooperation less and less dependent on the willingness and good will of governments and authorities to cooperate at several levels. The initiator of a cross-border project experiencing obstacles due to uncoordinated national legal provisions could thus follow a certain procedure with a timetable for their application with a clear addressee for their application (competent authority of the Member State). This empowerment of the applicant reduces the need for and any delay in an agreement between the two sides of the border to adjust a mismatch in the legislation.

*Implementation* – National implementing legislation is necessary to ensure effective use of the European cross-border mechanism. The EU regulation imposes a concrete status on promoters with clearly defined powers and obligations for the competent national authorities. Provinces situated along a national border should support this basic idea of the EU regulation. It is recommended that each Member State establishes a legal model with a tailor-made governance system to achieve the objective of removing obstacles to cross-border cooperation for border projects. The mechanism

established under the regulation requires Member States to set up a (two-tier structured) mechanism for each border with a neighbouring Member State in order to remove legal obstacles to cooperation in a common cross-border region. The national and regional coordination points in all border regions could have a strong interest in dealing with the request of border project promoters for the removal of obstacles to cross-border cooperation in border projects. Stakeholders in border projects facing such an obstacle should have the right to submit the application to the national coordination points, which should then assess the admissibility and merits of the application on a case-by-case basis – even if the Member State subsequently withdraws from the procedure to deal with the case by means other than the EU regulation.

*Recommendations* – This analysis suggests a number of recommendations that can improve the proposed European cross-border mechanism. The implementation of the European cross-border mechanism should take place within the wider debate of improving existing governance systems on the basis of existing cooperation instruments. For the implementation of the European cross-border mechanism, it is recommended that Member States include an explicit provision in their national legislation allowing for certain legal derogations for certain border regions. In addition, a framework with essential further clarifications and definitions should be provided for the own existing mechanism to comply with. After all, certain aspects remain unclear, in particular the scope of the obstacle to cross-border cooperation, the role of the actors, the expectations and powers of the coordination points, the voluntary nature, and the consequences for implementation. In addition, it needs to be made clear whether Member States or border regions (or even possibly at project level) can choose to implement the mechanism. What would happen if one Member State chooses to implement the cross-border mechanism, but the neighbouring country does not? Should the cross-border coordination points be located in each Member State? Or would it be better for them to be located only in cross-border regions? With these types of questions, it becomes clear that the procedure and certain definitions need to be considered in more detail. The procedure will hopefully be clearly described, so that it is clear to those stakeholders who want to use the European cross-border mechanism.

*European integration* – Ultimately it is up to the Member States to, hopefully, also be convinced of the suitability of the European cross-border mechanism. The European cross-border mechanism established under the regulation will certainly help to minimise legal and administrative obstacles in a cross-border context as a step towards the achievement of an EU internal market. The mechanism set up at national and regional level should be brought into line with the objectives and principles of the European and Benelux cross-border mechanism. In the event that the EU regulation is not finally adopted, the explanation and the proposal should, at least, provide clear and comprehensive guidance for supporting Member States to improve interregional cooperation.

## Dossier 4: 'Governance' under the new INTERREG Regulation 2021-2027

Vera Hark  
Martin Unfried  
Dr. Mariska van der Giessen

In sight of the upcoming INTERREG VI-A period 2021-2027, programme areas across Europe are developing new cooperation programmes (CP), defining their respective strategies, goals and objectives. For this new programme period, the European Commission (EC) has developed and proposed a new regulation to the European Parliament and European Council, which introduces 'Governance' as a novel objective.<sup>191</sup> The term 'Governance' can be understood and defined in multiple ways. It appears for the first time in an INTERREG regulation as a binding objective with mandatory budget share. How do different INTERREG programme areas understand this concept and how do they plan to realise it in their CP? This dossier investigates the different approaches to the 'Governance' objective of three INTERREG programme areas, namely the Germany-Netherlands programme, the Euregio Meuse-Rhine programme and the Greater Region programme. For this purpose, we conducted interviews with key stakeholders of these programme areas as well as a representative of the EC's DG REGIO.

In our dossier, we state that the fostering of 'Governance' activities can increase *Euregional Cohesion* and be a basis for *Socio-Economic Development* in border regions by counteracting Cross-Border obstacles. One may even argue that the 'Governance' objective is to guide a substantial reform of the INTERREG programme, transitioning from its routine 'project mode' to a more strategic and long-term 'framework building' for CBC. Arguably, the project mode might have become outdated after almost 30 years of INTERREG cooperation, while some might reckon that the 'overarching objective' of structural CBC has gone out of sight. An innovative framework for structural cooperation guided by the 'Governance' objective could thus allow for more sustainable CBC processes. This would lead to a better *Euregional Cohesion* as well as the creation of jobs and economic opportunities, thus stimulating *Socio-Economic Development*.

Generally speaking, the interviews show a consensus among INTERREG stakeholders on the interpretation of the 'Governance' objective: It is supposed to foster a more durable and sustainable CBC with structurally cooperating institutions. In this context, a key notion is the need to set-up a 'framework' for improved and enduring CBC. Views differ, however, on the implementation approach for the 'Governance' objective. Suggestions and plans range from meeting platforms for potential partners to common trainings for public administrations and improved public relations. This diversity in local realisation plans was anticipated by the EC, who formulated the objective broadly to account for the differing border region contexts across Europe and allow flexibility in implementation.

While it is reasonable for the EC to avoid strict requirements for the objective, several programme area representatives wished for more concrete guidance on implementation in our interviews.

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<sup>191</sup> European Commission: "Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments", Strasbourg, 29.05.2018, [https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-specific-provisions\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-specific-provisions_en.pdf), p.30, last visited on 01 July 2019.

Additionally, some expressed their scepticism towards the new objective, believing that it is rather oriented at 'less experienced' border regions and not seeing the relevance for the border region they are responsible for. From a third party's perspective, this situation motivates additional communication efforts to emphasise the opportunities the new objective entails for programme areas and to discuss suitable implementation approaches. More topical exchange between representatives of the EC and the programme areas can avoid that the objective and the underlying concepts are misunderstood and increase the likelihood for DG REGIO's expectations to be fulfilled. In this respect, amongst others, the EC's "Cross-Border Review"<sup>192</sup> (2017) that displays various examples of CB challenges still present in many border regions, including the ones which are at the centre of this dossier, could be pointed at. Thanks to Interact<sup>193</sup>, this type of exchange will be stimulated. Additionally, it is to be noted that the CPs will be formally negotiated with the EC before adoption. It is therefore to be seen, if programme area representatives will have clearer insights after such clarifications.

Moreover, it is debatable whether the 'Governance' objective can and should be realised through the usual project mode or requires innovative approaches. The 'Governance' objective puts a focus on the ubiquitous challenge of INTERREG and programmes with comparable funding structures. The nature of projects, being timely and financially limited, and the fact that successful projects are often not granted with follow-up and long-term financing by local authorities counteracts the sustainability aspirations. As suggested by several interview partners, one could consider administrating the funds differently to allow for a longer lifetime of the activities. Such considerations seem in line with the intention of the EC to strengthen institutional cooperation which would increase the chance of more sustainable financing models for cooperation activities.

Finally, the EC representative we interviewed points out a general lack of data on the quality of CBC for 'Governance' structures and a need to find methods for the measurement of positive effects of 'Governance' cooperation. As only a small portion of the European Union's cohesion budget is allocated to INTERREG, no resources are dedicated to this type of data collection and evaluation. Additionally, the assessment of CBC activities funded by INTERREG currently concentrates on quantitative indicators, which are not very meaningful for the 'Governance' objective. If the newly introduced objective was therefore connected to a list of qualitative indicators, clarifying goals and targets, its implementation would be facilitated for programme representatives. Also, programmes could be encouraged to spend a fraction of their budget on studies investigating the effects of 'Governance' activities. On the long run, a type of scoreboard for CBC could be developed, similarly to the "European Quality of Government Index 2017"<sup>194</sup>. Notably, this Index is "the only measure of institutional quality available at the regional level in the European Union"<sup>195</sup> but does not include any CBC aspects.

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<sup>192</sup> Cf. European Commission "Cross-Border Review", 2017,

[https://ec.europa.eu/regional\\_policy/en/policy/cooperation/european-territorial/cross-border/review/#1](https://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/review/#1), last visited 15 July 2019.

<sup>193</sup> Cf. European Commission: "Interact, Interreg.", [https://ec.europa.eu/regional\\_policy/EN/atlas/programmes/2014-2020/europe/2014tc16rfir002](https://ec.europa.eu/regional_policy/EN/atlas/programmes/2014-2020/europe/2014tc16rfir002), last visited on 15 July 2019.

<sup>194</sup> European Commission: "European Quality of Government Index 2017", 2017, [https://ec.europa.eu/regional\\_policy/en/information/maps/quality\\_of\\_governance](https://ec.europa.eu/regional_policy/en/information/maps/quality_of_governance), last visited on 01 July 2019.

<sup>195</sup> Cf. ib.

## Dossier 5: Cross-border data monitoring: a real challenge

*Johan van der Valk*

Cross-border monitoring and cross-border impact assessment are difficult tasks because enough detailed quantitative information is lacking. Cross-border data is needed for all kinds of users on a structural basis. Users and stakeholders of cross-border information are extremely diverse of nature with their own scope. They are looking for information that is specific for their respective purpose. Meanwhile, they all benefit from harmonised data that is consistent within and across countries. For national and international users this is straightforward. But also, for local, regional and – notably – euregional users this is extremely helpful.

Appropriately scaled data allow them to show on which aspects they are unique. What is the specific situation in their region compared to others? It allows identification of opportunities. With this kind of information, they can for instance investigate which possibilities for smart specialisation their region has. This allows also to see which obstacles are more persistent compared to other regions. Finally, it allows border regions to learn from each other. If a measure is effective in a specific region it will show in the cross-border indicators. Subsequently, another region can benefit from this evidence. After all, measuring effectiveness is key for evidence-based policy-making. It requires the definition of appropriate indicators and the application of concrete benchmarks, particularly when aiming at longitudinal assessment and comparison. Consequently, a lack of consistency in methodology (e.g. changing indicators) as well as in the (quality of) data provision (e.g. insufficient regional detail) affects especially border regions negatively.

Producers of statistics are united in the European Statistical System (ESS). They are able and willing to work in this field to fill this gap of cross-border data. We argue that additionally there is a need to set up a network of statistical institutes that develop methods for producing cross-border statistics and disseminate them. They can organise this in a cost-effective and sustainable way by making optimal use of existing (inter)national sources, methods and infrastructures. Such a network should provide the data that is required for cross-border monitoring for all types of users on all regional, national and international level. Furthermore, it should develop tools to transform the data into practical information through visualisation tools. This should all be carried out involving all relevant European institutional support, like Eurostat and ESPON. Interestingly, France and Germany recently took the initiative to set up a network on cross-border monitoring. It makes perfectly sense to link up with this bilateral initiative. Hence, we recommend that the parties concerned join forces.

A key requirement to set up this network and carry out the work involved is to ensure the allocation of enough resources. We argue that it is primarily a national task to ensure that cross-border data become available, instead of it being a regional issue or an EU-responsibility. It is imperative that national governments realise that data across their border matter. It is crucial that statistical institutes stop to depict their country as 'an island'. In reality people, businesses and institutions cross the borders in their actions. Therefore, the situation across the border is relevant. Furthermore, it is important to measure for which policy areas crossing the border is more frequent than other areas. Translating this into statistics means that from a national perspective it is relevant for all themes to know about the situation across the border and to what extent crossing the border is happening.

Statistical institutes ought to lead this discussion within their countries about expanding their mandate in this direction.

In addition, one could think of the EC to support and facilitate the network on cross-border monitoring by assuring the coordinating tasks through allocating funds for this. We suggest to cover this under the actions to improve the governance in the next programming period of Interreg.

## Dossier 6: Cross-border effects of the EU Nitrates Directive and manure quotas between NL/DE

*Jurian van Beusekom*

*Youri Cremers*

*Jenny Franke*

*Enrico Wegner*

*Zuzanna Zmuda*

This dossier analyses *ex post* the effects of the European Nitrates Directive (91/676/ECC) on the Dutch-German border regions and the potential implications for manure fraud. The border region that was investigated, is the Euroregion Rhine-Meuse-North, encompassing the North of the Dutch Province of Limburg, the West of the German state of North Rhine-Westphalia, and – in deviation from the ‘real’ definition of the Euroregion Rhine-Meuse-North – the East of the Dutch Province of North-Brabant. The dossier focuses on the two main themes: *European Integration* and *Sustainable & Socio-Economic Development*. The Euregional cohesion theme has been omitted, mainly because it was hard to find useful data on which proper conclusions could be based. This is probably because of the sensitivity of the topic of fraud, due to which authorities and farmers are reluctant to give any information. The two themes that are discussed, have been investigated using certain legal and political benchmarks with which the current situation could be compared. This comparison was based on the following indicators (see table below).

Theme	Principles	Benchmark	Indicators
<b>European Integration</b>	Article 191 TFEU EU Nitrates Directive National implementation of the directive	Standards of the Nitrates Directive  Harmonized laws Effective enforcement	Legal analysis of EU Treaties  EU Directives National law
<b>Sustainable &amp; Socio-Economic Development</b>	Sustainable agriculture  Criminal/Economic	Decrease in environmental damage  Prevention of fraud	Soil quality Water quality Nitrate pollution Production of manure Export

Table 1: Themes, principles, benchmarks and indicators of the Dossier on the EU Nitrates Directive

Firstly, the dossier provides a thorough analysis of the legal background of the situation was given, beginning with the EU Treaties (Treaty on the European Union (TEU), the Treaty on the Functioning of the EU (TFEU)) and the legislative framework in which the directive is functioning. Being a shared competence (see Article 4(2)(e) TFEU), Member States may regulate the field of environment, yet the EU may ‘take over’ if it deems this necessary to ensure Treaty compliance. The Nitrates Directive was



thus adopted in the early 1990s because there were high levels of nitrogen pollution in the Member States' waters and these waters are not restricted within national boundaries. These high nitrogen levels can have a negative impact on the biological life of water, as well as the health of animals and people using it for drinking purposes. Therefore, this EU Directive has the objective of [1] reducing water pollution caused or induced by nitrates from agricultural sources and [2] preventing further such pollution' (Article 1).

Being part of a comprehensive framework of EU legislation to protect the environment and to further regulate environmental uses, the directive is a tool to fulfil – either directly or indirectly – the aims set out in Article 191(1) TFEU (preserve, protect and improve the quality of environment, protect human health, ensure rational utilisation of natural resources and promote measures at international level to deal with regional or worldwide environmental problems). The directive is also closely linked with EU policies concerning water, air, climate change and agriculture (e.g. the Water Framework Directive (2000/60/EC)). Its implementation yields benefit in all these areas, as well as the EU's Common Agricultural Policy, which backs up the directive through direct support and rural development measures.

Member States have to come up with (national) legislation to transpose the directive into national law, since the directive's provisions are not directly applicable. Both the Netherlands and Germany did so by spreading the provisions to be incorporated over several (already existing) pieces of legislation. The main legal instrument in the Netherlands is the Manure and Fertilizer Act (*Meststoffenwet*), in Germany it is the Fertilizers Ordinance (*Düngeverordnung*). However, the European Commission has brought an infringement procedure against both countries in the past because of non-compliance with the Nitrates Directive due to insufficient implementation. In view of persistent non-compliance with permitted nitrogen levels, assumptions about fraudulent practices does not seem far-fetched.

The European Court of Justice ruled in 2003 that the Dutch policy – of which MINAS (MINeral Accounting System) was the central instrument – was inconsistent with the obligations following from the directive. The system was mainly criticised for the way it set standards for the amounts of nitrogen allowed: either there were none, or they were unclear. After the ruling, the Netherlands strove to adapt its implementing legislation in consultation with the European Commission. Something similar applied to Germany: despite figures showing worsening nitrate pollution on groundwater and water surfaces, Germany apparently failed to take sufficient additional remedial measures. The Commission brought the German government to court in 2016 despite a revision of the Fertilizers Ordinance to render it more concise and make it compulsory. Recently, the CJEU ruled (in 2018) that the German revision in fact was not enough to ensure sufficient protection against nitrate pollution.

Next to the legal analysis, the environmental and economic impact of the EU Nitrates Directive is also investigated. Starting off with the environmental impact, the analysis focuses mainly on the impact on water pollution, since no usable soil pollution data were available. The effects on the water pollution were analysed using the official impact reports for the Netherlands (RIVM, 2017) and Germany (BMU, 2017). Country data was used, since no detailed data at the level of the Euroregion was available. The conclusions are therefore more general than that was hoped for. They can nonetheless be used to gain a general overview of the current practical implementation and enforcement problems of the Nitrates Directive.

Both, the Netherlands and Germany, did not show any significant changes in the nitrate's pollution of their groundwaters between the last two implementation periods. Technically, a positive change was indirectly implied by the fact that more locations showed signs of decreasing rather than increasing water pollution. More concerning though seems the fact that, at least in Germany, a high share of zones, which were already classified as problem zones, are still showing signs of increasing water pollution. These findings suggest that especially in vulnerable areas, the directive shows no effect. What is particularly alarming about the current implementation of the Nitrates Directive is that a sizeable share of problem zones is close to the border in both countries. News reports point to the potentially excessive manure trade across the Dutch-German border, and thus provide an explanation for this finding.

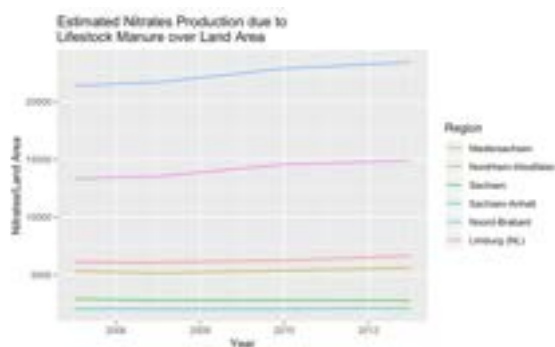


Figure 5.3: Manure Production over Land Area (kg/ha)  
Data from EUROSTAT 2017, (assess) number of farms and heads of animals of different types by agricultural size of farms (EU44) and NUTS-2 regions (EU\_010000)

Accordingly, the economic impact is analysed by using export and impact reports (RVO, 2019b), as well as data from EUROSTAT. In the latter case, the data show that there exists a large “surplus” of manure on the Dutch side of the Euroregion. This is also depicted in the enclosed figure to the left where all the Dutch regions have a much higher per-land-area manure production than the German regions. This also explains the high amount of legal manure exports from the Netherlands to Germany.

Germany receives about 50% of all legal manure exported from the Netherlands. At the same time, the team found many indications that a lot of fraud is committed in this context in the Euregion. Since legal disposal is costly for farmers and disposal regions are scarce, there likely exists an upward price pressure for manure exports. The actually increasing levels of nitrogen pollution in German problem zones that lie close to the border suggest as much, i.e. that the level of Dutch manure export in reality is not only high but illegally excessive. Increasing prices might make it less and less affordable for farmers to legally expose of manure and thus might make fraud more likely.

Since these border-regions are especially located in the above described Euroregion one should further investigate the effectiveness of the current implementation and enforcement of the Nitrates Directive in this cross-border region.

## Summaries Cross-Border Impact Assessments 2018

### Dossier 1: Exploration of the cross-border impact of an increase in the low VAT rate

*Prof. dr. Frank Cörvers  
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The coalition agreement of the Rutte-III government sets out the intention to raise the low VAT rate from 6% to 9% with effect from 1 January 2019. The rate increase relates to sales of products including fruit, vegetables, and many other foodstuffs, medicines, books, and repair services for clothing, footwear, and bicycles. Such a VAT increase would make the low VAT rate in the Netherlands higher than the lowest VAT rate in Belgium (6%) and the low rate in Germany (7%). In this dossier, we explore the potential cross-border impact of this proposed VAT increase. Our main focus is on an ex ante assessment of the economic consequences, and the consequences for the EU's integration of regulations and Euregional cohesion are also discussed though to a lesser extent.

At the insistence of the European Parliament and the European Council, the European Commission is currently developing plans to switch to a system of taxation in the country of purchase instead of the country of sale. This change of direction will make it possible to liberalize the existing rules on VAT harmonization and will give national governments more scope to set their own rates in the future. It is therefore to be expected that decisions on VAT rates will increasingly be considered national issues. This may result in greater VAT rate differences between countries, whereby, as promised by the current Dutch context, little account is taken of the cross-border impact.

In order to estimate the cross-border impact of the planned increase in the low VAT rate, the scientific literature on cross-border impacts and the consequences of previous changes in indirect taxation in the Netherlands were first examined. The focus then shifts to the specific case in hand, the situation in the Dutch border regions. For example, we discuss some key data on the number of inhabitants and entrepreneurs in the Dutch border region and their contributions to VAT revenues. We also discuss the current price differences, both between the Netherlands and its neighbouring countries and the differences within the Netherlands between border regions and non-border regions. We use secondary data sources supplemented with our own analyses. On the basis of purchase behaviour studies and additional information from a discount chain, we look at the extent to which residents in the Dutch border region are currently prepared to do their shopping abroad, partly because of price advantages. On the basis of this information, we will then make an ex ante assessment of the specific consequences of the VAT increase on the economic situation in the border region, including the competitiveness of businesses, price levels, tax revenues, and cross-border purchase behaviour.

The literature review shows that the question of how entrepreneurs and consumers respond to an increase in indirect taxes cannot be answered unambiguously, especially in the case of border regions. The question is: to what extent the VAT increase will lead to higher prices for consumers and consequently to reduced sales and turnover for businesses? The Netherlands Bureau for Economic Policy Analysis (CPB) assumes that three quarters of the tax increase for the Netherlands as a whole

will be paid by consumers and one quarter by companies. If the increase in the low VAT rate is passed on in full to consumers, it will lead to price increases of almost 3%. However, studies of previous rate changes show that such a price increase is very uncertain and highly dependent on the type of product or service concerned. In some cases there may be hardly any price increase for consumers, while in other cases there may be a price increase greater than that justified by the increase in VAT.

The impact of the forthcoming VAT increase on border regions is particularly uncertain. The literature studied shows that price increases in border regions could be both greater and smaller than national price increases. On the one hand, existing literature suggests that price increases at the border will be smaller than in central regions because competition on the other side of the border does not have to pass on any VAT increase to the consumer. On the other hand, competitors in the border regions of Belgium and Germany currently apply higher prices to a number of products and services, which may give the Dutch border regions more scope to raise prices. In other words, there are extra major uncertainties for consumers and businesses in the border regions compared to the rest of the country due to the VAT increase. This relates not only to the prices that consumers will have to pay, but also to the impact on the turnover and profits of businesses, the incomes of entrepreneurs, and employment and economic growth in the border regions.

The scale of the cross-border impact depends on the differences in prices between regions on either side of the border and on the willingness to travel greater distances to make purchases. It appears that the willingness to make purchases further afield in another country is greatly dependent on the context. Factors that play a role in this include the geographical conditions at the border in question, the perception of price differences by consumers, and the degree of substitutability between goods abroad and Dutch goods, which is more pronounced in the case of identical goods that have a long shelf life and are easy to transport. As consumers like to buy goods from a single location, a change in indirect taxation may also affect goods not affected by this rate but sold in the same shops or locations. All this may mean that traders in the border region have more scope in some cases or less scope in other cases to pass on an increase in indirect taxes to consumers.

For 13% of the Dutch population, the border is a stone's throw away, within 10 km, while almost a third of the Dutch population lives within 30 km of a national border. Despite the lack of precise data, we estimate that the planned increase in VAT will increase tax revenue from the low VAT rate by more than €800 million to €2.4 billion in the wider border region, of which almost €1 billion will be generated in the region up to 10 km from the border. Because of the large number of people living in border regions in a general sense, even a relatively small deterioration in competitiveness and a small shift in spending could lead to the loss of many millions of euros in turnover for entrepreneurs and in tax revenues for the Dutch state. There are extra major uncertainties for consumers and businesses in the border regions compared to the rest of the country due to the VAT increase.

In the case of foodstuffs, which account for a large proportion of the revenue under the low VAT rate, price differences between the Netherlands and other countries appear to vary considerably between products. On average, however, the price level for food is considerably lower in the Netherlands than in Belgium (more than 10% cheaper). The price difference with Germany is smaller, but again the Netherlands seems on average to be cheaper (approx. 5%). It is possible that prices in the border

region are somewhat higher than in the rest of the Netherlands due to relatively little competition from abroad. For example, the Jumbo supermarket chain charges relatively high prices in branches close to the border and lower prices in municipalities far away from the border.

Purchase behaviour studies show that price differences in the border region are large enough to trigger cross-border purchase behaviour. For instance, a quarter of Dutch households spend an average of €50 euros a month on grocery shopping abroad, which amounts to a total of €1 billion a year. Conversely, Belgians and Germans spend even more in the Netherlands. In Limburg, the region with by far the most cross-border purchasing, people from outside the Netherlands spend much more in the Netherlands (€473 million) than Limburg citizens spend abroad (€228 million). Additional information from one of the discount supermarkets shows that it is primarily Germans (and to a lesser extent Belgians) making cross-border purchases in Limburg, possibly because of certain store preferences and geographical circumstances.

If any cross-border impact is seen anywhere, it is clear that Limburg – especially on the border with Germany – will be the most affected because the most cross-border purchases take place here due to the geographical circumstances. The cross-border impact is usually much greater right at the border than further away. Very locally along the border, especially along the border with Germany, there may be small and medium-sized enterprises (e.g. supermarkets, chemist's shops, bakers, butchers, and greengrocers) that are greatly affected by the VAT increase due to a loss of turnover in response to price increases, and a loss of profit or income if they do not raise prices. Moreover, Dutch and European VAT policy means it is likely that national VAT rates will diverge further in the future, and the resulting cross-border impact will increase. For entrepreneurs and citizens in European border regions, this means that the national border remains a relevant dividing line, especially for everyday activities such as shopping.

## Dossier 2: The Qualifying Foreign Taxpayer Obligation (“90% rule”): A Preliminary Ex-Post Impact Assessment

*Prof. dr. Maarten Vink*

*Johan van der Valk*

*Sem Duijndam*

The qualifying foreign taxpayer obligation (hereafter: QFTO), which entered into force on 1 January 2015, establishes that non-resident taxpayers in the Netherlands may benefit from the same deductions and tax credits as resident taxpayers only if they earn at least 90 per cent of their global income in the Netherlands. Under this new system, these non-resident workers, if they neither earn 90% of their world income in the Netherlands, nor have a sufficient taxable income in their country of residence, risk forfeiting tax benefits (e.g. mortgage-interest deductions for owner-occupied dwellings). Moreover, the rule may especially impact frontier workers and have detrimental economic effects if such non-resident workers decide against employment in the Netherlands and prefer to work in another country. In such a scenario, employers in border regions should be concerned, given that the majority of non-resident workers are employed in areas along the Dutch border. In this inventory of the potential impact of the QFTO, we focus on the group of persons who are employed in the Netherlands, but reside outside of the Netherlands, as they are likely the largest group affected by the rule. The objective of this preliminary ex-post analysis is to examine trends over the years from 2013 to 2016 in the number of non-resident employees in order to see if notable changes occurred in the number and composition of non-resident employees in the Netherlands after the 90%-rule came into force.

Table 1 shows the number of non-resident workers in the Netherlands for the years 2013-2016, as well as the nationalities and countries of residence of the non-resident employees. The number of non-resident employees has increased considerably over this period. Where in 2013 the number of non-resident employees was a little more than 130.000, this number increased to over 185.000 in 2016. This increase, however, is mainly due to the large influx of Polish non-resident workers in this period. The number of non-resident workers living in Belgium or Germany increased just slightly. When we look at Dutch non-residents we see that they mostly live in Belgium or Germany, and that their number increased slightly since 2013.

Looking at employment sector, we see that most non-resident workers work in commercial services. These non-resident workers mainly have the Polish nationality. It is therefore not surprising that the number of non-residents employed in the commercial sector increased sharply since 2013 (from 85.800 in 2013 to 133.300 in 2016), corresponding with the large increase in the number of Polish non-residents over the same period. The number of non-residents working in the industrial sector or public and social services remains fairly constant around 20.000 for the years 2013-2016. Both these sectors mainly employ Dutch nationals, although they also employ a considerable number of Belgians and Germans. Few non-residents work in agriculture, forestry, and fishery and there are also no notable changes visible.

More than half of the non-resident employees work in the cross-border regions. Most of these non-resident workers live in either Belgium or Germany. This is also clearly depicted in Figure 1, which shows the number of non-resident workers residing in Belgium or Germany as a percentage of the total working population for the year 2016 (only this year is shown, because there is not much change over time). Unsurprisingly, most non-resident workers in cross-border regions at the German border are German, whereas those at the Belgian border are Belgian. Some border regions share a border with both Belgium and Germany (Midden-Limburg and Zuid-Limburg). In Midden-Limburg 3.6% of the working population in 2016 lived in either Belgium or Germany, while in Zuid-Limburg this was 5.6%. For most (border) regions the shares remained almost constant over the period 2013-2016, and no common trend is visible. The share of non-resident workers residing in Belgium or Germany over the total working population remains constant at 1% from 2013-2016.

Table 1: Number of non-resident employees by country of residence and nationality, 2013-2016 (x1000)

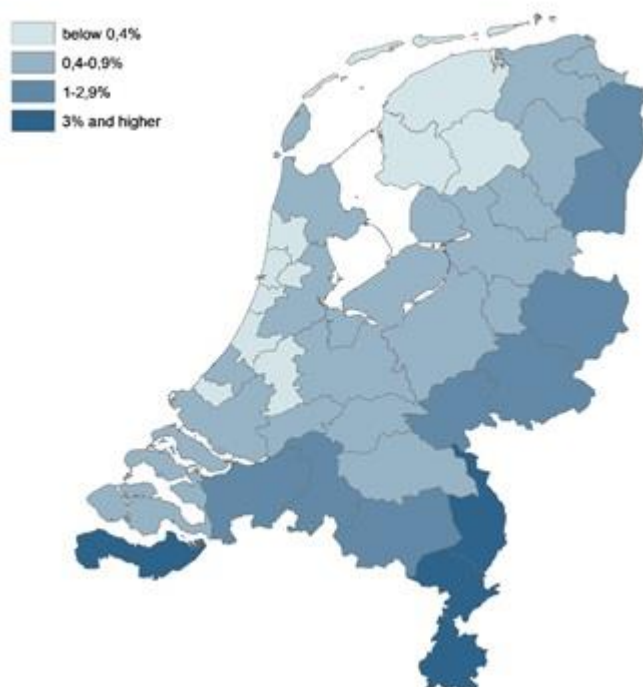
Country	of		2013	2014	2015	2016
	residence					
Belgium	Nationality	BE	13.9	14.1	14.2	14.7
		DE	0.2	0.2	0.2	0.2
		NL	20.9	21.1	21.0	21.1
		PL	0.3	0.3	0.3	0.4
		Other	1.2	1.4	1.4	1.5
	Total	36.6	37.1	37.2	37.9	
Germany	Nationality	DE	15.4	14.2	14.3	13.9
		NL	15.8	16.1	16.3	16.4
		PL	2.7	2.8	4.1	4.6
		Other	1.8	1.9	2.0	2.8
	Total	35.8	35.1	36.9	37.8	
Poland	Nationality	DE	0.9	0.9	0.9	0.8
		NL	0.9	0.9	1.1	1.2
		PL	42.8	53.9	71.5	77.2
		Other	0.5	0.6	0.4	0.4
	Total	45.0	56.3	73.9	79.5	
Other	Nationality	NL	3.4	4.2	4.1	4.4
		PL	0.1	0.1	0.1	0.1
		Other	11.8	16.7	21.4	26.0
	Total	15.4	21.2	25.9	30.8	
Total	Nationality	BE	14.1	14.2	14.4	14.9
		DE	16.6	15.5	15.5	15.1
		NL	41.0	42.4	42.6	43.1
		PL	45.8	57.0	76.0	82.3
		Other	15.3	20.5	25.2	30.7
	Total	132.8	149.6	173.8	186.1	

Source: Statistics Netherlands

Overall, the preliminary ex-post analysis does not seem to show any compelling effects of the QFTO on the number and composition of non-resident workers in the Netherlands and the Dutch cross-border regions. When we look at the total number of non-resident workers we see an increasing trend, which is persistent over time and does not seem to have been altered since the implementation of the QFTO. For the nationality and work sector of non-residents we also observe a solid trend over the whole period 2013-2016; the number of Polish and “other” nationals increases, as well as the number of non-resident workers working in commercial services. For the border regions there are also no significant changes visible. However, this analysis does not allow us to focus on those individuals that are most likely affected by the QFTO (those who do not earn 90% of their world income in the Netherlands). Furthermore, the possible delayed effects of the rule cannot yet be assessed, as data is only available until 2016.

For future work, income data from the Dutch Tax Authority will become available, which makes it possible to assess which non-resident workers do not earn 90% of their world income in the Netherlands, and hence which non-resident workers are most likely to be affected by the QFTO. For future inquiries individuals can also be followed over time to research their exact labour and housing mobility. With the use of regression and/or time-series techniques it can be shown if the QFTO has a significant effect on the housing and labour mobility of non-resident employees.

Figure 1: Non-resident employees living in Belgium or Germany by all NUTS3/COROP regions, in percentages of the total working **labour force for the year 2016**



*Note: For around 25%-30% of the workers it is not known in which COROP region they work. These percentages, however, are similar for both resident workers and non-resident workers. Therefore, the percentages will most likely approximate the real percentages, although they must be considered with caution.*

Source: Statistics Netherlands



### Dossier 3: Schemes relating to retirement ages in NL/BE/DE: a multidisciplinary analysis

*Dr. Hannelore Niesten  
Sander Kramer, LL.M.*

There is no standard European retirement age within the European Union. The different European member states all have their own retirement ages for both statutory and supplementary pensions, and they differ considerably from one another. Because of this lack of coordination at the European level, a cross-border worker who has worked in different member states is faced with different start dates and a wide range of options and impossibilities for making these start dates more flexible. The start date of the full pension of a cross-border worker – which is composed of a number of different pensions, each with its own start date – is determined by the highest retirement age. As a result, depending on their personal income situation, cross-border workers may face a shortfall in income in the period between leaving the labour market and the pension stage, which may jeopardize the adequacy of the pension as a provision for old age. An estimated 2000 former cross-border workers are affected by this. In addition, the existing flexible options are inadequate. The former legislative proposal for the flexibilization of the state old-age pension start date could have worked out positively as this would have offered the cross-border worker the option to synchronize the start of his or her state old-age pension in the Netherlands with the start date of the statutory pension abroad.

#### *Cross-border worker: a need for overview and insight*

In addition to this fragmentation of pension entitlements, cross-border workers are faced with a lack of an overview of and insight into their statutory and supplementary pensions, including the various retirement ages. This could mean cross-border workers are left in the dark as to the age at which they can start taking their pension. In addition, due to the lack of a comprehensive overview, cross-border workers are unable to determine whether they will receive a sufficient level of pension payments upon their retirement to maintain their standard of living after retirement. The person concerned also faces a high degree of uncertainty – including legal uncertainty – regarding the net pension income resulting from pension contributions in one member state and tax payments in another. A cross-border or European pension register is therefore necessary in order to enable this cross-border worker to gain a clear and accurate overview of his or her accrued cross-border pension, to offer perspectives for action, and to guarantee an adequate income after retirement. Such a pension register is a positive incentive for the labour mobility of workers.

#### *People receiving two pensions: provision of more information as a first step*

One of the main consequences of the differences in retirement ages – and the main reason for a multidisciplinary analysis – is the discoordination of the tax and social security levy in the case of people receiving two pensions. In essence, the conflict rules in the bilateral tax treaties are not aligned with the conflict rules in Regulation (EC) 883/2004 and the authorization to tax is not always granted to just one member state. This obligation to pay double contributions is particularly problematic in the European internal market. In some cases, the tax levy is charged in the state of residence and the social security levy in the state of retirement, or vice versa. In addition, pensioners may be contributing to financing care in more than one member state. They are therefore put at a disadvantage in the

form of double economic charges. The obligation to pay double contributions means that the equal treatment of current and retired cross-border workers is not guaranteed. In many cases, cross-border workers are not aware of the fact that they are switching between social security systems ('driving against the traffic'). This problem can be solved by means of information and advice provided by tax authorities and other organizations (such as the *GrensInfoPunten* (border info points) and the *Grensoverschrijdend Werken en Ondernemen* team (cross-border work and business team) of the Tax and Customs Administration in Maastricht).

#### *Pensions: coherence of tax and social security charges*

One possible way of improving coherence in taxation and social security levies relating to pensions is to abolish the special provisions for pensioners in the Regulation along with the exclusive application of the main rule on taxation of pensions (Art. 18 of the OECD model tax convention) and to assign the obligation to insure to the state of residence (Art. 11, section 3, part e of the Regulation (EC) No 883/2004). Both tax and social security contributions would then be subject to taxation in the state of residence, which would lead to 'equality in the street' as guaranteed under the Treaty on the Functioning of the European Union (TFEU). In this case, the arguments for and against the taxation in the state of residence are weighed up. A less far-reaching solution could also be considered for an adjustment and improvement of the current regime. One suggestion could be to use the duration of insurance as a starting point when designating the competent pension state. In addition, cross-border workers could opt for a tailor-made solution, such as accepting a fragmented pension and/or a small employment position. However, if a Dutch or Belgian pensioner takes on a part-time job across the border, this would have an impact on his or her social security position. A single-pension pensioner can switch their social security position by working in their country of residence. This may affect rules relating to matters such as health insurance, which may bring advantages or disadvantages.

#### *Pro rata right to levy tax between the state of residence and the source state*

One alternative is a proportional (pro rata) right to levy tax, divided between the state of residence and the source state. However, this is not a solution if it is not linked to the exclusive levying of social security contributions. On the other hand, from a Dutch perspective this does not seem to be a very realistic option in view of the international efforts made during treaty negotiations to impose taxation in the source state on tax-facilitated pensions. In addition, a non-affiliated agreement could be reached on the grounds of Article 17 of Regulation (EEC) No 1408/71 or Article 16 of Regulation (EC) No 883/2004 in which the social security levy is linked to the tax levy. In theory at least, there is also the possibility of limiting the power of the pension state to collect contributions or limiting the taxation powers of the state of residence. In addition, the right of the country of residence to levy tax could be restricted. Although this option would contribute to the equal treatment of cross-border workers, some questions could be raised regarding the technical implementation aspects and the administrative burden for the implementing bodies.

#### *Care financing by pensioners: discount scheme*

In addition, health care in some member states is financed either by general resources (tax), by tax and social security charges, or by a combination of means. Pensioners may therefore contribute to the financing of care in more than one member state, resulting in economic double taxation which is at odds with the freedom of movement. This problem can be solved unilaterally, for example by means

of a discount on the tax assessment (equivalent to the proportion of the tax used by the state of residence to finance health care) as permitted by a state of residence.

*Disparities in retirement ages: impact on application of national legislation*

The lack of harmonization of retirement ages between member states also affects national legislation, for example with regard to insurance periods in other member states. For example, if an employee can take their statutory pension in the Netherlands or Germany, this not automatically also the case in Belgium. If the employee opts to take his Dutch pension and stops working, this may result in the option of retiring in Belgium being postponed. In addition, the differences in retirement ages lead to a lack of income continuity for cross-border workers residing in Belgium who have had a long period of employment in the Netherlands and become unemployed after the age of 65.

*New legislation: cross-border impact to be assessed preventively*

The above makes it clear that it is necessary to take account of the effects of new legislation on cross-border workers and border regions in the process of preparing legislation and regulations because this will prevent existing legislation from having to be adjusted and corrected at a later stage. In addition to making savings in terms of administrative tasks and time, this also prevents inconvenience being caused to the people affected. New legislation and regulations concerning cross-border workers and border regions still do not generally receive the attention they deserve; in other words, national legislators still underestimate the cross-border impact. We support the need for preventative research into the cross-border impact at an early stage of the legislative process, and the incorporation of the findings into the IAK (the integrated impact assessment framework for policy and legislation). A preventative cross-border impact assessment should form part of new Dutch and European legislation and should be multidisciplinary in its nature. This assessment could be made even more concrete if statistical offices were able to use coherently-collected data on cross-border employment and pensions. This will make it possible to identify more specifically the scale of the current problems and their impact on the sustainable economic development of the border regions and the business climate.

## Dossier 4: *Baukindergeld*

Dr. Hannelore Niesten

Within the framework of the *Wohnraumoffensive* (the Merkel government's national building scheme), the *Koalitionsvertrag*<sup>196</sup> (Coalition Agreement of the German Federal Government) between the political parties CDU, CSU, and SPD includes an agreement to a form of child benefit aimed at promoting home ownership among young families. The *Baukindergeld* is a child-dependent benefit that can be made available over a period of ten years to assist with the purchase of an existing dwelling or a dwelling that has yet to be built in Germany. The benefit amounts to €1,200 per child per year (up to 25 years of age).<sup>197</sup> The condition for receipt of the benefit is that the annual taxable family income does not exceed €75,000, with €15,000 added to the limit per child. The income limit is calculated by taking the average of the annual income of the past two calendar years. So far, there is no legal basis for the benefit.<sup>198</sup> The law is expected to be passed in the autumn of 2018. The scheme would apply retroactively from 1 January 2018.<sup>199</sup> The *Baukindergeld* is only for people who live in Germany. It is therefore necessary to examine whether the *Baukindergeld* constitutes a restriction on free movement and freedom of establishment laid down in Articles 21, 45, and 49 of the Treaty on the Functioning of the European Union (TFEU).

### *Residence requirement of the benefit is not EU-proof*

The proposed scheme as it stands today means that cross-border workers do not meet the conditions of eligibility for the *Baukindergeld*, as it requires the person concerned to be resident in Germany. Making the *Baukindergeld* conditional on the dwelling being located on German territory is contrary to EU law (see in this context the condemnation pursuant to European law of the *Eigenheimzulage* [grant for building owner-occupied property], below).

The requirement for the home to be located in Germany would mean that resident tax payers under German law (*unbeschränkte Steuerpflicht*) (including non-residents with more than 90% German-source income) who are owners of their home which is located outside Germany would not be eligible for the *Baukindergeld* in Germany. There is often also no right in the country of residence to tax benefits that encourage home ownership. In most cases, incomes in the country of residence are too low to be able to benefit from mortgage interest relief. These people therefore fall between two stools.<sup>200</sup>

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<sup>196</sup> Can be viewed (in German) at: [https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag\\_2018.pdf?file=1](https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1).

<sup>197</sup> In 2018, €263 million is budgeted for construction costs. The sum of €3 billion will be set aside for the coming financial years. See (in German): <https://www.vergleich.de/baukindergeld.html>.

<sup>198</sup> <http://www.aktion-pro-eigenheim.de/haus/news/baukindergeld-2018-ein-update-zur-baupoerderung-fuer-familien.php>.

<sup>199</sup> <http://www.faz.net/aktuell/wirtschaft/kompromiss-beim-baukindergeld-flaechenbegrenzung-aufgehoben-15661576.html>.

<sup>200</sup> As far as the Netherlands is concerned, the taxpayer can transfer a surplus of foreign 'box 1' income (taxable income from employment and homeownership) to a subsequent year (the so-called *doorschuifregeling* or "storage scheme" (*stallingsregeling*)). See article 11 'Double Taxation (Avoidance) Decree 2001'.

Under the proposed scheme, cross-border workers are not eligible for the benefit, even though persons who are in the same situation from an income-tax perspective and who live or intend to live on German territory by building or acquiring a dwelling are eligible for the benefit. In such a situation, the benefit therefore has a dissuasive effect on cross-border workers working in Germany, who enjoy the right to free movement pursuant to Articles 45 and 49 of the TFEU and who wish to build or acquire a dwelling in another member state in order to take up residence there. It follows that making the *Baukindergeld* benefit conditional on the dwelling that is being built or acquired for the purpose of living in it being situated on German territory infringes the freedom of movement of workers and the freedom of establishment, as guaranteed by Articles 45 and 49 of the TFEU.<sup>201</sup>

*Designation of the benefit: social or tax advantage*

Pursuant to Article 7(2) of Regulation (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union<sup>202</sup>, migrant workers enjoy the same 'tax and social advantages' as workers with the nationality of the host member state. Cross-border workers are entitled to equal treatment in terms of fiscal and social advantages. Whether the *Baukindergeld* is to be regarded as a 'fiscal' benefit or as a 'social' benefit is therefore ultimately not important. The German method of directly promoting the purchase of an existing dwelling or one yet to be built can be regarded as an acute negative tax in terms of its function: a grant. On the one hand, it can be argued from the name '*Baukindergeld*' that this benefit is taken care of via the *Einkommensteuergesetz* (Income Tax Act) (as is the standard *Kindergeld* [child benefit]). The *Baukindergeld* benefit is not specifically granted to workers but to everyone. The *Baukindergeld* benefit is a general incentive scheme for home ownership. On the other hand, the German *Baukindergeld* benefit may also be designated as a so-called social benefit.<sup>203</sup> The *Baukindergeld* benefit should also be granted in cases in which the cross-border worker and/or his or her spouse are fully exempt from tax in Germany. After all, the notion of 'social benefit' also offers advantages that are granted simply because the beneficiary is resident in the national territory. Cross-border workers are, as a rule, in the same position as workers established in their own national territory. The German scheme, under which cross-border workers are excluded from the benefit, therefore creates a disguised form of discrimination and is therefore contrary to the free movement of persons and Article 7(2) of Regulation (EU) No 492/2011. After all, cross-border workers are entitled to the same fiscal and social advantages as their German counterparts. Equal treatment in the workplace applies to Belgian, Dutch, Luxembourg, Polish, French, Swiss, and Czech cross-border workers in Germany.

However, there is no entitlement to *Baukindergeld* under Regulation (EC) No 883/2004. Unlike the German *Familienleistungen* (Family benefits, e.g. *Kindergeld* [child benefit])<sup>204</sup>, the German

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<sup>201</sup> Compare with ECJ, 26 October 2006, C-345/05, *Commission/Portugal*, *Jur.* 2006, I-10633, point 25.

<sup>202</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, *OJ. L* 141/1.

<sup>203</sup> See article expressing the views of G. Essers, 'Heeft een grensarbeider aanspraak op het Duitse Baukindergeld? Ja!' (in Dutch), available at <https://aha24x7.com/heeft-een-grensarbeider-aanspraak-op-het-duitse-baukindergeld/>.

<sup>204</sup> Pursuant to the European Regulation (EC) No 883/2004 on the coordination of social security systems, a cross-border worker is entitled to the German *Familienleistungen* (Family benefits, e.g. *Kindergeld* [child benefit]). If one parent works in the Netherlands and the other parent works in Germany, the Dutch child benefit ranks first for payment. Germany must

*Baukindergeld* cannot be designated as a social security benefit within the meaning of the European Regulation (EC) No 883/2004 on the coordination of social security systems.

#### *Eligibility of cross-border workers to receive Baukindergeld in Germany pursuant to EU law*

The *Baukindergeld* can be regarded as an advantage in terms of personal and family life, as referred to in the judgment of the European Court of Justice in the *Schumacker* case. In most cases, cross-border workers working in Germany find themselves in a 'Schumacker situation'.<sup>205</sup> In most cases, resident tax payers under German tax law who live outside Germany earn almost their entire income or family income in Germany (90%) and should therefore be treated in the same way as German residents as regards personal and family benefits. Refusing to grant financial assistance to persons resident outside Germany but who under German tax law are deemed a resident tax payer constitutes indirect discrimination and is contrary to EU law.<sup>206</sup> After all, under EU law, migrant cross-border workers are entitled to the same treatment as comparable workers (i.e. in the 'Schumacker situation') who are nationals of the country in question. Consequently, Germany must also grant the *Baukindergeld* for owner-occupied dwellings situated outside German territory if the cross-border worker working in Germany has income of which more than 90% is subject to German taxation (and is therefore a resident tax payer under German tax law). On the other hand, it also follows from EU law that whether or not the country of residence can take into account the personal and family circumstances of the tax payer is an important factor.<sup>207</sup> If the country of residence is unable to do so due to the person in question having an insufficient taxable income, while Germany as the country of employment can take this into account because the person concerned receives sufficient income there, Germany will have to grant the benefit even if the 90% income limit has not been met.

Moreover, even in non-Schumacker situations, cross-border workers working in Germany are entitled to German *Baukindergeld* pursuant to Regulation (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union.<sup>208</sup> As stated above, pursuant to Article 7(2) of Regulation (EU) No 492/2011 migrant workers enjoy the same 'tax and social advantages' as workers with the nationality of the host member state. As the *Baukindergeld* is to be considered as a benefit within the meaning of article 7(2) of Regulation (EU) No 492/2011, cross-border workers employed in Germany are entitled to it.

#### *Lessons from previous European rulings on the former German 'Eigenheimzulage'*

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then supplement ('*aufstocken*') the Dutch child benefit to the applicable German level. Equal treatment in the country of residence and equal treatment in the country of employment.

<sup>205</sup> Amongst others ECJ, 14 February 1995, C-279/93, *Schumacker*, *Jur.* 1995, I-225. See also H. Niesten, *Belastingvoordelen van de grensoverschrijdende EU-persoon. Een onderzoek naar de behoefte aan en de mogelijkheden van het minimaliseren van fiscale belemmeringen van het vrije personenverkeer in de Europese interne markt*, PhD thesis Hasselt and Maastricht, 2017.

<sup>206</sup> Amongst others the free movement of workers in Articles 18 and 45 of the TFEU; freedom of establishment in Article 49 of the TFEU for self-employed persons.

<sup>207</sup> See ECJ 9 February 2017, C-283/15, X, ECLI:EU:C:2017:102, point 42.

<sup>208</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, *OJ. L* 141/1.

The *Baukindergeld* is the successor to the former *Eigenheimzulage* (grant for building owner-occupied property) in Germany.<sup>209</sup> The *Eigenheimzulage* was a large-scale building grant for families between the years 1995 and 2005. This benefit was granted to families (with children) who wanted to acquire property. Approximately €800 per child was granted per year. This German tax-free grant scheme for the promotion of home ownership was abolished in 2005.<sup>210</sup> People who were resident tax payers in Germany under German tax law and who had acquired a dwelling in Germany were eligible to claim the *Eigenheimzulage*.<sup>211</sup> However, Germany refused to pay the *Eigenheimzulage* to cross-border workers working in Germany. The *Eigenheimzulage* was abolished after the European Commission was asked by the European Parliament in 2003 whether Germany's refusal to pay the *Eigenheimzulage* to cross-border workers was in breach of EU law.<sup>212</sup> The then European Commissioner Frits Bolkestein was of the opinion that a 'cross-border worker who was a resident tax payer in Germany under German tax law' could claim the German *Eigenheimzulage*.<sup>213</sup> Following infringement proceedings by the European Commission, the Court of Justice ruled against the German government in 2008.<sup>214</sup> Cross-border workers who had applied for the *Eigenheimzulage* received the payment after all with retroactive effect.

#### *Possible solutions*

It is clear from the above that the *Baukindergeld* cannot be limited to homeowners in Germany. Cross-border workers living outside Germany and working in Germany are also entitled to it. The rules on the free movement of persons and on European citizenship do not allow any distinction to be made between places of residence in this respect.<sup>215</sup> It is recommended that a coherent analysis of the impact of the new legislation on cross-border workers be included in the parliamentary debate on new legislation, which could be included in a separate section of the Explanatory Memorandum. However, in so far as analyses of the cross-border impact of new legislation have taken place, such analyses are often not carried out in a coherent manner, i.e. the method of investigation varies. In general, the cross-border impact of new legislation on cross-border workers and border regions is still not being adequately examined, i.e. the cross-border effect is still underestimated by national legislators.<sup>216</sup>

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<sup>209</sup> The *Eigenheimzulage* was set out in the first sentence of Paragraph 2(1) of the Law on subsidies for owner-occupied dwellings (*Eigenheimzulagengesetz*) in the version published in 1997, as amended by the Accompanying Budget Act of 2004 (*Haushaltsbegleitgesetz* 2004).

<sup>210</sup> The law abolishing the grant for building owner-occupied property (*Gesetz zur Abschaffung der Eigenheimzulage*) of 22 December 2005, *BGBl.* 2005 I, p. 76.

<sup>211</sup> paragraph 1 of the *Einkommensteuergesetz* (Income Tax Act), in the version of the *BGBl.* (Federal Law Gazette). 2002 I, page 4210 (hereinafter: 'EStG').

<sup>212</sup> Written question E-3846/02 by Ieke van den Burg (PSE) and Wilfried Kuckelkorn (PSE) to the Commission. See (in German): J. Feijen, 'Bolkestein: Duitsland moet Eigenheimzulage verlenen aan grensarbeiders', *NTFR* 2003, edition 16, p. 679.

<sup>213</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A92002E003846>.

<sup>214</sup> ECJ 17 January 2008, C-152/05, *Commission v Germany*, *Jur.* 2008, I-39, V-N 2008/10.6.

<sup>215</sup> ECJ 17 January 2008, C-152/05, *Commission v Germany*, *Jur.* 2008, I-39.

<sup>216</sup> On the positive side, however, two studies on the position of cross-border workers were published in 2017:

- Report by the Commissie grenswerkers (Committee for cross-border workers), *Grenswerkers in Europa; Een onderzoek naar fiscale, sociaalverzekerings- en pensioenaspecten van grensoverschrijdend werken* (Geschriften van de Vereniging voor Belastingwetenschap no. 257), Vereniging voor Belastingwetenschap (Association for taxation studies) 2017.

- H. Niesten, *Belastingvoordelen van de grensoverschrijdende economisch actieve EU-persoon* (PhD thesis Maastricht and Hasselt), 2017.

## Dossier 5: Social security of non-standard workers: a challenge at the national and European level

Dr. Saskia Montebovi

*'Offering access to social protection is crucial for the economic and social safety of the workforce and well-functioning labour markets that create jobs and sustainable growth. Nevertheless, there is a growing number of people who, due to their type of employment relationship or form of self-employment, are left without sufficient access to social protection.'*<sup>217</sup>

Now that increasing numbers of workers, both in the Netherlands and in other Member States, can no longer be regarded as standard workers, it is useful to investigate the social security protection of this growing group of non-standard workers.<sup>218</sup> Who are they? What protection do they have, what protection do they lack, and what happens in a cross-border work situation?

One can no longer ignore the increase in new forms of work and contracts including on-demand work, part-time work, intermittent work, voucher-based work, platform work, and work as a self-employed person (including pseudo self-employment).<sup>219</sup> The evolution towards this type of working relationship over the last twenty years will – in the long run – affect and threaten the social, economic, and financial sustainability of our social security systems.<sup>220</sup> But even now, the workers, their employers, and governments are reaching the limits of the current systems. As defining the employment relationship can be so complex, the social-security position of the non-standard worker is often already up for discussion. On the basis of current legislation as well as the lack thereof, platform workers who offer and carry out their services via Uber, Deliveroo, Helpling, Werkspot, Foodora, etc. are generally classed as self-employed. This has a direct impact on their social-security protection, as this is much more limited for the self-employed compared with employees. It has also become apparent that workers with high levels of labour mobility often have insufficient social security rights and entitlements, precisely because of their changing work pattern, sometimes performed in multiple countries.

In addition to freedom and economic gain, this lack of a comprehensive and transparent legal framework for platform workers and workers with high levels of labour mobility leads to abuses, legal

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<sup>217</sup> European Commission: Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018, COM(2018) 132 final, page 1.

<sup>218</sup> For the description and definition of the non-standard worker as well as the standard working relationship, please refer to the Cross-border Impact Assessment on which this summary is based.

<sup>219</sup> European Commission, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018, COM(2018) 132 final, page 2.

<sup>220</sup> For more information, please refer to the European Commission Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018, COM(2018) 132 final, pages 1 and 2. Please also refer to page 4 of the same document for percentages relating to the different types of employment relationships.



uncertainty, legal inequality, insufficient legal protection, etc.<sup>221</sup> In the Netherlands, Wouter Koolmees, the Minister of Social Affairs and Employment, has promised to propose a solution by 2020. Furthermore, initiatives are being implemented at a European level, though they are non-binding.<sup>222</sup>

In the absence of new legislation and sufficient jurisprudence, we will have to define and regulate the *new* employment relationships with the *existing* rules. The main bottlenecks are: firstly, the limited hours or income from non-standard working relationships and the associated limited social security contributions and accrual; secondly, the diffuse separation between employees and the self-employed, which also increases pseudo self-employment; thirdly, the digital revolution, which is drastically changing the nature of work and working relationships; and fourthly, the European rules contained in the Regulations on the coordination of social security systems (EC Regulations 883/2004 and 987/2009). These European rules are still based on physical presence at a workplace. This is inflexible regarding workers in new forms of employment such as teleworking as well as hybrid workers – those who sometimes function as employees, self-employed individuals, or civil servants and sometimes combine several statutes and jobs – and with regard to temporary contractors who, whether voluntarily or not, enter into alternating short-term, temporary working relationships and who, in the meantime, sometimes find themselves in a legal vacuum. Moreover, those who work alternately in their country of residence and the country of employment are bound by the coordination rules specified in European regulations written during the period when workers had one job with one employer for a sustained period of time.

The Cross-border Impact Assessment further analyses European integration, sustainable development, and Euregional cohesion regarding non-standard workers such as teleworkers, homeworkers, and workers who have multiple short-term employment relationships, whether they are chosen deliberately and voluntarily or not.<sup>223</sup>

The themes of European integration and Euregional cohesion refer to the current complex or overly complex work and employment relations that cannot be addressed by the current coordination regulations. As the current designation rules of the Regulations still apply the country of employment principle as the main rule, while relying on the physical presence of the worker, teleworking or a combination of several jobs in several countries is difficult to classify and leads to undesirable and impractical changes to the applicable legislation. For example, one week a teleworker would be covered by social insurance in the Netherlands as that is where most of their working hours are spent, whereas during another week German social security legislation should apply because the teleworker

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<sup>221</sup> Examples include the situation of workers at Deliveroo, Uber, Helpling, etc.

<sup>222</sup> For examples at the Dutch national level, please refer to documents such as the coalition agreement dated 10 October 2017, pages 22-26 (only available in Dutch). For EU-level examples, please refer to documents including European Pillar of Social Rights, A European agenda for the collaborative economy, 2018 Commission work programme, White Paper on the Future of Europe, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, and Proposal for a Directive on transparent and predictable working conditions in the European Union.

<sup>223</sup> Please refer to the Social Security dossier from paragraph 2.3.2 onwards of the ITEM Cross-border Impact Assessment 2018.

works more hours at their home in Germany.<sup>224</sup> This is unattractive for both workers and employers. As such, employers are not encouraged to make use of the free movement of persons. Moreover, the issue of equal treatment also plays a role, as employers who wish to treat all their employees equally and place them all under the Dutch social security provisions and labour law rules must take the 25% rule of the regulation into account. As a result, workers who work from home for one out of three or two out of five days will no longer be covered by social insurance under the legislation of the 'main workplace' or where the employer is established but will be insured under the social security legislation of their place of residence. This means that equal treatment in legislation and regulations, as employers also often pursue, is now practically impossible despite the fact that the working conditions at home and at the employer are almost identical via teleworking.

In short, the increase in non-standard working relationships and the gig economy definitely do not contribute to the legal certainty or clarity of non-standard workers. Moreover, it often does not contribute to a decent legal position for non-standard workers, most certainly not in cross-border working relationships. Both the current national legislation and the European regulations need to be refined or adapted, which would be beneficial to workers, employers, and governments.

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<sup>224</sup> This is a simplified view since multiple factors play a role over a longer period of time. For more information, please refer to EC Regulations 883/2004 (Articles 11 and 13) and 987/2009 (Articles 6, 14, and 16).

## **Dossier 6: Student dossier: The potential effects of the ‘Experiment gesloten cannabisketen’ on the Euregions Meuse-Rhine and Rhine-Meuse-North**

*Saskia Marks*

*Gaia Lisi*

*Floor van der Meulen*

*Calumn Hamilton*

*Castor Comploj*

On October 10 2017, an unprecedented Pilot Project with the name “Experiment gesloten cannabisketen” was presented in the Netherlands. The coalition agreement introduces the Pilot Project to address the current backdoor-problem. It comes with the scope of studying the effects of a potential legalization of the production of cannabis in particular on the reduction of crime and on decreases in adverse health effects from consuming low-quality marijuana. The Pilot Project consists of an experiment in which the cultivation of cannabis will be decriminalised within strict parameters and a finite, prespecified timeframe. This will take place in 6-10 municipalities in the Netherlands in a time-span of 4 years. The precise wording of the coalition agreement, in English, is as follows:

*“The government will introduce legislation, if possible within six months, on uniform experiments with tolerated cultivation of cannabis plants for recreational use. The experiments will be carried out in six to ten large and medium-sized municipalities, with the aim of determining whether and how controlled cannabis can be legally supplied to coffee shops and what the effects of this would be. After these experiments have been independently evaluated, the government will consider what action to take.”*

This study provides an ex-ante impact assessment of this Pilot Project on two Euregions. The geographical focus of the demarcated Euregions is formally known as Meuse-Rhine and Rhine-Meuse-North. The main findings can be categorized under three different themes, which are respectively European Integration, Sustainable/ Socio-economic development and Euregional Cohesion.

With regard to the theme of European Integration, it can be put forward that the Pilot Project will not further the goals of free movement under European Union law. The fact that specific municipalities will be selected into the Pilot Project could be regarded as a form of indirect discrimination among individuals providing services, as protected by European Law under Articles 49 and 56 TFEU. However, because there appears to be valid reason for the violation of EU law (i.e. reducing organized crime and improve the quality sold in coffeeshops), the new legislation could be justified upon the rule of reason. The cultivated cannabis cannot be exported freely and the selection of cultivators could therefore potentially infringe on the freedom of establishment and the freedom to provide services.

The analysis of potential impacts such a policy could have on a Euregional macroeconomic level is crucial to the scope of this impact assessment. While decriminalizing the production of cannabis itself could already at the national level have a strong impact on employment trends and tax revenue, the

effect could be further amplified in the Euregion Meuse-Rhine and Rhine-Meuse-North due to its proximity to the neighbouring countries Germany and Belgium. In the Euregion in particular, a decrease in drug tourism and nuisance deriving from these countries' nationals is being aimed at by participating in the pilot project. Although drug nuisance in the city of Maastricht has been decreasing over time from 58 to 39 percent, it still remains relatively high in the Netherlands.

At the level of Socio-Economic development, the new legislation is likely to be beneficial. In 2015 alone, almost 6000 illegal cannabis plantations have been seized all across the Netherlands which according to the Dutch police was estimated to be only one fifth of the total. Since 6.55 percent of the population in the Netherlands live in the Euregion, this would imply that almost 2000 cultivators are operating in the Meuse-Rhine and Rhine-Meuse-North Euregions, assuming that the level of illegal cannabis cultivation and associated revenues in the Netherlands is independent of the geographic location. This, together with a CBS estimate of €450m for illegally produced marijuana in the Netherlands, or proportionally €29.5m in the Euregion, would imply that an upper bound estimate of €100m per annum is set for potential tax revenues from the decriminalisation of marijuana production in the Netherlands, proportionally €6.55m in the Euregion. Additionally, were the cultivation of cannabis to become tolerated under Dutch law, this would make a yearly contribution of €6000-8000 for every worker active in the cannabis production industry, provided that these currently produce a value added which is close to average in the Dutch economy.

With regard to the theme of Euregional cohesion it was established that in the jurisdictions concerned (the Netherlands, Germany and Belgium) the cultivation, trade, sales and consumption of cannabis are illegal, although all of these jurisdictions tolerate the possession and cultivation of cannabis in small amounts. The discrepancies between the different legal frameworks will now only become larger due to the Pilot Project. In addition, the Pilot Project tests the limits of obligations under the international legal framework by enabling the cultivation of cannabis on a larger scale. However, the potential incompatibility with international obligations is mitigated by the experimental and temporary character of the experiment. Finally, the paper identified an increased likelihood that Belgium and Germany step up border controls to combat illegal cultivation and trade of cannabis.

It is therefore clear that, although it forms only a national cannabis policy, the Pilot Project has the potential to impact the Meuse-Rhine and Rhine-Meuse-North Euregions both in terms of European Integration, Sustainable/socio-economic development, and Euregional Cohesion.

## Summaries Cross-Border Impact Assessments 2017

### Dossier 1: The potential effects of the German car toll on border regions

Martin Unfried  
Barbara Hamacher

In January 2017, the German Bundestag adopted the *Infrastrukturabgabengesetz* (Infrastructural Charges Act). In March 2017, the Bundesrat subsequently voted for the legislation to enter into force. The measure – known as the ‘car toll’ – is now expected to be introduced in 2019. The act provides that owners of foreign-registered vehicles for use on German motorways must purchase a vignette. The fees are scaled according to the duration of use and the vehicle emissions. Owners of vehicles registered in Germany must also pay this tax, but it will be written off against their motor vehicle tax. The act was adopted amidst a public debate about potential discriminatory effects on owners of foreign-registered vehicles and the estimated revenue for the state. This dossier deals with the potential effects of the toll on border regions, such as the Euregio Meuse-Rhine (EMR). In that regard, the *Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM* carried out an online survey among car drivers from the Belgian and Dutch parts of the EMR, with 422 people responding to the survey. In addition, qualitative interviews were held with German experts in tourism, marketing, and retail. The German car toll could therefore have negative consequences on the EMR – the border region between Germany, the Netherlands, and Belgium – something which was not considered in the federal government’s assessment. This relates especially to the unresolved legal issue of discrimination against EU citizens (1), the possibility of influencing future EU measures on tolls (2), the issue of financial losses for certain sectors in Germany and for the regional economy (3), the negative effect in terms of emissions and noise from traffic avoiding the toll (4), and the fundamentally negative effects on regional cohesion (5).

#### 1. Legal uncertainty is not good for border regions

Continued legal uncertainty can be detrimental to border regions, particularly when it results in complaints being made to the ECJ. An analysis of the legal studies carried out to date shows that, despite receiving the green light from the European Commission, the ECJ could still issue a negative judgment. In such a case, this would mean years of legal uncertainty, which could create uncertainty for businesses (in terms of investment in the Euregio) and employers (in terms of professional training in the Euregio).

#### 2. German toll is a hindrance to a European solution

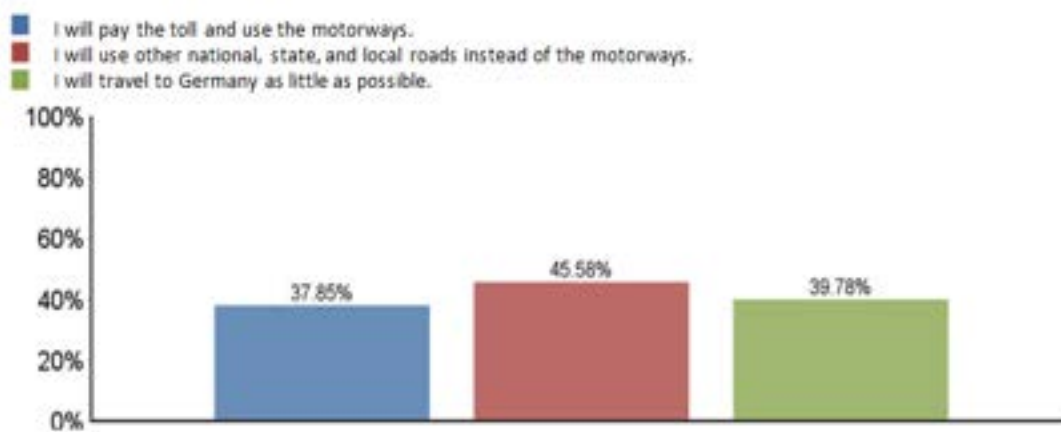
The German toll could, in principle, hinder rather than facilitate the introduction of the uniform EU-wide toll system proposed by the European Commission. It is unlikely that a German government would replace the country's own system just a few years after its controversial introduction (which works on time rather than distance). It is conceivable that there will be a knock-on effect, with Germany’s neighbours introducing their own systems. This could have highly negative consequences on border regions, which will particularly suffer with uncoordinated systems. This problem was recognized by the survey respondents. 63% are against Belgium and/or the Netherlands introducing their own toll and 44% objected to a uniform EU-wide toll system.

#### 3. Change to driving habits with consequences on the economy and labour market

The survey suggests that people from neighbouring countries will change their driving habits as a result of the toll, limiting their journeys to Germany. 40% of respondents said that they will want to drive to Germany as little as possible because of the toll. After the toll is introduced, 11% of respondents who currently cross the border at least once a week will do so less. Out of those who currently cross the border at least once a week, 17% will limit the number of journeys made. The number of respondents who will only travel to Germany every now and then increases by 24%. The survey suggests that retail and tourism will be affected. According to the responses, the main reasons for journeys to Germany are primarily groceries (63%), recreation/leisure/eating out (58%), shopping (46%), and holidays (39%). These figures were corroborated by the assessments of German experts. At the Aquis Plaza shopping centre in Aachen, for example, many customers come from Belgium and the Netherlands – as many as 25% on Saturdays according to a 2016 survey. Businesses on the German side of the border therefore have good reason to fear a loss of revenue if their customer base is reduced.

14% of respondents stated that their place of work was in Germany. 29% cross the border into Germany for business meetings. Cross-border commuters have little chance of avoiding the annual toll fee. Public transport is not an option for most people. Businesses in Belgium and the Netherlands which operate across the border will have to factor in additional costs for the toll. The toll fee scale (older, more polluting cars pay more) suggests that cross-border commuters on a low income (often owning older cars) and small businesses (with few vehicles) will be disproportionately affected. In particular, working in Germany will be made more difficult for employees who have never had any experience with it. For them, the toll represents another financial and administrative barrier. In that respect, the toll can be considered an additional psychological barrier to cross-border work and an open cross-border labour market.

**The toll applies to foreign-registered cars on motorways only. What will you do?**



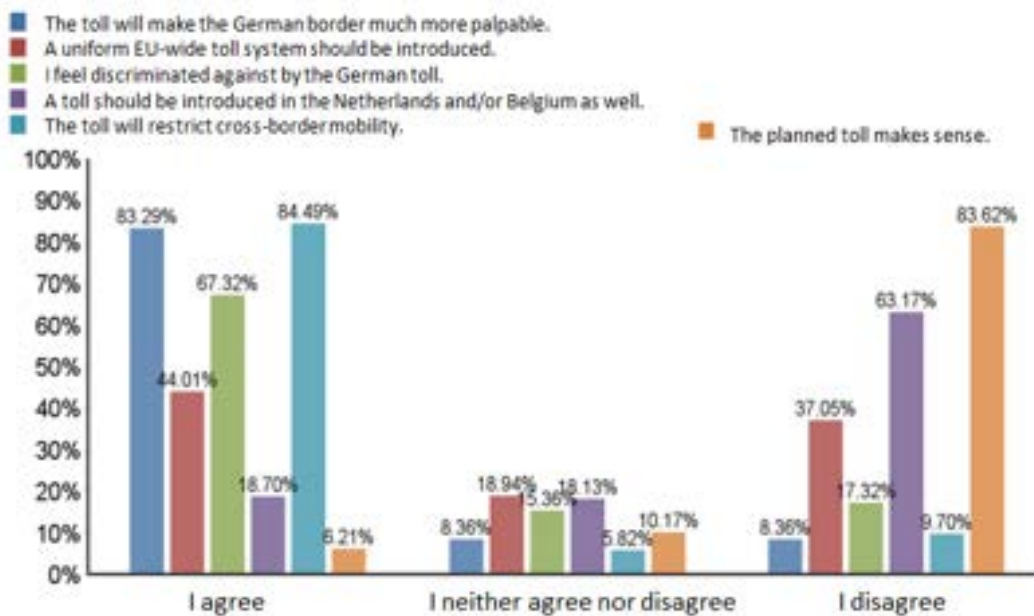
4. Change in driving habits can lead to higher emissions and noise in built-up areas  
 Drivers seeking to avoid the tolls can result in problems for the environment: 46% of respondents intend to use secondary roads once the toll is introduced, so they don't have to pay the toll fee. This could place a considerable burden on frontier communities on both sides of the border in terms of emissions and noise problems. Due to traffic avoiding the toll, there could be a higher burden on local traffic, increasing noise pollution and the risk of an accident. The toll, which was intended as a measure

to protect the environment, could actually end up harming it; the financial incentives to avoid the motorways are higher, especially for people with older cars with higher emissions.

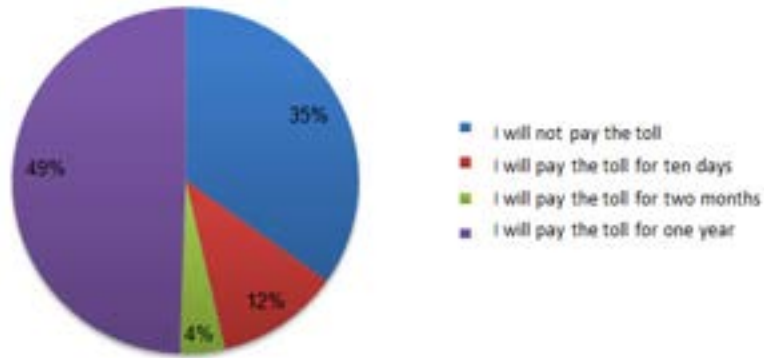
#### 5. Negative effects on Euregional awareness

With the introduction of the toll comes a sort of psychological barrier: 83% of respondents state that the border with Germany will be more palpable with a toll. 84% agree that cross-border mobility will be reduced by the toll. All things considered, the sentiment towards the toll is not a good one: 84% of respondents do not think the toll makes sense; 88% are negative or highly negative towards it. 64% say they feel discriminated against by the toll. This negative reaction in neighbouring countries can have a negative effect on cross-border interaction between citizens, clubs, businesses, and administrations. A key achievement of European integration has been to make border crossings straight-forward and instant. With a toll, people need to decide whether or not to pay it and, if so, for how long. A toll does not make border crossings straight-forward and instant, as border residents would like. Consequently, it could mark a step backwards for cross-border cohesion.

#### Which of these statements do you agree with?



**For what period would you pay the toll?**





## Dossier 2: Tax Treaty Netherlands-Germany

*Professor Anouk Bollen-Vandenboorn*

*Kilian Heller, LL.M.*

*Bastiaan Didden, LL.M.*

*Sander Kramer, LL.M.*

*Professor Marjon Weerepas*

The new tax treaty between the Netherlands and Germany entered into effect on 1 January 2016.<sup>225</sup> The cross-border impact assessment 2016 also looked at the border effects of the new tax treaty by examining the amendments to the specific treaty articles on income from employment and pension even more closely.<sup>226</sup> One of the recommendations in the cross-border impact assessment 2016 was to draw a comparison between the income situation of frontier workers (both Dutch and German ones) and their neighbours and colleagues.<sup>227</sup> The cross-border impact assessment 2017 follows up on this point with an ex-post analysis in an early stage of the border effects under the theme of 'European integration'.<sup>228</sup>

Based on the detailed, practice-based calculations produced by [Bol Adviseurs](#), insight is provided into how Dutch and German frontier workers are treated for tax purposes: to what extent are they fiscally treated equally with their colleagues or neighbours under the new tax treaty?

Three scenarios have been produced in order to compare the differences in the net disposable income of German and Dutch frontier workers under the new tax treaty. These comparisons also consider the significance of the two concessions for frontier workers included in the protocol to the new tax treaty: the compensation scheme and the 'Splittingverfahren'.

One of the key conclusions that can be drawn is that there is no longer full parity with neighbours and colleagues under the new treaty. Overall, 'the same pay for the same work in the same place', i.e. an equal net wage, is not achieved merely by bilateral tax treaties between states.<sup>229</sup> After all, the aim of the tax treaties is to prevent double taxation by distributing tax rights between the Contracting states.

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<sup>225</sup> Bundesgesetzblatt Jahrgang 2012 Teil II no. 38; Tractatenblad van het Koninkrijk der Nederlanden Jaargang 2012, no. 123.

<sup>226</sup> The cross-border impact assessments on the Tax Treaty Netherlands-Germany can be found on the ITEM website: <<https://www.maastrichtuniversity.nl/nl/onderzoek/instituten/item/onderzoek/studie-grenseffectenbeoordeling#report2016>>.

<sup>227</sup> For the recommendations on this point from the ITEM cross-border impact assessment 2016, see [Dossier 1B: Tax Treaty Netherlands-Germany, Pensions \(NL\)](#), p. 38.

<sup>228</sup> Please note: the specific repercussions for frontier workers and frontier regions still cannot be quantifiably measured since the treaty has only been in force for a year and a half, no coherent data on frontier work has been collected, and the beneficiaries of the treaty had the opportunity to continue enforcing the old treaty in 2016, based on the general transitional scheme (Article 33(6) of the new treaty).

<sup>229</sup> See also European Commission, Speech 15-6074 by the Commissioner for Employment, Social Affairs and Labour Mobility, Marianne Thyssen (Maynooth University of Ireland, Dublin), 13 November 2015.

At: [http://europa.eu/rapid/press-release\\_SPEECH-15-6074\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-15-6074_en.htm?locale=en).

Depending on the scenario, the tax treaty proves to put the frontier workers affected at a disadvantage compared to their neighbours and colleagues. The concession in the form of the compensation scheme does not always seem to provide sufficient relief for Dutch frontier workers.

Based on the calculations in scenario 1 (one earner plus partner), the compensation scheme seems to improve the position of Dutch frontier workers if they are not married to their partner. In such case, there is a marked increase in net income, while the disparity with neighbours and colleagues is lessened. For German frontier workers, the calculations suggest that the new tax treaty has no effect on the net income of married partners when only one of the partners is earning. It is worth pointing out, however, that German frontier workers generally find themselves in a better tax position than their German neighbours.

Based on the calculations in scenario 2 (two earners), Dutch frontier workers generally find themselves in a worse tax position than their neighbours, more specifically in a lower income bracket. The compensation scheme therefore does not seem to succeed in ensuring sufficient parity between Dutch frontier workers and their neighbours. By contrast, Dutch frontier workers are in a better tax position than their colleagues, partly thanks to the concession under the compensation scheme. German frontier workers, by comparison, are generally in a more favourable tax position than their neighbours. This benefit is both absolute and relatively larger in the low income bracket. Moreover, German frontier workers are in a better tax position than their colleagues in some cases, largely because of the export of German child benefit to the Netherlands.

The calculations under scenario 3 (sole earners) show that Dutch frontier workers are significantly worse off than their neighbours in terms of net income, even though they are entitled to the compensation scheme. However, they are in a better position than their German colleagues from an income perspective. German frontier workers in the Netherlands who are sole earners also do not enjoy any parity and take home significantly more than their German neighbours. Nevertheless, they do have parity with their Dutch colleagues.

Although achieving full parity in the future seems difficult owing to the lack of harmonized national fiscal and social security systems, we believe it is worth keeping an eye on the border effects in this dossier. A quantitative and qualitative data analysis could be carried out to establish the relationship between the treaty and cross-border labour mobility and the effect on sustainable/socio-economic development. The cross-border activities of frontier workers need to be monitored coherently for this purpose, as mentioned in last year's cross-border impact assessment, in order to provide a representative picture of the effects of new legislation on the positions of these persons. Collecting such data coherently will help to make the analysis more representative, allowing us to subsequently evaluate cross-border mobility and, in turn, the success of the European integration project.

## Dossier 3: Social security

dr. Saskia Montebovi

In December 2016, the European Commission proposed amendments to EC Regulations 883/2004 and 987/2009.<sup>230</sup> The purpose of the recast regulations is to *create (more) simple, honest, efficient, and clear rules*, while ensuring that the financial and administrative *burdens are shared amongst Member States more fairly*.<sup>231</sup> The underlying aim of the update is to make it easier for all employees to enjoy or to continue to enjoy free movement.

The Commission's proposal to amend Regulations 883/2004 and 987/2009 has not yet been definitively adopted, but it will soon be put forward to experts and Member States for further refinement, analysis, and any reformulations. The analysis contained in this cross-border impact assessment is, in that sense, an ex-ante analysis of proposals which have yet to be finalised.

The focus of this report is on the amendments to cross-border social security in the four following areas: long-term care, unemployment benefits, family benefits, and social benefits for EU citizens who are not economically active. There are two ITEM themes tied to each one of these four areas: European integration and Euregional cohesion. Thus, the border effects of each measure can be explained systematically.

An initial analysis centres on European integration and the link to the four areas and the proposed amendments thereto. With regard to *long-term care*, the extension of the rules – with a separate section, definition, and list of care provisions – is welcomed, but the definition still seems to require clarification. With regard to the *unemployment rules*, a number of amendments, some far-reaching, have been made. The most significant amendment is the introduction of the country-of-work principle for frontier workers who are entirely unemployed after having worked in a single Member State for twelve months. This rule still merits further thorough investigation so as to differentiate traditional frontier workers (those who live in one country and work for long periods in another, sometimes for their entire career) from other mobile workers (those who work for short, consecutive periods in different countries or alternate working between two countries). The extension of the export of unemployment benefits and the amendment to the aggregation of unemployment benefits are two other amendments concerning unemployment, the effects of which for the Netherlands appear to be more administration-related and time-bound.

With regard to *child benefits*, a new article has been introduced. This concerns special provisions for income-replacement family benefit for child-raising periods. Given that the Netherlands does not recognize this type of benefit, the direct impact of this is rather limited and it is more about the knowledge of the regulation in other Member States and any modifications to the administration systems.

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<sup>230</sup> These form the basic and implementing regulations for the coordination of social security within the EU.

<sup>231</sup> See COM(2016) 815 final, p.2-4.

The fourth amendment affects social benefits for *EU citizens who are not economically active*. With regard to the claim which this group of citizens wishes to make for social benefits without needing to work or be looking for work and without sufficient means to support themselves, the preferred method is to codify a series of judgments by the Court of Justice between 2013 and 2016. The Member States seem to have different ideas about this. There is still difficulty in achieving a community position that underlines European integration and, equally, the free movement directive. While there is a desire to prevent abuse of the free movement of people, other European values must also be upheld.

The second analysis focuses on Euregional cohesion and the effects on the proposed amendments. The effect of each amendment on cooperation between the Member States and government bodies is also examined.

With regard to *long-term care*, the expanded rules provide for an enhanced legal framework and perhaps also better management of cross-border care cases. In the initial phase, the implementation and interpretation of the new rules could well result in some administrative burden or financial costs, but in the long run a duplication of efforts can be prevented and resources can be used more efficiently on both sides of the border.

The *unemployment regulations* are subject to a number of proposals, with the effect expected to be greater than for a number of other unemployment rules. The most significant change also relates to the switch from the country-of-residence principle to the country-of-work principle for frontier workers who are entirely unemployed after having worked in a single Member State for twelve months. For government bodies, this means an increase in the number of applications in the countries of work and a decrease in the countries of residence. The administrative implementation therefore shifts more towards the country of work for this group of workers, resulting in less of a burden for the country of residence. However, other rules apply to workers who are not entirely unemployed or have not worked for twelve months. The question is whether these frontier worker regulations will have a positive or negative effect on cooperation in the Euregion. Consultation, transparent rules and agreements, and understanding each other's viewpoints will improve cooperation between states, specifically between neighbouring countries. Amendments to the export scheme and the aggregation rule probably won't have a huge influence, but could result in administrative changes or burdens. It is not certain whether this is temporary, but this is expected to be the case.

The new provisions for income-replacement *family benefits* for child-raising periods will have a limited effect on cooperation in the Euregion, given that these rules do not apply to the Netherlands.

As for the fourth category – social benefits for *EU citizens who are not economically active* – everything has yet to be fully formulated. This jeopardizes cooperation between the Member States because of the different experiences of Member States as well as fears for the future. It would be sensible to determine a common position on this point, after thoroughly analysing the potential alternatives in the approach further. A common position between Euregional areas would make it consistently easier to handle applications and correctly implement EU rules which underline values such as free movement of people, equal treatment, and sincere cooperation.

## Dossier 4: Cross-border (im)mobility of students from third countries in the Euregio Meuse-Rhine<sup>232</sup>

dr. Alexander Hoogenboom  
Julia Reinold

The internationalization of higher education is currently at the centre of attention of scholars and policy-makers. With a view to make the EU higher education area more attractive for persons coming from outside the EU, specific legislation was adopted already in 2004 in the form of Council Directive 2004/114. This Directive, in turn, is set to be replaced by Directive 2016/801, meant to address some of the shortcomings of the previous Directive.<sup>233</sup><sup>234</sup> This dossier adds to the existing literature and debate regarding the analysis and evaluation of the student migration policy of the EU and the Member States by taking a Euregional perspective. It was specifically triggered by the adoption of the *Pilot huisvesting Akense niet-EU studenten* by the Netherlands in April 2016.<sup>235</sup> This Pilot calls attention to the possible existence of a 'border region penalty' for students from third countries as a result of certain assumptions underlying EU, Dutch and German legislation: the concept that frontier migrants are worse off – in the sense of encountering more legal hurdles – than migrants who study, work and live in one and the same Member State, in an otherwise comparable situation.

To establish if such a border region penalty exists, the dossier uses a combination of sociological and legal research methods including desk research, stakeholder interviews and a survey among international students. Combining legal and sociological research methods helps to arrive at a more comprehensive understanding of the current situation regarding the cross-border mobility of students from third countries as well as related challenges and opportunities. The Euregio Meuse-Rhine (EMR), is chosen as the geographical area to be studied, with a focus on the Dutch and German sub-regions. This is because the *Pilot huisvesting Akense niet-EU studenten* is implemented in this region and because the EMR hosts many higher education institutions which are located close to the border and increasingly attract international students from third countries.

Accordingly, it is specified that TCN students in a cross-border situation either live in the Dutch part of the EMR and seek to study in the German part, or vice versa. This is important since education matters are the main responsibility of the German *Länder* rather than central government. The German sub-region of the EMR belongs to the *Land NRW (NRW)* and relevant legislation includes the *NRW*

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<sup>232</sup> The authors would like to express their gratitude to all the stakeholders who took time to speak with us and share their knowledge, to the international students who shared their experiences living in a border region by filling in the online survey and to those who helped us implement the survey. Finally, we extend our gratitude to Prof. Melissa Siegel and Martin Unfried for their support along the way and for valuable comments on earlier drafts of this dossier. We would also like to acknowledge the valuable research assistance provided by Alexandra Rodriguez.

<sup>233</sup> See for instance EMN 2012 [http://www.emn.lv/wp-content/uploads/Immigration\\_of\\_International\\_Students\\_to\\_the\\_EU\\_SR\\_11April2013\\_FINAL.pdf](http://www.emn.lv/wp-content/uploads/Immigration_of_International_Students_to_the_EU_SR_11April2013_FINAL.pdf) or European Commission 2013 Report on application of directive 2004/114 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0587:FIN:EN:PDF>.

<sup>234</sup> Following these assessments, Directive 2004/114 is soon to be replaced by Directive 2016/801, which must be implemented by 23 May 2018 at the latest.

<sup>235</sup> See B11/2.4 Vreemdelingencirculaire 2000.

*Hochschulgesetz*,<sup>236</sup> the *Aufenthaltsgesetz*,<sup>237</sup> and the *Bundesausbildungsförderungsgesetz*.<sup>238</sup> For the Netherlands, the relevant legislation is found in the *Wet op het Hoger Onderwijs en Wetenschap* (WHW)<sup>239</sup> as well as the *Vreemdelingenwet 2000*,<sup>240</sup> the *Wet arbeid vreemdelingen*<sup>241</sup> and the *Wet Studiefinanciering 2000*<sup>242</sup> (and the regulations based on these instruments).

Table 1 below sums up the most important findings of the legal analysis based on relevant EU and national legislation. Overall, the ‘cross-border student’ is worse off, legally speaking, when it comes to both residence and work opportunities when compared to a student who studies, resides and works in one and the same Member State (the single state student). Put differently, the applicable EU and national legal framework assumes the single state student paradigm, and creates a set of right and opportunities tailored to that situation, as a result of which the cross-border student misses out. There is, for example, no clear EU admission route for a TCN student seeking to live in one Member State but study in another. Instead, the cross-border student would have to rely on national initiatives to plug the gap, which either may not exist (e.g. in Germany) or may be very limited in scope (such as the *Pilot huisvesting Akense studenten* in the Netherlands). Similarly, the cross-border student enjoys much more limited access rights to employment than the single state student: the appropriate authorities will always perform a full labour market test in case of cross-border employment. Hence, the analysis supports the finding that a border-region penalty for TCN students exists.

Table 1 Comparison of the legal situation of the single state student and the cross-border student

Element	Single state student	Cross-border student	Evaluation
Study	Valid residence permit; educational level requirements	‘Valid residence permit in other MS’; educational level requirement	Position similar
Residence	Harmonised and clear admission route set out in EU law	No direct route under EU law; limited national law possibilities ‘Pilot huisvesting Akense studenten’)	Position cross-border student more restrictive
Work: during	Minimum guaranteed access of 10 hours (15 hours per week)	No guaranteed access: labour market test.	Position cross-border student more restrictive
Work: after	Search period guaranteed under EU law; extended periods available under national law	No search period guaranteed under EU law; some possibilities under national law	Position cross-border student more restrictive

<sup>236</sup> Gesetz über die Hochschulen des Landes Nordrhein-Westfalen (Hochschulgesetz - HG), GV. NRW. S. 547, as amended.

<sup>237</sup> BGBl. I S. 162, as amended.

<sup>238</sup> BGBl. I S. 1952; 2012 I S. 197, as amended.

<sup>239</sup> Stb. 1992, 593, as amended.

<sup>240</sup> Stb. 2000, 495, as amended.

<sup>241</sup> Stb. 1994, 959, as amended.

<sup>242</sup> Stb. 2000, 286.

This has negative effects on European integration, socioeconomic development and Euregional cohesion. Indeed, the surveys undertaken as part of this dossier show that third country national students are interested in living in a neighbouring countries, but that visa and residence permit limitations prevent them from doing so. Similarly, where it concerned work across the border, TCN students cited work permit issues as a major factor for not pursuing such opportunities.

Introducing more flexible arrangements for TCN students especially access to the Euregional housing and labour market could convert the negative experiences with 'borders' into positive effects for the students involved, but also for the EMR more generally with regard to short- and long-term socioeconomic development. By increasing cross-border mobility, TCN students become more familiar with the region and what it has to offer. This can increase the region's attractiveness for students and graduates, who are important sources of human capital in today's knowledge-based economy. The EMR could thus boost its competitiveness and mitigate the effects of negative population developments and demographic change.

## Dossier 5: Belgian Passenger Name Records Regulation

*dr. Johan Adriaensen  
Mathijs olde Scheper*

In the aftermath of the terrorist attacks in Paris, Brussels, Berlin, and London, national governments in the EU rushed to implement a series of counter-measures to avoid the repetition of such a tragedy. Many such measures ultimately led to the re-instatement of border controls. The Belgian federal government drafted thirty measures to counter terrorist activity. One of these measures is the gathering of passenger name records for travel into the country. The law obliges rail and bus operators that enter Belgian territory to provide records on the passengers transported to the Belgian intelligence services. Being able to cross-check the passengers' name records with known criminal databases would allow the authorities to identify potential suspects and facilitate the prevention of criminal or terrorist attacks.

The adopted measure originates from the implementation of an EU directive on the retention of passenger name records for flights between member states and non-member states. The novelty of the Belgian initiative is that it not only covers intra-European flights, but -more importantly- that it also targets transportation by land which may affect cross-border regions disproportionately. While the regulation has been approved by the Belgian parliament in December 2016, its implementation awaits the adoption of a series of executive orders.

These orders have been due to the concerns voiced by several stakeholders including the affected service providers, passenger organisations, the European Union, and neighbouring countries. Opposition to the initial proposal already resulted in the exclusion of local cross-border train services as well as bus lines operating under a public service obligation. The executive orders are expected to detail several other sensitive aspects of the regulation such as the information to be transmitted, the method of passenger identification, the time frame and method to submit information to the Passenger Information Unit and so forth. To inform the executive order for rail services, the government has ordered an impact assessment which is expected by the end of 2017.

The specification of these modalities is critical to assess the potential impact of the measure on cross-border mobility as well as to identify any potential conflicts with EU law. Such conflict can be foreseeable on two grounds: conformity with EU laws on data protection and the freedom of movement within the EU. In both cases, the key question will revolve around the measure's proportionality. While the use of passenger name records to protect public security has been accepted by the Court of Justice of the EU as far as international flights are concerned, it remains to be seen whether it is also deemed proportional for passenger services by land. Especially if the passenger name records regulation ultimately results in the introduction of border checks, the obligations under the Schengen accords will be violated.

As far as the expected impact is concerned, we hypothesized and studied four distinct channels through which the regulation affects cross-border mobility. First and foremost, the measure will provide an administrative burden on the service provider. In addition to the ICT costs of operating such a system, the loss of flexibility in the provision of its services (inability to sell tickets over the counter or requirements to arrive 30 minutes before departure) can result in higher ticket prices or



reduced service provision. Interviews additionally showed concern for security of staff and passengers as terrorists could also attack the security check points and security personnel, instead of attacking the trains and busses themselves. Second, as the measure demands the gathering of personal information, passengers might be deterred from using such services as they are in opposition to the collection of their personal data by the government. This could influence the demand for international travel. A third impact of the passenger name records measure pertains to travellers' greater sense of security. This could potentially increase cross-border mobility. Considering the questionable effectiveness of passenger name records on terrorism prevention and considering passengers' limited concern for terrorist attacks, we expect the positive effects of the passenger name records regulation on citizens' mobility to be negligible. A fourth and final effect refers to the opportunity costs that arise from the government's budget allocation to implement the measure. The direct impact of the measure's expected cost of 13.45 million euro on cross-border mobility is – at best – indirect and limited as these costs are borne by the entire population. The costs feature most prominently in debates about the cost-effectiveness of the passenger name records measure as opposed to other preventive measures. Preliminary evidence suggests the existence of several alternatives that fare better in attaining the legislation's objective to prevent terrorist and criminal attacks at a lower societal and financial cost.

Concerns about the legality of the eventual regulation as well as its potential impact on cross-border mobility boil down to questions of proportionality. In the end, the key challenge is to conceive a passenger name records regulation that is both effective in attaining its security objectives while being minimally distortive to cross-border mobility (at a reasonable cost). The revisions made to the original proposals and further refinements introduced through stakeholder consultation have shaven off the rough edges of the proposal. Thus, we have seen carve outs from the regulation for regional cross-border trains and busses operating under a public service obligation. We are equally likely to observe a more calibrated approach to gather and process the solicited passengers' information to avoid legal (and political) contestation through the executive orders implementing the regulation. At the same time, many of these revisions have widened the meshes of the net, making it less effective in addressing the security threats for which the measure was originally designed.

The eventual fate of the Belgian passenger name records regulation – as far as transport by land is concerned – depends to no small extent on the results of the impact assessment ordered by the Belgian government. The specific focus of our study on mobility in a cross-border region allows us to provide several insights that may guide (the reading of) the commissioned impact assessment. First, any impact assessment should ideally cover questions of proportionality if it is to serve the policy process. This is not only important to pre-empt any potential legal conflicts but also to reconcile opposing political views both within government and between the government and affected stakeholders due to implement the measure. Two other recommendations follow: Second, to address questions of proportionality, any impact assessment should give due attention to the welfare effects on the passengers and not just the costs on transporters and government (unlike the Commission's impact assessment on the passenger name records directive). Third, the assessment should ideally cover alternative measures beyond the modality of the passenger name records measure to inform any proportionality test.

## Dossier 6: The Qualifying Foreign Taxpayer Obligation (“90% rule”): A Quantitative Ex-Ante Impact Assessment

*Prof. dr. Maarten Vink  
Johan van der Valk  
dr. Marcel Schaper  
Lea Smidt*

The dossier analyses the population of non-resident workers in the Netherlands as of 1 December 2014 to estimate the potential cross-border impact of the qualifying foreign taxpayer obligation (“90% rule”) that took effect on 1 January 2015. The legislation establishes that non-resident taxpayers in the Netherlands may benefit from the same deductions and tax credits as resident taxpayers if they earn 90% of their global income in the Netherlands. It replaces the optional scheme considered incompatible with EU law by a ruling of the Court of Justice of the European Union (CJEU).<sup>243</sup>

Under the optional scheme non-resident taxpayers could opt for the same tax treatment as resident taxpayers even if earning less than 90% of their global income in the Netherlands. Under the new scheme, non-resident workers risk forfeiting tax benefits, e.g. mortgage interest deductions for owner occupied dwellings, if they neither earn 90% of their world income in the Netherlands, nor have a sufficient taxable income in their country of residence. The CJEU has established that this legislation infringes on the principles of freedom of movement for workers (Art. 45 TFEU) and of establishment (Art. 49 TFEU) in the EU.<sup>244</sup> By providing a statistical overview of non-resident employees in the Netherlands one month before the 90% rule took effect, our ex-ante assessment provides a preliminary benchmark for a measure of the impact of the new tax regime. Future impact assessments can estimate the ex post effects of the legislation on the aforementioned principles of European integration against this benchmark.<sup>245</sup>

Overall, 131.2 thousand employees work but do not live in the Netherlands on 1 December 2014. Of this target group 89.1 thousand are men, 42.0 thousand are women. Furthermore, as most non-resident employees are between 25 and 45 (15.6%) the legislation potentially affects families with younger children. Dutch citizens represent the largest nationality within the population of non-resident workers in the Netherlands (43.4 thousand). They mostly live in Belgium (22.5 thousand) and Germany (16.1 thousand). Another third of non-residents are Polish nationals (42.6 thousand), of which most reside in Poland (41.3 thousand). Thus, Polish residents also constitute the biggest group

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<sup>243</sup> ECJ 18 March 2010, Case-440/08 (Gielen), NTFR 2010/795, Jur.2010. p. I-2323

<sup>244</sup> ECJ 09 February 2017, Case C-283/15 (X). See also H. Arts and J. Korving, De kwalificerende buitenlandse belastingplicht van art. 7.8 IB en het EU-recht. In: Grenseffectenrapportage 2016, Institute for Transnational and Euregional cross border cooperation and Mobility/ITEM, pp. 188-198.

<sup>245</sup> The data used in this impact assessment comes from Statistics Netherlands (CBS). We identify the target group of the 90% rule by linking processed data from the Municipal records data base (BRP) and the *Polisadministratie*. However, data limitations prevent a definite ex post assessment at this point in time. Firstly, it is only ex ante because tax returns are only complete up until 2014 and not for a sequence of years following the legislation. Secondly, the number of non-residents who claim tax deductions and earn less than 90% of their income in the Netherlands remains a preliminary estimate because tax data on non-residents is not processed at CBS. *Polisadministratie* data excludes self-employed people and information on whether people file a tax return.

of non-resident workers in the Netherlands followed by Belgian (38.4 thousand) and German residents (34.3 thousand).

German and Belgian citizens likely commute to their work place on a daily basis if they live in the border region. Most of them are full-time employees while Polish residents more often work part-time. A similar ratio applies for Polish nationals compared to all other nationalities. As Poland is not a Dutch border country, this may suggest a high rate of seasonal employment of Polish residents in the Netherlands. Generally, part-time workers less likely earn 90% of their global income in the Netherlands because they may have a source of income in another country to complement their Dutch salary.

Table 1: Number of non-resident employees (in thousands) by country of residence, nationality and employment status

Country of residence			Employment status		Total
			Full-time	Part-time	
<b>Germany</b>	Nationality	NL	9.4	6.7	16.1
		DE	9.5	4.4	14.0
		PL	1.6	1.0	2.6
		Other	945	0.5	1.4
		Missing	0.3	0.0	0.3
	Total		21.7	12.6	34.3
<b>Belgium</b>	Nationality	NL	12.9	9.7	22.5
		BE	8.2	6.1	14.3
		Other	1.0	0.5	1.5
		Missing	0.1	0.1	0.2
	Total		22.1	16.3	38.4
<b>Poland</b>	Nationality	NL	0.4	0.4	0.9
		PL	17.6	22.1	39.7
		Other	0.3	0.4	0.7
		Missing	0.0	0.0	0.0
	Total		18.3	22.9	41.3
<b>Other</b>	Nationality	NL	2.8	1.2	4.0
		Other	6.5	6.6	13.1
		Missing	0.2	0.0	0.2
	Total		9.4	7.8	17.2
<b>Total</b>	Nationality	NL	25.4	18.0	43.4
		DE	10.0	4.9	14.9
		BE	8.3	6.1	14.4
		PL	19.4	23.2	42.6
		Other	7.9	7.3	15.2
		Missing	0.5	0.2	0.7
	Total		71.6	59.6	131.2

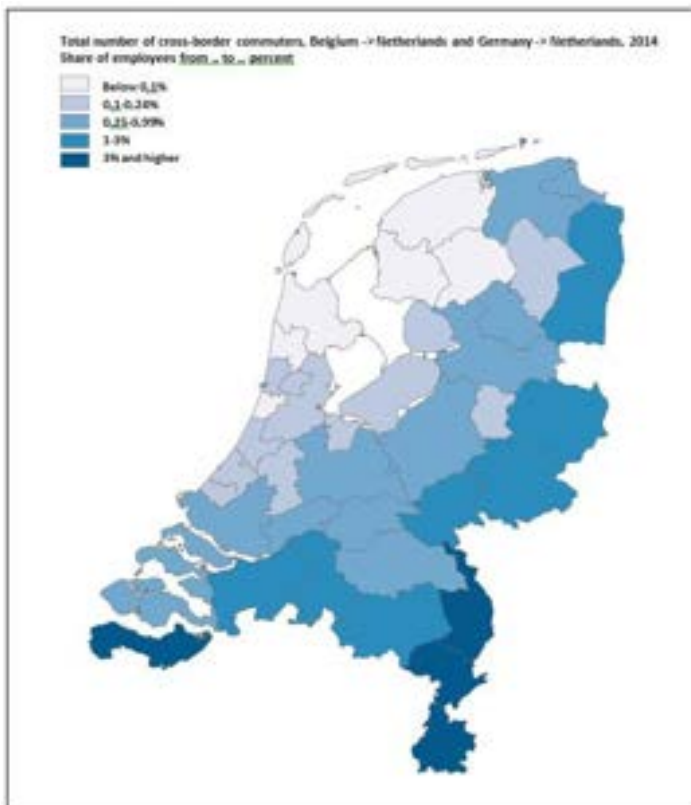
Moreover, the 90% rule has a differential effect across work sectors. Across all nationalities, most non-resident workers are employed in the commercial service sector (65.2%). Yet, a sizable number of

Dutch nationals work in the public and social services (68.6%) as well as the industrial manufacturing sector (38.6%). While the number of Polish nationals is highest in the commercial service sector they represent the major share of agricultural non-resident workers (81.1%).

Especially the border region is concerned by the impact of the 90% rule. The 14 COROP areas along the Dutch-German and Dutch-Belgian border employ the majority of non-resident workers (63.4%). Most of them are Belgian or German residents working in the Southern Netherlands. In particular, Zuid-Limburg employs most non-resident workers in absolute terms (16.7 thousand) and relative to the total employed population in the region (6.6%). Most of them live in Belgium (76%). The relative number of non-resident employees from Germany is highest in Noord-Limburg (3.4%).

In sum, the 90% rule likely reduces the positive effects of EU labour mobility, especially in the Dutch border COROPs. While some workers may be willing to move to the Netherlands, others might seek to change their employer to benefit from tax deductions in their country of residence. Besides counteracting the application of EU rights and principles, this has potentially adverse effects on investment and skills in the border regions.

#### Commuting non-resident workers from Belgium and Germany as share of total employed population by COROP/NUTS3 region



## Preliminary Research 1: Euregional mindset in two Euregions

*Student Group from Fontys Hogeschool Venlo,  
coordinator Christopher Neller*

This student research project, undertaken by a group of students from Fontys Hogeschool Venlo, dealt with the awareness of citizens with respect to the Euregions.<sup>246</sup> Further, their knowledge, thinking and emotional attitude regarding the neighbours, institutions, labor markets, etc. is analyzed. This results in the heading 'euregional mindset'. The assumption was that the structure of a Euregion, its general strategic approaches and objectives could have an impact on the specific mindset of the citizens. Do we see big differences in the mindset within and between two different Euregions? In this respect, the Euregio Meuse-Rhine (EMR) and the euregio rhine-meuse-north (ermn) were compared. How do citizens think about the Euregion? What do they know about it and is there a correlation towards the mentioned differences? The aim of the study was to collect some first results in order to stimulate further research.

For this purpose, a survey was conducted in the two Euregions mentioned above to get first ideas on the mindset of the inhabitants. With 204 respondents, the sample size of the survey was relatively small. Therefore, the analysis can only be regarded as a first indication for future research on the topic "Euregional mindset".

Comparing the two Euregions is particularly interesting since they show significant differences. In the first place, there different governance structures are established. In contrast to the erm n including only partners from Germany and the Netherlands, the EMR includes partners from Germany, the Netherlands and Belgium. Whereas in the erm n two languages are spoken (Dutch and German), the EMR deals with three, Dutch, German and French. Further, in the erm n politicians from municipalities and districts next to representatives of the chambers of commerce (German Industrie- und Handelskammern (IHK)) are the active stakeholders in the organization. These are members of the Euregional institution that amongst others decide together about European subsidies for cross-border projects. In contrast, the local level does not play a major role in the EMR but the provinces next to the Belgian community and the Zweckverband Aachen.

### 1. Euregions and European Integration

The Euregio Meuse-Rhine as well as the euregio rhine-meuse-north base their strategies on the Lisbon Treaty. The euregio rhine-meuse-north set up the Vision 2014-2020+ coming into force on the 31<sup>st</sup> of October 2013.<sup>247</sup> In spring 2013, the Euregio Meuse-Rhine presented its new strategy EMR2020.<sup>248</sup>

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<sup>246</sup> Instead of the term „Euregion“, terms like „Euregio“ or „Euroregion“ can be used. This report uses the term „Euregion“. The term will refer to the institution itself rather than the border-area which is covered by a particular Euregion (cf. Giessen, van der, M. (2014), p.7)

<sup>247</sup> euregio rhine-meuse-north, [http://euregio-rmn.de/wp-content/uploads/2016/08/2015-03-17\\_euregio-Vision\\_Webversion.compressed.pdf](http://euregio-rmn.de/wp-content/uploads/2016/08/2015-03-17_euregio-Vision_Webversion.compressed.pdf) (accessed the 01.06.2017)

<sup>248</sup> Euregio Meuse Rhine, <http://www.euregio-mr.com/de/intern/pdf/EMR2020-D.pdf>, (accessed the 01.06.2017)

Both strategies partly cover similar topics but then follow different strategies.<sup>249</sup> Both Euregions want to promote EU-Integration and want to be seen as dynamic and creative European border regions.

Being asked about open borders and the general perception of the EU, the answers of the respondents showed interesting differences between both Euregional areas. According to the survey, respondents in the EMR are more open-minded towards the EU than in the erm. In the EMR, especially the Belgian respondents were most open-minded towards the EU, followed by the Dutch and the Germans. So the difference between the respondents in the EMR and erm is to some extent a result of the fact that in the EMR there are more Europe-minded Belgians. Also in the erm, the Dutch respondents were more in favour of European Integration than the German respondents. As both Euregions just mention to promote the EU Integration but do not set up concrete objectives, it was not possible to make any link between the official objectives of the Euregions and these findings. The general support of European Integration is mentioned in both strategic documents. However, there are interesting research questions for future studies: Are there really differences related to nationality with respect to the general support for European Integration in the Euregions? Or is there a strong correlation between a positive European and Euregional mindset?

In the Lisbon Treaty, it says that deepening the peoples' solidarity while respecting their history, culture and traditions is the key for success.<sup>250</sup> Both Euregions officially support the exchange of cultural institutions and want to promote the participation in a lively Euregional cultural programme. The respondents of the survey showed rather low interest in the public institutions of the cross-border regions. In both Euregions, the respondents either never or just infrequently make use of the neighbor's cultural establishments and events, such as museums, libraries, sport events and bicycle routes. This could indicate that in both Euregions, inhabitants do not really use the cultural diversity of the cross-border region. Future studies have to take a closer look and discuss the conditions for stimulating cultural exchange.

In addition, in both Euregions, the Dutch respondents are more likely to speak German and French (according to their self-assessment), still just on a moderate level, than the other citizens. Plus, more Belgians than Germans respondents said that they speak Dutch moderately.

The answers to the surveys also showed that in both Euregions, the Dutch respondents said that they read German literature and use German media-like webpages. This is not the case for the German respondents with respect to Dutch (online) publications. Consequently, language skills could apparently lead to – what is not surprising – the use of media/literature of the neighbor and finally to a more positive Euregional attitude.

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<sup>249</sup> In detail, the euregio rhine-meuse-north follows an integrated approach. The Vision 2014-2020+ covers the topics agribusiness, industry, logistics, tourism/recovery/culture/sport and labor market/education/languages. In comparison, EMR2020 deals with the themes economy/innovation, labor market/education/training, culture/tourism, healthcare and safety.

<sup>250</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M000>

## 2. Employment and a cross-border labor market

According to the survey results, there is a correlation between language skills and the perception of the neighboring labor market. Especially the Dutch respondents perceive Germany as a country with attractive employers and are open for cross-border labor, which is less true the other way round. Two reports show that there is indeed a cross border labor market and interestingly it is balanced in relation towards the total amount of employees of both countries.<sup>251</sup> At the same time, the German and Dutch respondents do not perceive the Belgian labor market as very attractive. Nevertheless, the latest figures (mentioned under footnote 5) show that almost as many Dutch persons cross the border to Belgium for work as to Germany. In relation to the total employees of the compared countries, much more Belgian inhabitants work across the Dutch-Belgian border than Germans cross the border to the Netherlands.<sup>252</sup> It has to be investigated in further research, how the perception of the neighboring labor market is in fact influencing labor mobility.

There are also interesting differences with respect to the two Euregions: the respondents living in the erm are on average more open-minded regarding an employment in the neighboring country than in the EMR. In the erm, respondents mention interesting branches as a reason to potentially work in the neighboring country. In contrast, the approach to promote sustainability and innovation seems to bring positive effects in the EMR. Here, both terms are frequently mentioned as reasons to work in the neighboring country. In both Euregions, German respondents perceive the Dutch companies as more sustainable (open for green technologies, etc.) than the other way around. Whereas Dutch respondents consider German companies as more innovative in general than the Dutch.

Future research could investigate whether some of the Euregional projects related to certain branches and industries do have an influence on the perception of the labor market and job opportunities.

## 3. Euregional Cohesion

Do citizens in the Euregions know in which Euregion they live? In both Euregions, about 60% of the respondents knew the correct answer. In addition, the Dutch respondents were better informed than the others. Especially in EMR, 77% of the Dutch, 54% of German and 50% of the Belgian respondents answered correctly. This is striking since the Belgian respondents were the ones with the strongest support for European Integration. In this case, openness for European Integration and open borders is not necessarily linked to a profound knowledge of the own Euregion.

Is the Euregion as an organization known to the citizen? According to this sample, not really. Almost none of the respondents knew individuals working for the Euregion or representing the Euregion, in both border-regions. This is to some extent more surprising in the erm (euregio rhine-meuse- north)

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<sup>251</sup> From all German employees, around 0,072% of the employees are commuting for a job towards the Netherlands. From all Dutch employees 0,074% of the employees are commuting across the border towards Germany. Next to this there is an amount of people who moved across the border and work in their home country as well as in the new country. (See for more information: PBL (2015) Arbeidsmarkt zonder grenzen, p. 10 and CBS- Internationaliseringsmotor 2016 –III Duitsland, p. 25)

<sup>252</sup> There are 4800 persons commuting from the Netherlands to Belgium across the border versus 5100 Dutch people crossing the border towards Germany. The percent of Germans crossing the border for work towards the Netherlands is around 0,072%, while 0,39% of the Belgians cross the border towards the Netherlands for work (see reports onder footnote 5).

where the municipal politicians play an important role. The Euregions as an organization are not really known to the respondents. Apparently, even the involvement of local politicians (e.g. mayors) in Euregional organizations cannot increase awareness.

Besides, almost none of the respondents attended an event organized by Euregional organizations. Therefore, it will be very interesting to do research on the question how Euregions – as organizations and with their prominent leading figures – reach citizens and whether and how they can promote Euregional thinking by organizing own activities. According to the answers of this Euregional sample, Euregions as organizations are not very visible.

The interviewees were also asked about their perception of Euregional cooperation, their familiarity with Euregional cities/towns, their sense of belonging and whether they feel at home in the Euregion. The results showed that the overall Euregional Cohesion (as a mix of different aspects) is rated a little bit higher by respondents living in the EMR than in the erm. In both Euregions, Dutch respondents express a stronger relation to the Euregion and a stronger Euregional cohesion. In the case of EMR, the survey revealed a significantly stronger perception of Euregional cohesion of Dutch and Belgian respondents than of German. Also in the erm, the answers of German respondents indicate less Euregional affection than their Dutch neighbors.

Comparing the two Euregions, when asked whether they feel at home in the Euregion, respondents from the EMR on average gave lower numbers than in the erm.

### Conclusions

This student project has indicated that it is worthwhile to start broader research on the topic of a Euregional mindset. According to the results of this rather small sample, it is interesting to look into the perception of Euregions with the background of different nationalities. The survey indicates that, also in cross-border regions, nationality is still a decisive factor regarding the perception of the Euregion. There are also indications that it is very difficult to find correlations between the different governance structures of the Euregions and the specific mindset of citizens living in these Euregions. One potential reason could be that the Euregion is regarded more as a geographic than a political concept. In future research projects, it would be important to include the question whether the visibility of Euregions (as organizations) and their political figures amongst citizens is really that low. And if yes, it would be interesting to analyze whether this is a problem for the idea of a widespread Euregional mindset.



## Preliminary Research 2: Ex-ante analysis of the effects of the General Data Protection Regulation in Limburg

*Student Project by Martin van Rooij,  
Maastricht University*

In this project, a Maastricht University student did a pre-study on the awareness of the EU General Data Protection Regulation in Limburg. The purpose was to find out whether it is already possible to assess ex ante its effect on enterprises in the border region.

The General Data Protection Regulation,<sup>253</sup> hereinafter referred to as GDPR, includes major changes in data handling procedures for public and private organisations within the EU and may also apply to organisations abroad due to its broad and extraterritorial scope. The GDPR encompasses a broad array of changes regarding the security of personal data in the EU. Since the Regulation will enter into force on 25 May 2018, undertakings and public authorities have to prepare for the deadline.

After years of preparation, the EU Parliament approved the GDPR on 14 April 2016 to replace Data Protection Directive 95/46/EC. As a Regulation, the GDPR was designed to harmonize the data protection laws across the European Union. However, the GDPR includes a number of opening clauses, granting Member States leeway regarding the exact implementation of specific provisions of the GDPR. Further, The GDPR touches upon various national legal regimes resulting in potentially differing legal outcomes in different Member States. Therefore, the implementation of the GDPR is and will not be entirely consistent throughout the EU. The question is, whether these discrepancies can lead to uncertainties for organisations with multiple cross-border activities.

In particular, the research tried to establish a preliminary outlook on possible effects the GDPR has and will have on Dutch business in the border-region of the Dutch Province of Limburg.

According to the wording in the GDPR the regulation focuses on:

- reinforcing individuals' rights; strengthening the EU internal market; ensuring stronger enforcement of the rules; streamlining international transfers of personal data and; setting global data protection standards.

The main argument for a coherent EU-wide approach to data protection is to untangle and harmonize the different rules and regulations that became apparent throughout the Union. The ideal situation for business in any country is a common approach without administrative burden, as is described in the Commissions' goals: "Organisations will only have to deal with a single national data protection authority in the EU country where they have their main establishment. Likewise, people can refer to the data protection authority in their country."<sup>254</sup> Some of the basic obligations of the Regulation relate inter alia to the nomination of a data protection officer in specific cases, the recognition of binding corporate rules and model clauses for the transfer of personal data to countries outside the

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<sup>253</sup> Regulation (EU) 2016/679

<sup>254</sup> [http://europa.eu/rapid/press-release\\_IP-12-46\\_en.htm](http://europa.eu/rapid/press-release_IP-12-46_en.htm)

EU as one of the means to transfer personal data from the EU to third countries and the introduction a scheme to recognize of Codes of Conduct.

The findings are based on interviews with business managers in the region, as well as experts on the GDPR in Limburg. A total of 23 interviews were conducted. However, because of the sensitive information discussed, all interviewees agreed to participate on the condition that their commentary was to be discussed anonymously.

Even though the GDPR is a Regulation and should thus be implemented harmoniously throughout the EU, many provisions allow for national legislators to implement exceptions to the rule, which are contained in so-called opening clauses in the GDPR. Any such difference between countries creates a potential obstacle.. The issue of compliance with data protection rules is thus a contentious issue for business and experts alike. The 23 qualitative interviews with company representatives and experts in the field<sup>255</sup> were only a small selection of the numerous companies contacted. Many refused to participate in this research. It is likely that those who did not want to discuss their level of data protection compliance might realize their standards are subpar.

#### Results from the interviews

Perhaps the most striking aspect that many experts in the field iterated so far is the lack of implementation of the GDPR throughout all different sectors. At the time of the interviews, businesses had less than a year before the GDPR became applicable throughout the EU. One of the reasons why

*“Most companies in the region do not adhere to the old rules, why would they comply with the GDPR? The only way to create awareness is to fine them.”*

businesses did not seem to hurry with the required changes is because they did not comply with the current legal regime preceding the GDPR.

Others started to create awareness, meaning that they commenced implementation, leading to compliance in the longer term. These were mainly newer companies that are active in the online media sector and thus are closer to the topical debate.

When asked about the exceptions that allow different Member States to implement the GDPR in different ways, none of the respondents seemed to express their concern. In fact, respondents indicated that the current Directive entails many more exceptions, which does not prevent them from trading cross-border.

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<sup>255</sup> Companies from different sectors: privacy consultants and experts, automotive industries, transport companies, marketing companies, healthcare providers, app-builders, several tech start-ups, contractors.

The pre-study was also meant to ask companies about their positive expectations and the benefits of the Regulation. Due to the abovementioned lack of awareness of the companies interviewed, they were not in a situation to commit a proper self-assessment on the question whether the Regulation will be beneficial for their business.

One aspect that was raised was that the cooperation of companies with other companies might have an influence since the enforcement of the Data Protection Authorities is still not very thorough. Especially German businesses are much more aware of privacy concerns and might thus reject potential partners in business in the future if they do not commit to the same level of data protection.

The lack of preparation is cause for concern as it can be expected that a majority of the business in the region will not comply with the GDPR as the deadline comes closer. It was also interesting to note that none of the companies interviewed had been in contact with the appropriate Data Protection Authority.

Since Member States have some freedom regarding some specific aspects of the implementation of the GDPR, it was expected that some issues might arise with respect to cooperating with cross-border business. However, none of the respondents claimed any disadvantage because of it. Experts say it might be because they do not yet realize the full effects and the all-encompassing scope of the Regulation. Others mention that many of these exceptions are so specific in nature that only a very small group of business will be affected.

## Conclusions

Many of the companies interviewed are still not taking appropriate measures with respect to the obligations of the Regulation and they are not fully aware of consequences. They find it difficult to make the necessary arrangements. In particular, this means that they do not have a clear picture of the positive or negative effects of the Regulation on their own business when it comes to cross-border business.

*“If the government does not act strictly on the companies who fail to implement the GDPR, the only way they [these companies] will comply is if the international business sets a certain standard. The fear of missing out is bigger than risking the fine”*

This pre-study has indicated that broader research on the final situation of the companies in the entire Euregion is necessary in order to assess the state of preparation around the date of the deadline. There are indications that this could in particular be relevant for companies who do business with German counterparts. If their German counterparts are already GDPR compliant, they might expect a similar standard with regard to GDPR compliance of potential business partners. If businesses in the Province of Limburg do not uphold the strict standards of the GDPR, it is possible others might not wish to conduct business with them. It will be interesting to conduct a proper analysis of Dutch, German and Belgian companies in the border regions.

The answers of the small number of companies are to some extent alarming: most companies will probably not be prepared in time for the full implementation date on 25 May 2018. Surprisingly, this does not seem to be a concern for the respective companies so far.

Whether this is because they will not be affected to such a large degree by the changes or because they will only realize the far-reaching implications once they encounter major problems remains to be seen. The pre-study has shown that further research is necessary to also prevent a scenario where too many companies jeopardize cross-border businesses.

## Summaries Cross-Border Impact Assessments 2016

### Dossier 1: Netherlands-Germany tax treaty

#### A. Labour

*Kilian Heller, LL.M.*

*Prof. dr. Anouk Bollen-Vandenboorn*

*Mr. dr. Marjon Weerepas*

Taxation in international situations is always a hot topic, especially with the ever deepening project of European integration. States put tax treaties in place in order to regulate the allocation of taxing rights in cross-border situations. In general, tax treaties are concluded between states that have strong economic, financial, and political cooperation. In the given case, Germany and the Netherlands not only have strong relations with each other, but they are also in close geographical proximity to each other, being direct neighbours.<sup>256</sup> This close relationship prompts many questions concerning active frontier workers. The old tax treaty between the Netherlands and Germany (hereinafter: old tax treaty) dates back to 1959 and neither met the new international taxation standards set out by the OECD, nor did it sufficiently represent the current state of economic ties between the two countries.<sup>257</sup>

In the light of the new tax treaty between the Netherlands and Germany, which entered into force on 1 January 2016<sup>258</sup> (hereinafter: new tax treaty), this dossier looks at the changes the new treaty brings for frontier workers. The focus in this regard is on all the frontier workers who are crossing the border between Germany and the Netherlands. From publicly available data, it can be determined that there is a decrease in officially traceable frontier workers. However, at this stage it must be pointed out that exact information about the number of frontier workers is not available and results differ greatly depending on the sources publicly found. The differing numbers among the sources publicly available is reducible to differing approaches used to calculate the numbers of frontier workers. To give an indication of the decrease of frontier workers, some available data were gathered together and resulted in the numbers shown in Figure 2.

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<sup>256</sup> Is explicitly mentioned in *Kamerstukken II 2013/14*, 33 615, no. 3 (MvT), section I.1; for the strong relationship see Statistisches Bundesamt, *Statistisches Jahrbuch 2011*, p. 474.

<sup>257</sup> *Kamerstukken II 2013/14*, 33 615, no. 3 (MvT), section I.1; See Deutscher Bundestag, 17. Wahlperiode, *Gesetzentwurf der Bundesregierung, Drucksache 17/10752*, A. Problem und Ziel.

<sup>258</sup> *Bundesgesetzblatt Jahrgang 2012 Teil II Nr. 38; Tractatenblad van het Koninkrijk der Nederlanden Jaargang 2012*, no. 123.

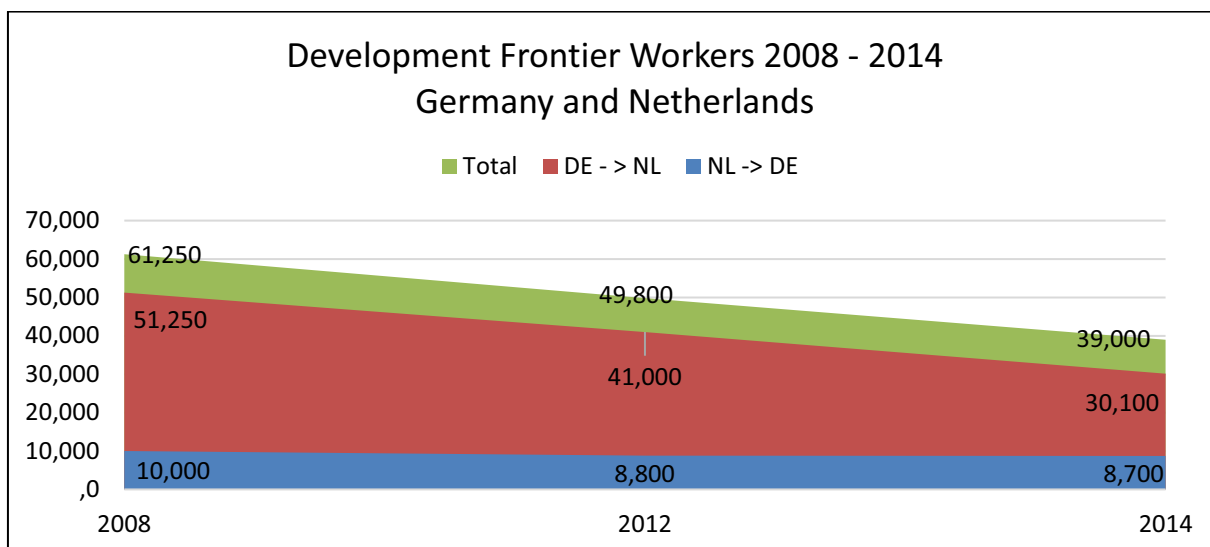


Figure 1: Source: Internationaliseringsmonitor 2016 – Derde kwartaal, p. 24; CBS 2015 Arbeidsmarkt zonder grenzen, p. 18, 22, 33; Feiten en Cijfers / Zahlen und Fakten, Overijssel-Duitsland in de grensstreek, 8 februari 2016, p. 26; Maatwerktabel - Grenspendel en migratie at <https://www.cbs.nl/nl-nl/nieuws/2016/37/meer-duitsers-pendelen-naar-nederland-dan-andersom>

Figure 2 shows that there has been a clear decrease of frontier workers between Germany and the Netherlands from over 60,000 in 2008 to roughly 40,000 in 2014. For future assessments, it would be advisable to develop a coherent approach to counting the numbers of frontier workers, even though it is clear that it is impossible to end up with an accurate number due to many special forms of frontier workers.

As mentioned above, the new tax treaty entered into force on 1 January 2016. The impact assessment of this dossier should therefore have taken an ex-post form. However, since there is no data available to assess the real impact of the new tax treaty as yet, and due to the general transition period of one year which enables taxpayers to follow the old tax treaty provisions up to January 2017,<sup>259</sup> this assessment takes the form of an ex-ante evaluation. It provides in the first place an overview of the changes for frontier workers, and secondly evaluates the new compensation scheme based on calculations provided by the Dutch parliament for Dutch resident frontier workers working in Germany. The rationale behind the compensation scheme is to relieve the Dutch resident frontier workers from the higher tax burden in Germany and compensating tax advantages available in the Netherlands, which are absent in Germany.

Various changes for cross-border workers can be highlighted by comparing the old and new tax treaties. Whereas only minor changes can be found in the actual general employment provision in Art. 14 (1-3), quite a number of changes can be observed for the tax treatment of personnel working aboard ships and aircrafts, directors, as well as artists and sportsmen and women. The allocation of taxing rights for personnel aboard a ship or aircraft in Art. 14(4) shifted from the state of effective

<sup>259</sup> Art. 33, section 6 of the treaty: 'Niettegenstaande het tweede en derde lid, indien een persoon uit hoofde van de Overeenkomst van 1959 recht zou hebben op grotere voordelen dan uit hoofde van dit Verdrag, blijft de Overeenkomst van 1959 naar keuze van een dergelijke persoon met betrekking tot deze persoon volledig van toepassing gedurende een tijdvak van één jaar, te rekenen vanaf de datum waarop de bepalingen van dit Verdrag van toepassing zouden zijn uit hoofde van het tweede lid.'

management of the employer to the resident state of the employee. The new Art. 16 imposed by Germany<sup>260</sup> now taxes artists and sportsmen and women in the state of performance, which is in accordance with the OECD approach, and no longer in the state of residence. For directors, a new Art. 15 had been implemented. Irrespective of their position as a member of a supervisory or management board, directors are now taxed in the state in which the company for which the director works is officially based. Not much changed in relation to the income of professors and lecturers for short-term visits, now to be found in Art. 19, except for the fact that a separate provision has been implemented in the new tax treaty. The most influential new aspects for all forms of employment income derived by frontier workers between Germany and the Netherlands are the adoption of a compensation scheme for the higher tax burden Dutch resident workers face in Germany as well as the lowering of the threshold to fall under the German *'Splittingverfahren'*. The compensation scheme can be expressed in short through the following equation (see Figure 3):

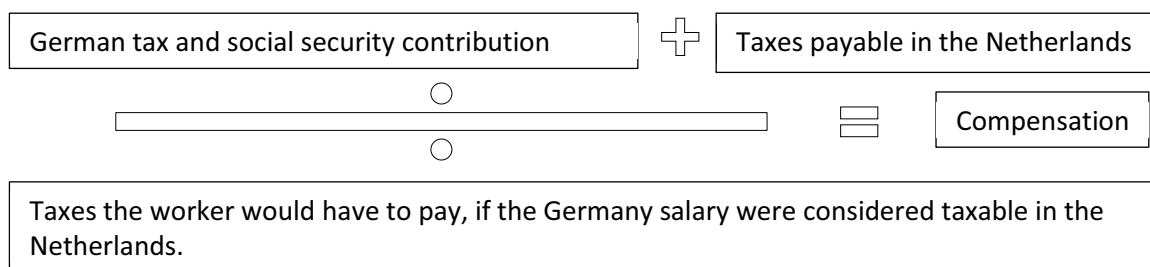


Figure 2

The simplification provided in the new tax treaty regarding the German splitting tariff consists of a detachment of the 90% and the absolute income requirement for both spouses.<sup>261</sup> In this respect, it is only necessary that one spouse (taxable in Germany) is personally fulfilling the requirements. Thus, if one of the spouses complies with the 90% condition or the absolute income requirement, the entire income of both spouses can be taken together and then split into half for a more favourable treatment in terms of progression.

For the *'Splittingverfahren'* and the compensation scheme, the Dutch parliament has drawn up various examples of general Dutch resident frontier workers and how the new situation could play out in real life. Table 4 gives a summary overview of the cases dealt with and shows the possible advantages of the splitting tariff and potential amounts of compensation possible.

<sup>260</sup> Lower House of Parliament, session year 2013–2014, 33 615, no. 5, p. 31-32; Drucksache 17/10752, p. 59.

<sup>261</sup> In article XVI, section 1 of the Treaty Protocol, the limitations of the second sentence of article 1, section 3, in conjunction with Article 1a, section 2, of the German Act on income tax (*'Einkommensteuergesetz'*) are declared not applicable to spouses living in the Netherlands.

Table 4: SP = Spouse; CH = Children; SOL = Solitary; GS = German Salary; RV = Rentenversicherung; AG = Arbeitslosengeld; SN = Salary Netherlands; OHC = Own House Costs; B1 = Box 1 Income; GT = German Tax; IT = Income Tax; PV = Premie Volksverzekering; HK = Heffingskortingen; SB = Schaduwberekening; COM = Compensation; TT = Total Taxes; IB = Income Tax; AV = Sole Wage Earner; BV = Both earning salaries; CH = Children; ASPT = Advantage German Splitting Tariff.<sup>262</sup>

Case	1A w/o CH		1B with CH		2A SOL	2B SOL	3A AV/ w/o CH	3B AV/ with CH	4A BV DE & NL with CH	4B BV DE & NL with CH	4C BV DE & NL w/o CH	4D BV 75% DE & 35% NL
	SP 1	SP 2	SP 1	SP 2	SOL	SOL	SP 1	SP 1	SP 1	SP 1	SP 1	SP 1
<i>Salary conversion</i>												
<b>GS</b>	30000	20000	30000	20000	30000	95000	30000	30000	30000	60000	60000	60000
<b>RV</b>	2835	1890	2835	1890	2835	6578	2835	2835	2835	5670	5670	0
<b>AG</b>	450	300	450	300	450	1044	450	450	450	900	900	0
<b>SN</b>	26715	17810	26715	17810	26715	87378	26715	26715	26715	53430	53430	60030
<b>OHC</b>	5000	-	5000	-	5000	16000	5000	5000	5000	16000	16000	16000
<b>B1</b>	21715	17810	21715	17810	21715	71378	21715	21715	2715	37430	37430	44000
<i>Calculation of compensation</i>												
<b>GT</b>	3541	2361	3,365	2243	4226	29982	1396	1396	2702	12166	12356	6586
<b>IT</b>	1373	1041	1373	1041	1373	20141	1373	1373	1373	4345	4345	0
<b>PV</b>	6764	5547	6764	5547	6764	10392	6764	6764	6764	10392	10392	10392
<b>TT</b>	-	-	-	-	-	-	-	-	-	-	-	16044
<b>IB</b>	-	-	-	-	-	-	-	-	-	-	-	7104
<b>PV</b>	-	-	-	-	-	-	-	-	-	-	-	10392
<i>Deductions</i>												
<b>HK</b>	3724	3603	3724	3603	3724	2551	3724	3724	3724	3197	3197	2934
<b>HKN</b>	-	-	-	-	-	-	2001	2001	-	-	-	-
<b>SB</b>	4413	2985	4413	2985	4413	27982	2412	2412	4413	11540	11540	14562
<b>COM</b>	0	0	0	0	0	2000	0	0	0	626	816	1482
<b>ASPT</b>	68		157		-	-	2830	2610	1304	1850	1902	7608

<sup>262</sup> Lower House of Parliament, session year 2013–2014, 33 615, no. 5, p. 50-58 retrieved from <https://zoek.officielebekendmakingen.nl/blg-266255>.



As can be seen from the various cases above, the compensation scheme as it has been expected to work in 2013 does not warrant great benefits for Dutch frontier workers working in Germany. In the presented situations, the compensation scheme rendered only minor effects up to a salary of €60.000 gross reaching a compensation of a maximum of €1,600, but often remaining below €1,000. For workers earning a salary above €80,000, the compensation scheme may become more lucrative as compensations of €2,000 and higher are possible. Only if specific conditions for one of the wage earners are met, then the actual compensation can in certain situations result in a higher amount.<sup>263</sup> In addition, the splitting tariff can now be applied easier, potentially leading to tax advantages in Germany and consequently an increase in net salary. In the end, as can be observed through the general examples provided, much depends on the specific situation and benefits can vary a great deal.

Considering the compensation scheme especially the new mutual agreement on the regulation for the compensation scheme, which stipulates that German social security contributions are not comparable to Dutch social security contributions and are in this respect excluded from the compensation calculation, puts the above given examples into question. If the German contributions are not comparable and in this respect not taken into account for the compensation scheme, the overall compensation might decrease, which discourages frontier workers from requesting the application of the compensation scheme as the benefits are going to be minimal. In addition, very recently the 'Deutsch-Niederländische Gesellschaft' (DNG) commented on the new compensation scheme questioning the fairness of a one-sided compensation scheme in the protocol to the new tax treaty (No. XII).<sup>264</sup> According to the DNG, the newly adopted compensation scheme would treat German resident frontier workers working in the Netherlands less favourably than Dutch resident frontier workers working in Germany. They therefore sent a letter to the finance ministry of North Rhine-Westphalia (NRW), in which they request an implementation of a compensation scheme for German resident frontier workers too.<sup>265</sup> An answer to the request of the finance ministry is still awaited.

All in all, at this stage for the active frontier workers no conclusive effects can be observed. This summary of the impact assessment on the new tax treaty between Germany and the Netherlands elucidated the important changes to come for the active frontier workers and a potential functioning of the new compensation scheme and applied '*Splittingverfahren*'. Definite conclusions however have to be considered with caution.

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<sup>263</sup> In this respect, see cases 1A and 1B.

<sup>264</sup> DNG (2016) 'Benachteiligung deutscher Grenzgänger in den Niederlanden?' retrieved from: <http://aha24x7.com/benachteiligung-deutscher-grenzganger-den-niederlanden/>

<sup>265</sup> *ibid.*

## B. Pension

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*Mr. Dr. Marjon Weerepas*  
*Bastiaan Didden LL.M.*  
*Sander Kramer LL.M.*

The new tax treaty between the Netherlands and Germany entered into effect on 1 January 2016. This treaty serves to replace the tax treaty signed in The Hague on 16 June 1959. The new tax treaty and the changes within it were discussed extensively, as evidenced by the very extensive treatment in the Dutch parliament and the media attention devoted to the treaty when it was signed. One aspect of the new treaty in particular attracted a great deal of attention: the new article governing pensions. The change, known as the '€15,000 threshold,' which was implemented in this article as a change from the old treaty, entails a number of financial consequences for retirees residing in Germany and who have accrued pension in the Netherlands. Some of these retirees are retired German frontier workers who worked in the Netherlands at some point in the past.<sup>266</sup>

The most significant change in the pension article is a change in the tax liability on pensions in excess of the total amount of €15,000. Under the old tax treaty, a retiree residing in Germany incurred Dutch tax on his or her general old-age pension, and in Germany essentially no taxes on his or her company pension. Under the new treaty, both the general old-age pension and the company pension are taxable in the Netherlands as soon as the total gross amount exceeds €15,000. This is in contrast to the system under the old treaty, in which a retiree in the Netherlands was taxed in Germany on his or her 'Rente' (annuity) and taxed in the Netherlands on his or her German company pension. Under the new treaty, both the annuity and the company pension are taxable in Germany as soon as the total gross amount exceeds €15,000.

The research as part of ITEM's cross-border impact assessment 2016 considered specifically from a Dutch tax law perspective what the impact of the new pension article on post-active German frontier workers will be. The report presents income projections and mathematical examples to attempt to give a clear picture of the financial consequences the change in the pension article will have on this group. The proviso here is that the treaty has only recently come into effect, so for the time being, the actual impact on this group of retirees and the frontier region will be difficult to measure.<sup>267</sup> An additional complication is that under the 'general transitional scheme' the old tax treaty from 1959 may still be applied for the year 2016. There is also a transitional scheme on the Dutch side - the 'special transitional scheme' - that, under certain conditions, allows taxpayers to have their company

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<sup>266</sup> This also affects Dutch people who moved to Germany after retirement. A total of approximately 5,500 retirees are expected to be 'hit' by the change to the pension article. See *Parliamentary Documents II* 2013/14, 33 615, no. 8 (Memorandum in response to further report), p. 6. Unfortunately, concrete numbers about the group of retired frontier workers are not available.

<sup>267</sup> It can be argued that a retired frontier worker's connection to a specific geographic border area is less strong than the binding of active frontier workers in this area. Of course, after retirement the retired frontier worker is no longer necessarily bound to a border region. However, for this cross-border impact assessment, the cross-border effects result from the active period in which the worker did work in the cross-border situation.

pension taxed at a lower rate in the first six calendar years following the year the treaty enters into effect (2016).<sup>268</sup>

The income projections used indicate that the new tax treaty will have financial consequences primarily for retirees living in Germany with a Dutch pension in excess of €15,000. The special transitional scheme, which was designed to mitigate this impact on retiree income, is primarily effective for those retirees residing in Germany with a relatively high pension. Another aspect that the report reveals is the interest on the part of the legislator in creating a national tax measure in relation to the tax treaty. On this subject, the report discusses the Dutch ‘net pension scheme,’ a scheme that comprises a maximization of the tax-allowable company pension accrual and which, from a treaty-technical perspective, could raise questions about the tax treatment of the scheme.

As such, ITEM’s analysis of this dossier in the cross-border impact assessment 2016 can be seen as an initial (very early stage) step towards further, more detailed future research from a Dutch tax perspective. In the future, the treaty could also be ‘placed under the microscope’ from a German perspective. This also requires adequate statistical data to be available on which the effects of the new tax treaty in practice can be analysed and interpreted. Subjects that could be included in the context of future follow-up research include:

- the fact that the transitional scheme serves a resident of Germany who has accrued pension in the Netherlands can be seen as an indication that the situation under the tax treaty is problematic for that situation, but not for the converse. In the future, of course, it would be advisable to clarify the latter situation as well<sup>269</sup>, with the ultimate object of being able to make a comparison between:
  - the income situation of the ‘neighbour’ and former colleague of the Dutch retired frontier worker, both under the old and the new tax treaty.
  - the income situation of the ‘neighbour’ and former colleague of the German retired frontier worker, both under the old and the new tax treaty.
- further research from an economic perspective into the impact of the new tax treaty on the sustainable economic development of the border region and the business climate.

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<sup>268</sup> Opting for application of both the general and special transitional schemes can then lead to a maximum of five calendar years of utilization of these special conditions.

<sup>269</sup> By way of illustration, see: *Parliamentary Documents II* 2013/14, 33 615, no. 5 (Memorandum in response to further report), annex 1.

## Dossier 2: Recognition of professional qualifications

*Prof. dr. Hildegard Schneider*  
*Mr. dr. drs. Alexander Hoogenboom*  
*Lavinia Kortese, LL.M.*

The recognition of professional qualifications has been one of the capacities of Europe ever since the early days of the European Community (as set out in the Treaty of Rome). Over time, a huge number of tools have emerged to facilitate the mobility of practitioners of regulated professions.<sup>270</sup> The most recent is Directive 2013/55/EU, which updates a number of aspects of the existing Directive 2005/36/EC. In practice, professional practitioners report difficulties in practical matters such as obtaining information and the duration and expense of the procedures. Central within this research into the recognition of professional qualifications is the question of how certain practical matters that are of particular importance to the frontier worker are to be implemented and enforced in certain countries/states after the modernization of Directive 2005/36/EC brought about by Directive 2013/55/EU.

Research into the recognition of professional qualifications as a component of ITEM's cross-border impact assessment is focused on three countries/states, being based specifically on the area bordering directly on the Province of Limburg. Because the procedures for recognition for frontier worker are the same as for a professional from a country not directly bordering on the Province of Limburg, the research does, however, have broader implications. Consequently, the research comprises the entire Dutch-Belgian frontier and the entire border area between the Netherlands and the German state of North Rhine-Westphalia (*Nordrhein-Westfalen*).

The European legislation on the subject of recognition of professional qualifications is implemented 'in various places'. Because the directive provides two systems for automatic recognition (only available for specific professions) and one general system for recognition (under which most professions fall), the European regulations in this area are generally implemented in horizontal and sector-specific legislation. As a result, the process of recognition generally differs for each profession and sector.

For the recognition of professional qualifications dossier, ITEM conducted a mapping study of the potential frontier effects of Directive 2013/55/EU. As a consequence of the fragmented nature of the legislation on the recognition of professional qualifications and the fact that the procedures are usually defined at the profession or sector level, the research focuses on the following professions: junior medical/medical specialists, nursing staff, child care professionals, and electricians. These selected professions represent several different scenarios for recognition under European legislation, and are among the most mobile sectors under Directive 2005/36/EC.<sup>271</sup>

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<sup>270</sup> A regulated profession is a profession for which specific requirements governing the practice of the profession are dictated by law. As a consequence of the free movement of persons, access to nonregulated professions is unrestricted in the EU.

<sup>271</sup> Commission staff working paper – Impact assessment – Accompanying document to the Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of the professional qualifications and Regulation on administrative cooperation through the Internal Market Information System, SEC(2011) 1558 final, p. 6.

The underlying concept of recognition of professional qualifications is based on a few key principles. The topic is particularly relevant in the context of Union citizenship, the free movement of persons, non-discrimination, and the principle of mutual recognition. To test whether the Netherlands, Belgium, and North Rhine-Westphalia have implemented Directive 2013/55/EU in light of these principles, ITEM reviewed the legislation for the four selected professions against nine different indicators.

These indicators were defined based on the perspective of the frontier worker. Specific factors considered were the decision period, costs of the procedure, the language of the required documents accepted by the authorities, the quantity of documents required, the number of different desk contacts required throughout the process, availability of a central information point, option for electronic procedures, whether an Assistance Centre is available, and the way in which professional qualifications are recognized. After the analysis of the indicators by profession and by country/state, a score was assigned to each profession (max. 900). The table below shows the results of the analysis.

Profession	Country/state	Score (max. 900)
Junior medical/medical specialist	Netherlands	575
	Belgium	625
	North Rhine-Westphalia	525
Nurse	Netherlands	750
	Belgium	675
	North Rhine-Westphalia	600
Child care professional	Netherlands	750
	North Rhine-Westphalia	550
Electrician	Belgium	700
	North Rhine-Westphalia	550

The research reveals that the recognition procedures for the various professions score differently in the different countries. In general, the doctors scored lower, the nurses scored average, and the child care professionals and electricians scored higher and lower, depending on the area studied. The analysis also showed that procedural aspects can be the primary source of negative frontier effects. This specifically refers to the costs of recognition procedures, the method of requesting recognition, the language in which the documents will be accepted, and lack of clarity on obtaining information.

It can be concluded that the countries/states studied have properly implemented the actual provisions of Directive 2013/55/EU, so from a material perspective, it should be possible to set up a functioning recognition process. Nonetheless, the analysis reveals that a number of practical issues can give rise to obstacles, as a result of which the countries/states studied do not always offer the most advantageous facility for the frontier worker. The fact that some authorities only accept documents in one language is an example of such an issue; likewise, identifying the correct competent authority for the recognition and lack of clarity about the costs of the process can also be a problem. Multiple language choices for documents and more effective information flows would help streamline the recognition process.

Finally, it is worth making one final observation on this dossier. Despite the fact that the scores would appear to suggest the negative frontier effects are limited, the sheer number of cases in practice where problems with recognition are encountered indicates that the reality is different. This

demonstrates a discrepancy between the legislation and the practice of obtaining recognition. Although the legislation is not particularly problematic, the reality tells a different story. Remedying this gap between the legislation and the practice is an essential objective associated with the recognition of professional qualifications.

### Dossier 3: Cross-border cooperation Investigation of INTERREG programmes on the Dutch border

*Dr. Mariska van der Giessen*

In 2015, the European Union's INTERREG programme<sup>272</sup> celebrated its 25th anniversary. INTERREG, the funding programme for improving cross-border cooperation, has been serving the EU since 1990. It is part of the larger European Regional Development Fund (ERDF), and it has taken various forms and gone through various periods since the start of its implementation in the border regions. The current INTERREG VA programme, with a term of 2014-2020, is the fifth programme period. The budget of European funding made available for cross-border cooperation within Europe continues to increase steadily. For the current programme period, this means that there is approximately €6.6 billion available for cross-border cooperation in Europe.

The border regions working with this programme over its several periods have gradually changed their organizational structure and implementation processes. Through these changes, the basic concept, the promotion of cross-border cooperation with INTERREG resources as 'driver,' has remained unchanged. It would appear that the significant changes lie primarily in adjusting to the continuing movements in the legislation on the European side. This has, for example, necessitated a geographic restructuring of the programmes. It has also changed other aspects, such as the procedures for preparation of the programme, decisions within the programme and the process of closing projects. As the programme progresses, we are also gaining a perspective across multiple programme periods, and this reveals that the requirements and codetermination needs of the regional and national partners for the implementation of the programme are taking on an increasingly significant role.

The research within the cross-border impact assessment is a survey and comparative study of the three INTERREG VA programmes on the Dutch border. The research framework was defined to include the INTERREG programme Germany-Netherlands, the INTERREG VA programme Euregio Meuse-Rhein (a German-Dutch-Belgian programme) and the INTERREG VA programme Flanders-Netherlands. The research focuses firstly on a comparison of the progress in the programmes (reference date 1 August 2016). The next step is a comparison of approval and closing procedures for the project within the programme. Thirdly, the research concentrates on the most significant differences in the implementation of the programmes in comparison with the previous programme period INTERREG IVA. Finally, the research presents an assessment of the image of INTERREG VA in general on the part of the programmes themselves. Because the European Commission has been working for years to simplify programmes like INTERREG<sup>273</sup>, the research within the INTERREG dossier is also intended to determine whether the regulations of INTERREG VA have actually been simplified, and whether as a result the implementation of cross-border projects has been simplified in comparison to the preceding programme. Additionally, with this research ITEM is making a first attempt to look at the cause of the objections (which were also identified by parties in the field in the survey for the ITEM cross-border

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<sup>272</sup> The Interreg Community Initiative (INTERREG for short) is a European programme working towards breaking down borders in Europe. With European Union funding, INTERREG tries to promote cooperation between regional areas in different countries as part of a broader strategy of strengthening the economic situation and cohesion across the European Union.

<sup>273</sup> See, for example, CEC Simplifying Cohesion Policy for 2014-2020 in DG Regio.

impact assessment 2016) and determine whether they might also still apply for the current INTERREG VA programme.

This research includes, alongside the literature survey, depth interviews with programme and project coordinators of all three programmes. The indicators, formulated to serve as a guide for these interviews were based on a 'big picture' perspective of the three programmes, and cover both quantifiable and not directly quantifiable indicators. The quantifiable indicators include the exhaustion/reservation of the INTERREG VA resources, the number of approved projects, the average application time, the changed regulations and procedures on approval and closing of projects, and the consideration of the programme as a whole. Not directly quantifiable indicators include indicators like the interest in the INTERREG VA programme (in comparison to INTERREG IVA), the cooperation of the programme partners (as compared to the past), and the image of the programme. These general indicators reflect an assessment of the interview partners.

This research is a limited, overview study that only assesses (of all management layers cooperating within the INTERREG VA programme, being local/regional, national and European) the local/regional level, being that the discussions were only conducted with the various actors at the level of the programme management. This means it is a comparison in the performance of the programmes, without incorporating any analysis of the geographic, demographic, or economic characteristics of the areas or the various different forms of administration of the programmes. The various different administrative forms of the programmes are only highlighted where they proved to be of influence on the procedures of a programme. A more comprehensive follow-up study could incorporate input from the various administration and policy layers cooperating with each other vertically and horizontally across the border.

It can be concluded that the INTERREG programme Germany-Netherlands, as well as the Flanders-Netherlands programme, are more on schedule in the performance of the current programme, given that now, some one-and-a-half years after the start of the programme, approximately 50% or more of the total budget has already been committed. This is notably ahead of the programmes running via the INTERREG VA programme Euregio Meuse-Rhein. As it became clear in the interviews, this has nothing to do with any increasing administrative burden under European regulations. Virtually all interview subjects confirm that the European regulations on the implementation of INTERREG VA have actually become simpler. Likewise, in the programmes themselves, there is the desire to continue the simplification, so the ultimate beneficiaries of the programme (the project backers and partners) experience a reduced administrative burden and carry more independent responsibility in the projects. However, it is at this level in particular that future projects will have a long way to go. One such area of improvement might be more transparency of the procedures of the various programmes. Additionally, it should be possible to set the national rules aside somewhat more. There might also be a potential for better coordination of the programmes between each other and a reduction of the burden for project backers and partners, which at present have to set new regional regulations and/or coordination procedures for each programme and sub-programme.

Despite the reductions in burden and the renewed application, monitoring, reporting, and closing structures for projects in INTERREG VA (which are discussed in great detail in the dossier), the image of 'administratively onerous', 'difficult to implement in practice', and 'procedurally complicated' still hovers over the INTERREG VA programme. The underlying causes of this are, to some extent,



explained by the interview subjects themselves in several ways. From there, it appears that we can generalize reasons based on experiences from programmes in which things go wrong, and these can be projected onto all programmes. It also appears that experiences from the past with INTERREG IIIA and INTERREG IVA are being carried over into the new programme. It must also be noted that other funding programmes involving public or European funding may not be any less draconian.

Further it became clear in the interviews that if many programme partners have to make decisions together and the procedures in each individual programme are just a little bit different, the structure of INTERREG A in its entirety remains complex and not particularly transparent. Nonetheless, most interview subjects agreed that it is in fact the shared, cross-border administration by programme partners on each side of the border that makes the INTERREG A programme unique. This makes the programme in itself the very model of cross-border cooperation.

## Dossier 4: Social security: illness and disability

*Mr. dr. Saskia Montebovi*

*Prof. dr. Saskia Klosse*

Any person working in the Netherlands and who becomes sick or occupationally disabled then falls under the Dutch systems for illness (article 7:629, Dutch Civil Code) and occupational disability (Work and Income according to Labour Capacity Act). This also applies for any frontier worker residing in another EU Member State. Because social security is a national authority, Member States are entitled to design and change their own social security systems. Much more so than in other Member States, the Dutch government is increasingly integrating concepts such as privatization, activation, and reintegration into its social security. The current EC Regulations 883/2004 and 987/2009, which coordinate cross-border Social Security, have been in place since May 2010 and devote very little attention to reintegration.

This research, as a component of ITEM's cross-border impact assessments 2016, focuses on the Dutch short-term and long-term incapacity for work (illness and occupational disability) and the effects of this system in a cross-border situation. The reason for this choice is that the Dutch systems put in place to support these two social security risks have been fundamentally restructured over the past two decades, and additionally, they differ significantly from the systems in other Member States. This contrast between the Dutch rules (many, strict, complicated, and primarily nationally oriented) and the European rules (very few and not specific) in cross-border working situations quickly leads to problems or gaps for the EU worker and his or her employer. The focus on reintegration (stimulus philosophy) and the shift of the responsibility for reintegration to the employer and employee definitely has its positive sides, but at present is not always workable or comprehensible for foreign employers, employees, and the relevant institutions.

Neither the Dutch government (legislator and implementing body the UWV) nor the European legislator (through the coordination regulations) makes any distinction for border areas or frontier workers. This means that the Dutch legislation applies for not only German and Belgian frontier workers, but, for example, a Spanish or Polish worker doing work in the Netherlands, whether on a temporary or permanent basis. In practice, however, it appears that the approach to reintegration for frontier workers who commute daily, or to employees from Member States farther away, is completely different, and is not currently regulated adequately by either Dutch or European rules. For the purposes of this research, 'border area' is defined as the entire border between the Netherlands and other Member States.

The core principles that this research assumes are: the free movement of persons, non-discrimination, sustainable development within Europe, the Europe 2020 strategy, and the loyal cooperation between Member States.

Research has shown that the Dutch systems for illness and occupational disability can (and possibly do) impede the free movement of labour and also lead (or could lead) to legal uncertainty, while also (potentially) threatening social cohesion in Europe. Significant problem areas include: insufficient knowledge of the continued payment of salary obligation (of max. 104 weeks), insufficient knowledge of the reintegration obligation on the part of employee and employer both during illness and during

occupational disability, the heavy financial and administrative requirements of the reintegration obligation for both employer and employee, the lack of a contact point at the official government level during the period of continued payment of salary during illness, the national approach to medical exams and the non-acceptance of medical reports from abroad, the language and structure of the medical reports, the lack of a transparent foreign policy of the UWV, and the absence of European rules (in the Regulations) for reintegration upon illness and occupational disability.

These problem areas can have an obstructive effect for both the frontier workers affected by them and their employers, because they lead to the following negative effects: the employee receives no salary or is paid late, the employee does not receive adequate support during reintegration and is penalized financially by the UWV or the employer for this lack of support, the employer is financially sanctioned by the UWV (in the form of an extended obligation for continued payment of salary), and employer and employee become embroiled in a conflict concerning their obligations under Dutch law. For these reasons, employers may be tempted to eschew employees in a cross-border situation due to the complications and confusion on their social security protections under Dutch law.

Multiple measures will be required to prevent, or at least minimize, the obstacles in the application of the Dutch rules of illness and occupational disability to frontier workers. Potential solutions can be found in the introduction of a cross-border impact test, the drafting of medical reports that are applicable in other Member States, allowing acceptance of foreign medical reports, transparent policy rules on the part of the UWV, more European rules for reintegration (both benefits and dispensations), the reduction of the continued payment of salary obligation, more bilateral and multilateral arrangements, cross-border networks between government bodies, and an improved knowledge of the Dutch legislation through better information provision by the Dutch government.

## Dossier 5: The qualifying foreign tax obligation of section 7.8, Income Tax Act, and EU law

Dr. Hans Arts  
Jasper Korving LL.M.

On 1 January 2015, the optional scheme of section 2.5, Income Tax Act 2001, was replaced by the new system of the qualifying foreign taxpayer. Pursuant to section 7.8 of the Income Tax Act 2001, the qualifying foreign taxpayer is entitled to the same deductions and tax credits as domestic taxpayers.

The optional scheme was replaced because it was deemed to be not compatible with EU law.<sup>274</sup> In this section we examine the extent to which the new scheme of the qualifying foreign taxpayer is in accordance with EU law.

The scheme is quite relevant in the Dutch border region. Globally speaking, this scheme entails that taxpayers who do not reside in the Netherlands but enjoy over 90% of their worldwide income in the Netherlands are treated as residents of the Netherlands for tax purposes.

Because the current system has only come into effect recently, concrete figures are not available. Consequently, the research focuses essentially exclusively on the legal consequences and discussion points of the scheme.

### *For the KBB: Schumacker doctrine and the optional scheme for domestic taxpayers*

As a general rule, according to standard international tax law the country of residence of the taxpayer must provide for the personal deductions. Under EU law, and specifically the ECJ's Schumacker decision, a Member State is obliged to allow a domestic taxpayer who enjoys all or virtually all (90%) of his or her income in the Netherlands the same personal deductions as a domestic taxpayer.<sup>275</sup>

With the Schumacker decision in mind, the Netherlands introduced to the option for domestic taxpayer status. The optional scheme did include a significant anti-abuse clause, in the form of the 'clawback' provision under section 2.5(3), Income Tax Act 2001.

The clawback provision gave rise to a great deal of discussion, ultimately leading to the state secretary's decision to approve that foreign taxpayers initially opting in and later deciding to opt out because they did not meet the Schumacker criterion would not have the clawback provision applied to them.<sup>276</sup>

In the Gielen decision, the ECJ then explicitly addressed the place of the optional scheme within EU law<sup>277</sup>, ruling that the Netherlands was violating the freedom of establishment and that the Netherlands could not justify this violation by hiding behind the option for domestic tax liability.

### *Introduction of 'qualifying foreign tax subject'*

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<sup>274</sup> ECJ 18 March 2010, matter C-440/08 (Gielen), NTFR 2010/795, Jur. 2010, p. I-2323.

<sup>275</sup> ECJ, 14 February 1995, matter C-279/93 (Schumacker), Jur. 1995, p. I-225.

<sup>276</sup> Decision of 26 April 2013, no. DGB2013/201M, NTFR 2013/1090, V-N 2013/29.14.

<sup>277</sup> ECJ 18 March 2010, matter C-440/08 (Gielen), NTFR 2010/795, Jur. 2010, p. I-2323.

The optional scheme of section 2.5, Income Tax Act 2001, was eliminated effective 1 January 2015 and replaced by a 90% scheme with criteria based on section 7.8(6), Income Tax Act 2001. With this system, the Dutch government is trying to move closer to EU law and the Schumacker doctrine specifically. The personal scope is more restrictive than the optional scheme, and it eliminates a number of options under the latter scheme that could have constituted a violation of EU law.<sup>278</sup> This means that henceforth, all foreign tax subjects who earn at least 90% of their income in the Netherlands can be eligible for personal deductions if they are residents of EU and EEA countries, the BES Islands, or Switzerland. These persons are designated as qualifying foreign tax subjects under section 7.8(6) of the Income Tax Act 2001. With this change, the optional element of the present scheme is also eliminated. This effectively puts the Netherlands in compliance with the ECJ's Schumacker criterion in its strictest form.

#### *Personal scope of application*

The personal scope of application under section 7.8(6), Income Tax Act 2001, is restricted to residents of EU and EEA countries, the BES Islands, and Switzerland. The scheme does not apply to residents of any other country. The optional scheme of section 2.5, Income Tax Act 2001, applied to residents of EU Member States and of countries with which the Netherlands had a system in place for the prevention of double taxation that also provided for the exchange of information. The personal scope of application of section 7.8, Income Tax Act 2001, is therefore quite limited as compared to that of section 2.5, Income Tax Act 2001.

The legislator estimates that as a result of this change, a large number of persons in typical emigration/remigration countries will be losing a benefit of an average of €940 that they had formerly obtained by opting in.<sup>279</sup>

#### *Income requirement*

The income requirement of section 7.8, Income Tax Act 2001, entails that a foreign tax subject whose income is, by Dutch standards, entirely or virtually entirely (in the Netherlands, this is understood as at least 90%) subject to wage or income tax in the Netherlands can enjoy the same tax advantages as a domestic tax subject.

In reference to the income requirement, the legislator's position as set out upon the introduction of the Income Tax Act 2001 is worth noting:

*In consideration of the case law of the Court of Justice of the European Union, which indicates that as a rule it is up to the state of residence to take the personal and family situation of tax subjects into account, but that in the event of insufficient income from the state of residence, the state of work must take that situation into account, an arbitrary threshold of 75 or 90% of the world income should not be seen as preferable.*<sup>280</sup>

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<sup>278</sup> Parliamentary Documents II, 2013-2014, 33 752, no. 3, under point 6.

<sup>279</sup> Kamerstukken II 2013/14, 33 752, nr. 11, p. 74.

<sup>280</sup> Parliamentary Documents II, 1999/2000, 26 727, no. 7, p. 445.

Section 7.8 of the Income Tax Act 2001 once again introduces a scheme with just such an arbitrary threshold. According to the legislator, the Gschwind decision entails that ‘entirely or virtually entirely’ can be interpreted as ‘at least 90%’.<sup>281</sup>

Likewise, the partner of the qualifying foreign tax subject may, under certain conditions of and in accordance with the second change memorandum, also be designated as a qualifying foreign tax subject. It should be noted, however, that this expansion to include the partners does not change the fact that discussion can still arise over the allocation and amount of tax credits for emigrating and immigrating domestic tax subjects. This scheme can also potentially violate EU law if it results in a difference in treatment depending on migration year.

### *European integration*

A thorough investigation into the impact of this scheme on European integration must still be conducted; however, any such investigation would require a solid statistical foundation, which is not available at present. As such, there is no way to give an indication of the impact on European integration at this time.

The assumption is that the scheme will have a negative impact on European integration, the reason being that by opting for the hard and arbitrary threshold of 90%, the Dutch legislator may be acting in violation of EU law. For a more detailed discussion of this point, see section 2.3.4 of the full report.

### *Conclusion*

This research demonstrates that the scope of application of the qualifying foreign tax subject under section 7.8, Income Tax Act 2001, is more restrictive in comparison with the old optional scheme of section 2.5, because the personal scope of application of article 7.8 is limited to residents of the EU and EEA Member States, the BES Islands, and Switzerland. Secondly, section 7.8 only applies if the income of the foreign tax subject should be entirely or virtually entirely subject to tax in the Netherlands. This condition contradicts the legislative history of section 2.5, Income Tax Act 2001, because at the time of the introduction of the Income Tax Act 2001 the legislator indicated that this type of arbitrary percentage threshold was not preferable. Further, this hard threshold, set at 90% of the world income, could arguably be in violation of the case law of the Court of Justice of the EU, specifically the matters *Commission v. Estonia*, *Wallentin*, and the conclusion in the still pending procedure *X* (Spanish football broker).

Additionally, according to the Advocate-General (AG) it would be paradoxical if a tax subject with only one work state could make a claim under the Schumacker doctrine, while a tax subject who made use of the freedom of movement and worked in two countries could not. If the ECJ were to follow the AG’s reasoning, this would mean that the Dutch scheme for qualifying foreign tax liability would have to be adjusted, because in that case foreign tax subjects who earned less than 90% of their world income in the Netherlands would likewise have to be eligible for personal deductions in the appropriate proportion to their income.

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<sup>281</sup> Parliamentary documents II 2013/14, 33 752, no. 3, p. 24; and ECJ, 14 September 1999, no. C-391/97, Jur. 1999, p. I-5451, BNB 2001/78, with note by I.J.J. Burgers (Gschwind).

The conclusion must therefore be that at present the legislator has a clearly different interpretation of the Schumacker and Gschwind decisions than it did upon the introduction of the Income Tax Act 2001, but the parliamentary history of section 7.8 of that act gives no indication of why, and on what grounds, the legislator revised its position. Likewise, how to deal with a situation in which a foreign tax subject has two work states, but meets the 90% criterion in neither of them, remains an open question.

## Dossier 6: Proposal for a directive amending Directive 96/71/EC COM(2016) 128

*Dr. Miriam Kullmann, LL.M.*

Cross-border posting of workers is a phenomenon that appears to be happening more and more often. Cross-border posting of workers is governed by the following regulations in terms of labour law and its enforcement: Directive 96/71/EC ('Posting of workers directive')<sup>282</sup>, Directive 2014/67/EU ('Enforcement Directive')<sup>283</sup>, and Regulation (EC) 593/2008 ('Rome I')<sup>284</sup>.

The research discusses the proposed revision of the Posting of workers directive and its potential legal consequences on Dutch labour law. This legal examination does not allow any conclusions about the possible (ex ante) impact on a border region. Moreover, the extent to which there may be specific consequences for a border region is also difficult to determine, in part because of the lack of empirical data. According to European Commission figures, in 2014 there were 87,817 posted workers in the Netherlands. However, this figure does not provide an accurate picture, because it is based on A1 declarations. This is problematic for three reasons: (1) not all Member States are in a position to provide the requested information, (2) there are differences between posting within the definition of the Posting of workers directive and Regulation (EU) No. 883/2004, and (3) the country of work does not always give notice of all changes.<sup>285</sup> Additionally, the Netherlands still has no notification obligation for cross-border service providers. The Dutch government does plan to introduce one, but only with effect from 1 January 2018.<sup>286</sup>

Looking at the potential consequences of the directive on Dutch labour law is speculative, because it is not as yet certain whether, and if so, when or in what form the proposed revision will ultimately be adopted by the EU legislator.

### The proposal for revision of the Posting of workers directive<sup>287</sup>

On 8 March 2016, the Commission announced the intention to adjust the Posting of workers directive 96/71/EC on three specific but important details.

#### (a) Duration of posting 24 months

If the expected or actual duration of the posting exceeds 24 months, then the Member State in which the employee is posted is considered to be the country in which the employee normally performs the work (article 2bis). A further stipulation is that if the posted employee is replaced at the same place

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<sup>282</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18/1.

<sup>283</sup> Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') [2014] OJ L 159/11.

<sup>284</sup> Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L 177/6.

<sup>285</sup> Jozef Pacolet & Frederic De Wispelaere, 'Posting of workers: Report on A1 portable documents issued in 2014' (report for the European Commission, December 2015), p. 9.

<sup>286</sup> See WAGWEU and the planned introduction of the notification obligation as from 2018. Parliamentary Documents II, 2015/16, 34 408, no. 6, p. 4.

<sup>287</sup> From M. Kullmann, 'Detachering van werknemers: naar meer transparantie en een betere handhaving?', *TRA* 2016, afl. 6/7.



and for the same work, the total duration of the posting of the multiple employees must be taken into account, this conditional on these employees being posted for a minimum of six months.<sup>288</sup>

For the Netherlands, this clause will be new. In some cases, it will not be immediately clear how long the performance of services will last, or along the way it may become clear that performance will take longer than expected. In such cases, the period of posting of 24 months could be exceeded and as a result the employee's normal country of work would change. This means an employee who had normally been working in Germany could, at a certain point, suddenly be classified as working in the Netherlands. In that event, the employee's 'protective regime' changes: first, the employee fell under German labour law, and after the change under Dutch labour law. Naturally, this would entail a number of consequences. In some cases, these may be to the employee's benefit, but in others not. Normally, during the placement the 'hard core' of article 3(1)(a)-(g) of the Posting of workers directive, the provisions of the temporary country of placement would of course apply (this, however, conditional on the rules of the country of placement being more advantageous to the posted employee - if they are not, the law of the employee's ordinary country of work applies).

For enterprises and posted employees, this change can offer more legal certainty on when which law applies to their employment relationship. In order to assess the compliance of enterprises with posted employees, the I-SZW (Inspection Service of the Ministry of Social Affairs and Employment) must conduct reviews and, where violations are encountered, impose administrative penalties. A great deal will depend on the enforcement of this clause. For the applicability of this proposed 24-month scheme, the threshold of six months may attract workaround constructions (i.e. by which companies may find ways to limit the postings, and potentially the duration of the services, to six months). It must be noted that the duration of the services need not be linked to the duration of the posting.<sup>289</sup>

#### (b) Term 'remuneration' replaces 'minimum wages'

The proposal tackles one of the most disputed terms: 'minimum wages' is replaced by the term 'remuneration'. This expands the definition of wages: the provisions on remuneration that apply to local employees and those that are derived from the law or collective labour agreements declared generally binding are applied to posted employees. A requirement for Member States is to list all remuneration components on a single website. This notification obligation was already dictated under article 5 of the Enforcements Directive, which the Netherlands should have already implemented by 18 June 2016, but this has not yet happened.

Along the same lines, with regard to subcontracting Member States may oblige companies to only work with subcontractors that extend certain remuneration conditions to employees that they also extend to the contracting party. It is interesting to note that these conditions, at least according to the explanatory memorandum, can also be incorporated into collective labour agreements that are not declared generally binding.

For the Netherlands, this change will primarily be significant for the collective labour agreements that are declared generally binding. Experience has shown that posted employees are in most cases scaled

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<sup>288</sup> On the duration of the posting and the relationship between the Posting of workers directive and Rome I, see: M. Kullmann, 'Tijdelijke grensoverschrijdende detachering en gewoonlijk werkland: over de verhouding tussen de Rome I-Verordening en de Detacheringsrichtlijn en de rol van de Handhavingsrichtlijn', *NIPR* 2015, afl. 2, p. 205-216.

<sup>289</sup> Kullmann 2015, p. 211.

lower than their counterparts with a regular position in Netherlands. In a situation in which posted employees were to actually benefit in terms of remuneration, this could have the consequence of making them less attractive for the recipient of the services in the Netherlands, because these employees would then become more expensive. One could argue that this takes away something that could be considered a comparative advantage on which the free movement of services (and thereby the cross-border posting) is based.

(c) Equal conditions for posted employee and ordinary staffing employee

Another stipulation is that in line with article 5, Directive 2008/104/EC, posted employees must be subjected to the same conditions that apply to domestic staffing services companies. This makes article 3(9) of the Posting of workers directive a legal requirement. This provision is already applicable in the Netherlands, so the change will have no effect except perhaps in increasing the awareness of the obligation on the part of cross-border service providers and their employees.

## Dossier 7: Flexibilization of the Old-Age Pension Commencement Date Act

*Prof. dr. Anouk Bollen-Vandenboorn*

*Mr. dr. Marjon Weerepas*

*Bastiaan Didden, LL.M.*

In mid-February 2016, member of the Lower House of Parliament Norbert Klein submitted a legislative proposal to amend the General Old Age Pensions Act and Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old Age Pensions Act earlier or later than the statutory retirement date.<sup>290</sup> This legislative proposal, also known as the 'Flexibilization of the Old-Age Pension Commencement Date Act,' opens the option to allow the statutory pension to begin up to five years earlier or later than the date on which the pension-entitled person reaches the statutory retirement age.

For ITEM, the legislative proposal was a reason to call attention, by means of a letter to the Standing Committee for Social Affairs and Employment, to the position of employees who have accrued both a Dutch general old-age pension and a foreign statutory pension.<sup>291</sup> For this group of employees (for example, migrant workers, labour migrants, and frontier workers), the flexible pension start date could have a positive outcome. Frontier workers are confronted with the fact that the statutory retirement ages in the Netherlands, Belgium, and Germany are all different. The Dutch general old-age pension starts later than in Belgium or in Germany, as the following table shows.

<b>Country</b>	<b>Current statutory retirement age</b>
Netherlands	65 years + 6 months
Belgium	65 years
Germany	65 year + 5 months

A frontier worker who has accrued statutory pension both in the Netherlands and in one of these two neighbouring countries will, at the moment of receipt of this foreign statutory pension, still have to 'wait a while' for the Dutch retirement benefit. This can have an impact on a frontier worker's income position.

The legislative proposal for flexibilization of the old-age pension commencement date offers the frontier worker the option to coordinate the start of his or her Dutch pension with the start date of the foreign statutory pension. Unlike in the current situation, the frontier worker will be able to claim payment of benefits from his or her accrued statutory pensions to commence from the same start date. An example calculation is provided in the full report.

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<sup>290</sup> Parliamentary Documents II 2015/16, 34414, no. 2 (Legislative proposal by Member of Parliament N.P.M. Klein to amend the General Old Age Pensions Act and Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old Age Pensions Act earlier or later than the statutory retirement date (Flexibilization of the Old-Age Pension Commencement Date Act).

<sup>291</sup> The relevant passages/findings of this letter to the Standing Community for Social Affairs and Employment are given in the full report.

Despite this positive impact on frontier workers, ITEM observes that, now that the legislative proposal has been put on the agenda for panel discussion in the Lower House of Parliament (scheduled for the end of October 2016), nowhere does the legislative proposal, explanatory memorandum, or any of the extensive commentary in the Standing Committee for Social Affairs and Employment devote any attention to the potential impact of the legislative proposal on frontier workers, even though two motions, in 2009 and 2012, referred to the importance of ‘continuing attention to the issues of frontier workers.’<sup>292</sup> In 2015, the importance of conducting a cross-border impact assessment, identifying effects on frontier regions during the legislative process, once again came into the spotlight as a number of political parties expressed an interest in this discussion.<sup>293</sup> If the legislator had introduced such a ‘review’ in the Flexibilization of the Old-Age Pension Commencement Date Act dossier, then it would have been clear that the legislative proposal for the Flexibilization of the Old-Age Pension Commencement Date Act could have a positive effect on the frontier workers who have accrued both a Dutch general old-age pension and a foreign statutory pension.

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<sup>292</sup> Parliamentary Documents II, 2011/12, 33000 IXB, no. 21 (Bashir motion). This motion refers in part to a motion submitted by Weekers (and adopted) in 2009 (*Parliamentary Documents II* 2009/10, 26 834, no. 26) and referring to the importance of devoting attention to the frontier worker issue.

<sup>293</sup> *Parliamentary Documents II*, 2014/15, TK50, 4 February 2015 (Cross-border impact review).

## Dossier 8: Cross-border employment services: Effects of mandate and capacities of the Dutch UWV (employee insurance agency)

*Dhr. Martin Unfried*

Cross-border employment mediation for job-seekers and cross-border services for employers are not discretionary options for national public employment services, but a required function. The new EURES<sup>294</sup> Regulation (EU) 2016/589 explicitly stipulates that employment services in border regions must work together more closely.<sup>295</sup>

The compulsory function was created to ensure that all employees are able to enjoy the free movement of labour, on a fair basis and in accordance with Union law, national law, and all national practices, in the form of voluntary labour mobility. This is an engrained fundamental freedom, based on article 45 of the Treaty on the Functioning of the European Union (TFEU), from which common mechanisms have been established for the processing of job openings, applications, and CVs, and the exchange of information on the mobility of labour within the Union.<sup>296</sup>

The research into the 'Effects of mandate and capacities of the Dutch UWV' within ITEM's cross-border impact assessment 2016 revolves around the question of what effects the current mandate and capacities of the Dutch public service, the UWV<sup>297</sup>, have on the performance of cross-border labour mediation along the border with Belgium and Germany.

The specific frontier region area used in this research is the border of the Netherlands province of Limburg with the German state of North Rhine-Westphalia, and the relevant labour market regions.<sup>298</sup> In this region, the UWV has collaborated with the German *Bundesagentur für Arbeit* in launching two projects designed to improve the cooperation considerably, in the spirit of the new EURES regulation.

The cross-border impact assessment within this research is, based on the determination of the geographic area, oriented primarily towards the theme of Euregional cohesion. Using a number of indicators, for this specific project a description is provided of the impediments that arise from the function and capacities of the UWV. The research is based on qualitative interviews with employees of employment agencies and EURES consultants, as well as intensive participatory observation during the development of the two cross-border partnerships. The availability of overall figures, for example, on the number of cross-border placements by UWV or EURES, is limited, but is also less relevant to the research. Moreover, any such figures would have to be comparable in frontier regions, something

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<sup>294</sup> European Employment Services.

<sup>295</sup> See preamble, consideration 5, Regulation (EU) 2016/589 of the European Parliament and the Council of 13 April 2016 on a European network of employment services (EURES).

<sup>296</sup> Regulation (EU) no. 492/2011 of the European Parliament and the Council.

<sup>297</sup> UWV is the *Uitvoeringsinstituut Werknemersverzekeringen*, the employee insurance schemes implementing body. According to its own description, it facilitates expert and efficient implementation of employee insurances, and offers labour market and data services.

<sup>298</sup> These are the Dutch labour market regions North & Central Limburg and South Limburg, and, on the German side, the *Arbeitsagenturbezirk* for Aachen-Düren, Mönchengladbach, and Krefeld.

that is impossible with figures from *Arbeitsagentur* and VDAB, at least at present.<sup>299</sup> Even in a EURES context, the differences in the definitions and statistical methods are simply too great.

An initial and very important indicator within the research was the question of whether the UWV had the personnel capacity for personal support of job-seekers over the border. Under its current framework, the UWV offers its job-seeker support primarily through online channels. Potential frontier workers are not seen as job-seekers requiring extra attention, despite the fact that staffers of the UWV as well as of the *Arbeitsagentur* both acknowledge that cross-border mediation demands more time for personal assistance.

It would be easy to conclude from the statements of staffers that cross-border services are difficult to integrate into the regular services.<sup>300</sup> Employees or supervisors of the UWV need to achieve targets, and these can be put at risk by devoting too much attention to cross-border mediation. Nonetheless, under the UWV's current approach this task does need to be integrated into the standard service package.

Fortunately, regional efforts have paid off in bringing extra personnel to bear on the partnership projects and strengthening the UWV-*Arbeitsagentur* cooperation, particularly in North Limburg. It must be kept in mind, however, that this extra capacity is only temporary and not guaranteed for the long term. A focus on the part of local staff on 'cross-border mediation' has not yet been institutionalized. These are, strictly speaking, exceptions, because the example in South Limburg shows that it is extremely difficult to come up with extra manpower for the new cross-border service from within the UWV. The current capacity of the UWV seems to be a limiting factor in the conduct of cross-border labour mediation.

A second significant indicator within this study was the question of whether the UWV (in consideration of the limitations under the framework of the standard services) is utilizing the opportunities that EURES offers for cross-border labour mediation.<sup>301</sup> For the staffing of the new cross-border service in Kerkrade, which was founded in collaboration with the partners in South Limburg, the *Arbeitsagentur* was able to deploy its own EURES advisors because these people were already carrying out cross-border activities like the actual placement of Dutch job-seekers with German employers. This was something impossible for the UWV to do in the same way. One cause of this was the fact that EURES advisors in the Netherlands are much more strongly focused on information and communication, and not specifically on the placement of job-seekers. A second cause that can be identified is that the staffing capacities of EURES in the Netherlands are considerably more limited than the capacities of the *Arbeitsagentur*.

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<sup>299</sup> *Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding* (Flemish Service for Labour Mediation and Professional Education).

<sup>300</sup> Personal assistance plays a crucial role in the standard services of the *Bundesagentur für Arbeit*, and this is something that the *Bundesagentur* also offers to Dutch job-seekers.

<sup>301</sup> EURES is an element of the European EaSI programme for employment and social innovation. It is an EU financing tool intended to promote a number of goals, including quality, sustainable employment.

Additionally, advisers in the Netherlands have, up until now been performing not only cross-border activities, but particularly transnational activities.<sup>302</sup> This means that the way in which the UWV is using EURES, is in itself an impediment to a closer, more systemic partnership with the employment services along the border.

A third indicator researched was the question of how the UWV can process the data of foreign job-seekers and employers. Until the summer of 2016, there was no simple way for German and Belgian job-seekers to be registered in the UWV's system; without a 'DigiD' (Dutch identity management platform registration) and Dutch postcode, registration proved problematic. Employers also had technical problems (relating to tax ID numbers and postcodes) up until the summer of 2016. By comparison, the systems of the *Arbeitsagentur* and VDAB seem to be more open for the purposes of cross-border data traffic. This would imply that the system does not facilitate systematic cross-border cooperation.

ITEM's research also revealed that at present the UWV does not have the financial means to devote to extra training of job-seekers to prepare them for a job on the other side of the border (language courses, etc.). The ad hoc funding through extra provincial resources or with the help of a sector plan has so far not produced satisfactory results.

From the intensive support and analysis of the Limburg cross-border projects, ITEM was able to establish that the current standard approach in the capacities of the UWV are not promoting the objective of closer cross-border mediation of labour. More to the point, the regional services in Limburg have so far attempted to work around these institutional limitations with individual, ad hoc solutions.

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<sup>302</sup> After the summer of 2016, this changed; now, of the sixteen Dutch EURES advisors, six are fully focused on cross-border activities.

## Dossier 9: Cross-border train travel – Fourth Rail Package

Dr. Johan Adriaensen  
Centre for European Research in Maastricht (CERiM)

*It can be characterized as extremely contradictory that just at the moment that European integration was getting off the ground, and which made its flagship the elimination of the borders, it became increasingly difficult for the travellers to cross the same borders by public transport.<sup>303</sup>*

The fragmentation and underutilization of the European rail network was noted by the European Commission as far back as the 1980s. The realization of the single market for transport by rail was intended to turn this trend around. With the Railway Packages, the European legislators have been trying to establish this single market, but the last three railway packages have proven inadequate: ambition in the legislation framed for the purpose has been lacking, and implementation of that legislation by the Member States has been lacklustre.

The fourth railway package was intended to rectify this failing and was therefore also announced as the crowning achievement of a long-term restructuring process. The package comprises six acts of legislation, which can be encapsulated in three fundamental principles.

The first is the least politically sensitive, intended to promote interoperability and the harmonization of safety standards.<sup>304</sup> Despite all previous directives and regulations, in many cases the Member States are still using various different technical and security standards. This implies that a train carriage used for cross-border transport must comply with multiple national rules and that all necessary certificates for it must be producible on demand. After further harmonization of the rules, this fundamental principle means that the European Railway Agency will become competent to issue permits that are valid throughout the entire European Union.

The second fundamental principle is politically more sensitive, and pertains to the market effect of passenger and other transport by rail in the Member States.<sup>305</sup> Specifically, this refers to the further liberalization of the national markets. At present, in many Member States the services are still dominated by a national monopoly that is assured of obtaining a portion of the market through private contracts. The legislation proposed by the Committee should make public services contracts the rule and private contracts the exception.

The third and final principle is about the administrative structures that regulate the relationship between the net manager, the competent authorities, and the service provider(s).<sup>306</sup> The essential point of discussion here concerns the independence of the net manager in regard to the service providers. The principle also provides for the setup of a European network of infrastructure managers with the task of following up and continuing the coordination between various networks.

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<sup>303</sup> Peeters & Smilde (2010) Naar grenzenloos interlokaal personenvervoer. Study for the General Dutch Alliance & TreinTramBus. 10 November 2010. (page 10) Available at <http://www.mobielvlaanderen.be/studies/grip/eindrapport.pdf>

<sup>304</sup> Regulation 2016/796; Directive 2016/797; Directive 2016/798.

<sup>305</sup> 2013/0028 (COD)

<sup>306</sup> 2013/0029 (COD) & 2013/0013 (COD)



The legislation on the technical principle was ratified in April 2016 and published on 25 May of that year. On the other two principles, only an informal accord was reached (under Dutch chairmanship) at the end of April 2016. The consolidated text has not yet been published, even though the most significant changes to the original Commission proposal are already clear. In this cross-border impact assessment, we therefore make an ex ante assessment of the frontier effects of the fourth Railway Package. Geographically, the result of the analysis is to some degree an abstraction of the specific regions for which the findings apply. The focus is on cross-border interlocal transport rather than international transport. This means at least two successive stops in two different country locations that belong to the same border region. For the analysis, we draw on a document analysis of primary texts. The sources here are the original legislative proposals as drafted by the European Commission, the opinions of the Committee of the Regions and the European Economic and Social Committee, the positions of the European Parliament and the Council of the European Union, the three impact studies ordered by the European Commission and (if available) the ultimately approved wording of the acts.

Two effects are studied in this dossier: firstly, the implications of the railway package on the supply of cross-border transportation, both public and commercial (European integration), and secondly, the enhancement of cross-border governance structures (Regional cohesion).

Looking at the supply of cross-border transportation by rail, the analysis is quite positive. The realization of the technical component will lead to saving both time and costs in the permitting of the rolling stock. Whether this will actually translate into better service will depend largely on the permitting procedures applicable on the individual lines. Insofar as commercial exploitation on these lines is permitted, this is clearly a positive development. For cross-border public transportation, however, the findings are rather more conditional, as the legislator has neglected to develop a clear framework for the awarding of concessions on these lines. The suggestions of the Committee of the Regions are generally not followed, which implies that the competent authorities must be awarding these concessions under ad hoc schemes. Even if the cross-border trajectory then becomes more profitable, the service level is largely determined by the public service obligations set out in the contract. This brings us to the second component of the cross-border impact assessment.

Looking at the governance structures, the railway package will generally increase the need for cross-border coordination. With stricter division among infrastructure managers, railway operators, and competent authorities, there is a greater chance that the interests of the relevant actors will diverge. This will generally make consultations more difficult. On the other hand, if correctly implemented the diversity of market structures in the Member States will be reduced. In other words, there will be more actors at the table, each with their own interests, but the national structures within which these operate will be more uniform. Additionally, the governance aspect of the railway package provides for the setup of a number of consultation structures that can promote coordination. The creation of a network of infrastructure managers and the setup of a coordination committee by the competent institution facilitate discussion on problem issues surrounding cross-border trajectories. Here again, however, it is anybody's guess whether these committees, once established, will be effective in generating closer collaboration.

It is clear that the fourth railway package will not be an endpoint in the establishment of the unified railway market. If the deficiencies in the implementation of the previous packages are any indication, the market will be a volatile one over the coming fifteen years. Member States will be awarding

concessions less privately, which implies that the challenges with public service contracts in frontier regions will become a recurring phenomenon. Only then will it become clear whether the administrative tangles can be unravelled without a further helping hand from the EU. In the meantime, a useful step forward would be to catalogue the existing award procedures for all cross-border lines, along with the consultation structures used on them, the efficiency in terms of the award process, and the services ultimately provided under them.

## Dossier 10: The Belgian toll system for lorries

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*Fontys International Business School Venlo*

The Flemish Region, the Walloon Region, and the Brussels-Capital Region have committed themselves to introducing a distance-based toll system for heavy goods vehicles in Belgium in April 2016. This means that it is no longer possible to use the Eurovignette on Belgian roads.

According to a study conducted by the VID (Traffic Information Service / *Verkeers Informatie Dienst*), the introduction of the new Belgian toll for lorries will lead to more freight traffic on Dutch roads: *'It appears that transport companies are trying to reduce the number of kilometres in Belgium, in order to save on toll. This means that it has become noticeably busier on the Dutch East-West routes.'* (VID 2016)

A different source states that the introduction of the new, costlier, toll system for lorries in Belgium leads to an increase in the prices of the affected industries (in their example: the food industry). (Transport & Mobility Leuven 2015)

Until now, there has been no study to examine the specific impact of this new toll system on the logistics and forwarding companies in the area of the German-Dutch region close to the Belgian border. This has therefore been the focus of this research project as part of the ITEM cross-border impact assessment 2016.

The aim of the research project was to find out more about the practical impact of the introduction of the Belgian toll system on 1 April 2016 on logistics and forwarding companies in the German/Dutch border area of Northern Limburg. In order to achieve this, the existing or alternative routes of the logistic companies needed to be made clear. The level of new costs related to the Belgian toll system and whether or not these costs would be passed on to their clients were also studied. The project also explored what changed for companies that still had to buy the Eurovignette for journeys through the remaining Member States. Furthermore, the logistics and forwarding companies' opinions on the short-term and long-term effects of the Belgian toll system were included in this study.

The researchers investigated whether the companies had any problems with the installation of the OBU Boxes and/or if they required more time to meet the requirements of the Belgian toll documents etc. Lastly, the companies were asked if they would like to change anything about the Belgian toll system and if so, what they would want to change.

The research was conducted as follows. Firstly, secondary research was used to gain information on toll systems in general. This was done to create an overview of how companies are affected by tolls when taking alternative routes through different countries other than Belgium. Secondly, the new Belgian toll system was examined. Lastly, interviews were held with logistics and forwarding

companies from the designated area. This was done to gain first-hand information and opinions from professionals who are directly affected by the new toll system.

The outcome of this investigation provides information on the change of routes and costs as well as opinions of logistics and forwarding companies with lorries driving through Belgium.

Germany, the Netherlands, Luxembourg, and Belgium charge tolls for lorries on specific roads. Germany has its own, distance-based toll system for domestic and foreign HGVs<sup>307</sup>. The Netherlands and Luxembourg are Eurovignette countries, as was Belgium before the introduction of its own toll system on 1 April, 2016. Belgium has abandoned this time-based Eurovignette to move on to a distance-based toll system like Germany's.

Results from the interviews show that the introduction of the new Belgian toll system has barely had any impact on the routes taken by lorries from Dutch and German companies located in the border region with Belgium. Other than trying to avoid Brussels due to the high toll in this area, lorries from the interviewed companies still take the same routes through Belgium. In contrast, articles report that there have been changes in routes since more freight traffic has been noticed on roads in the Dutch border region close to Belgium. Nevertheless, this could not be confirmed by the companies that were interviewed for this project. Moreover, the costs that the companies are facing due to the new toll system have increased immensely. A one-way route through Belgium costs on average 290% more than it used to cost under the previous toll system (toll only). In addition, when companies buy the Eurovignette for the remaining Member States, they have to pay the same price as before when Belgium was still included. Before, the Eurovignette costing €8 per day was sufficient for a journey through Netherlands and Belgium. Now, however, the €8 for the Eurovignette has to be paid in addition to the Belgian toll.

Lastly, the interviewees do not like the new Belgian toll system very much; they see it only as a change that they have to accept. Seeing as costs have only increased for companies, the interviewed companies hope to see road improvements and better maintenance on Belgian roads. If they could, they would opt for a toll system that included the whole of Europe.

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<sup>307</sup> Heavy Goods Vehicle



ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise and Innovation on Demographic Changes (NEIMED), Zuyd Hogeschool, the city of Maastricht, the Euregio Meuse-Rhine (EMR) and the (Dutch) Province of Limburg.

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