



Dossier 1: European cross-border impact assessment and cohesion policy for border regions

Cross-Border Impact Assessment 2024



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Abbreviations

CBCP	Cross-border Coordination Point
CoR	Committee of the Regions
DG REGIO	Directorate-General for Regional and Urban Policy
ECBM	European Cross-Border Mechanism
ETC	European Territorial Cooperation
EU	European Union
GDP	Gross Domestic Product
HLG	High-Level Group on the future of Cohesion Policy
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

1. Introduction

Within the European Union (EU), border regions represent approximately 40% of its territory, home to a third of EU's population.¹ While being located at the edge of national borders, border regions act as 'living labs of EU integration'.² It is at the internal borders of the EU where European integration is experienced on a daily basis. Interactions take place between different cultures, languages, markets and societies. Yet, the same is true for legal and administrative systems. It is in cross-border regions where also (national and European) legal and administrative systems meet and interact daily.³ As a result obstacles may arise from these differences in systems, hindering the cooperation and practices across borders. From one side, there is thus a clear need for better addressing (cross-)border regions specifically when it comes to formulating new or revised legislation and policies. This is also acknowledged by the European Commission in its 2021 report on Better Regulation.⁴ The COVID-19 pandemic clearly showcased how cross-border regions can be hindered and hampered by uncoordinated policies and regulations, with detrimental effects to the free movement within cross-border regions. The effects for border regions were disproportionate, with an economic impact for border regions that was more than twice the average in other regions.⁵

The current status quo regarding the development of border regions is not enough. On the one hand, 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. There is a certain 'border blindness', which calls for better place-based policy and legislation. For EU policies and legislation, there is an Impact Assessment methodology to assess ex ante the impact of Commission proposals. The Commission's "Better regulation toolbox" formulates also specific recommendations for assessing the territorial dimension. It describes the necessity for such an exercise, namely in cases, where the risk of asymmetric territorial impact is obvious. "When a preliminary screening of impacts shows that territorial impacts are relevant, the TIA necessity check will help assess the need of a more in-depth analysis of such impacts."⁶ However, the application of the TIA necessity check is not obligatory. During the last 10 years, ITEM has screened many Commission proposals in the framework of the cross-border impact assessment research. We have not experienced those aspects of the territorial dimension play an important role in the reports.

¹ European Commission (2017). 'Communication from the Commission to the Council and the European Parliament: Boosting growth and cohesion in EU border regions', COM(2017) 534 final.

² European Commission (2021). 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Border Regions: Living labs of European integration', COM(2021) 393 final.

³ Unfried, M., Mertens, P., Büttgen, N., & Schneider, H. (2022). Cross-Border Impact Assessment for the EU's border regions. *European Journal of Law Reform*, (1), 47-67. <https://doi.org/10.5553/EJLR/138723702022024001004>

⁴ European Commission (2021). Communication from the Commission to the European Parliament and Council, Joining forces to make better laws, available at https://ec.europa.eu/info/files/better-regulation-joining-forces-make-better-laws_en

⁵ European Commission (2024). 'Ninth Report on Economic, Social and Territorial Cohesion', Luxembourg: Publications Office of the European Union.

⁶ See European Commission 'Better regulation' toolbox 2023, https://commission.europa.eu/document/download/de79fb8e-4cc1-45a0-ac34-72f73a5147ca_en?filename=BRT-2023-Chapter%203-Identifying%20impacts%20in%20evaluations%20fitness%20checks%20and%20impact%20assessments.pdf

A novelty in this regard is the revised Schengen Borders Code that introduces a cross-border region assessment for the first time specifically.⁷ 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.

This dossier is part of the ITEM Cross-Border Impact Assessment of 2024, but different in nature. Where the classical cross-border impact dossiers assess a specific piece of legislation or policy, this dossier is more an opportunity analysis. The analysis will map the recent developments when it comes to the treatment of cross-border regions in European policies and legislation and argues what can be done to improve the situation based on literature and research conducted at ITEM. This is a very important and timely topic. Negotiations about the future of territorial development will be held in the framework of the new political term of the European Parliament and European Commission. More importantly, the entire Cohesion Policy as such will be subject of discussion in the framework of the Cohesion Policy post-2027. As the High-Level Group on the Future of Cohesion Policy concludes: “as the EU embarks on this new phase of integration, it encounters a dual challenge: to stay on course with its ambitious global objectives while tackling disparities and rising discontent within its borders.”⁸

This dossier will be structured as follows. First, the ‘what’ will be explained by presenting the current EU framework on cross-border regions and regional policies. Secondly, the ‘why’ will deal with the question why improvements are essential and why research has shown that there is a certain border blindness, meaning that today the specific needs of border regions are not fully incorporated in policy and law making. Finally, the ‘how’ will answer the pressing question on what recommendations can be done to improve the EU system for its cross-border regions. In this regard, we will distinguish between financial and instrumental support for border regions and how the programmes could be improved (i.e. Interreg programmes), how the instrument “ex ante impact assessment” of new EU proposals could contribute and how stronger capacities and tools for the detection and analysis of persistent border obstacles could help. Finally, we discuss the need for innovative mechanisms or instruments to remove them. The objective is to discuss recent developments and describe the opportunities for improvements.

⁷ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

⁸ European Commission: Directorate-General for Regional and Urban Policy. (2024). Forging a sustainable future together : cohesion for a competitive and inclusive Europe : report of the High-Level Group on the Future of Cohesion Policy, February 2024. Publications Office of the European Union, p. 9.

2. What: the current situation

2.1. Territorial Cohesion within the EU

The Union “shall promote economic, social and territorial cohesion, and solidarity among Member States.”, according to Article 3 TEU. The territorial dimension in the European legal and policy framework was strengthened with the Lisbon Treaty. By amending Article 174 TFEU, territorial cohesion has been added next to social and economic cohesion. Now Article 174 TFEU stipulates that “the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.” More specifically: “Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.” Hence, specific territorial characteristics are thus mentioned, to which ‘cross-border’ is one of them. In this respect, border regions are defined as NUTS 3 regions with an international land border or regions where more than half of the population lives within 25 km of such a border.⁹

With Territorial Cohesion, there is the aim to promote a balanced and harmonious territorial development between and within countries and local and regional levels. It reinforces solidarity to promote convergence and reduce inequalities between regions and investments in regional developments.¹⁰ Four concepts are seen as central in this regard: concentration (overcoming differences in population density), connecting territories (overcoming distance), co-operation (overcoming division) and specific regional features.¹¹ For cross-border regions, the priorities under cooperation are of great importance. Nevertheless, in many occasions border regions also share territorial characteristics. For example, mountain regions and sparsely populated regions are often also border regions and island regions are often also mountain regions where half of the population also live in a border region.¹² It can therefore be a complex sum of territorial characteristics, that are more generally supported by the four concepts of Territorial Cohesion.

When specifically zooming in to internal border regions as such, figures show that it represents almost 30% of EU’s territory, housing almost a fourth of EU’s population.¹³ In economic terms, regional differences can be identified based on the territorial characteristics. See Table 1 below. From these figures it becomes clear that internal border regions profit from the European project and integration, definitely when comparing to external border regions. The difference in GDP per head compared to the EU average (= 100) is almost 30 percentage points.

⁹ Eurostat, Glossary: Border region, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Border_region; or: European Commission (2024). Ninth report on economic, social and territorial cohesion. Luxembourg: Publications Office of the European Union.

¹⁰ Territorial Agenda 2030: A future for all places.

¹¹ European Commission (2024). Ninth report on economic, social and territorial cohesion. Luxembourg: Publications Office of the European Union.

¹² Ibid, p. 109.

¹³ Ibid.

Table 1: Main characteristics of regions with specific territorial characteristics, 2021¹⁴

	No of NUTS 3 regions (% EU-27)	Population, million (% EU-27)	GDP million EUR (% EU-27)	GDP/head EUR PPS (% EU-27)
EU-27	1166 (100)	446.5 (100)	14 524 809 (100)	32 524 (100)
Border regions	384 (33.0)	124.6 (27.9)	3 412 107 (23.5)	27 923 -85.9
Internal border	332 (28.5)	108.7 (24.3)	3 147 885 (21.7)	28 998 (89.2)
External border	81 (7.0)	25 (5.6)	392 579 (2.7)	20 059 (61.7)
Island regions	58 (5.0)	20.6 (4.6)	748 688 (5.2)	33 578 (103.2)
Coastal regions	339 (29.1)	163.7 (36.7)	5 337 003 (36.7)	31 014 (95.4)
Mountain regions	309 (26.5)	115.7 (25.9)	2 915 947 (20.1)	26 741 (82.2)
Outermost regions	14 (1.2)	5 (1.1)	98 368 (0.7)	19 947 (61.3)
Northern sparsely populated regions	11 (0.9)	2.2 (0.5)	93 898 (0.6)	33 995 (104.5)

Source: DG REGIO calculations based on Ardeco.

Also, over the years, European policies regarding Territorial Cohesion seem to have worked. In the period of 2001-2021 the difference between the GDP per head in internal border regions with the EU average had decreased with 5 percentage points. In the following, we will specify the territorial considerations in EU policies and legislation by distinguishing between *ex-ante* and *ex-post* territorial impact assessments and evaluations and specific territorial instruments and policies supporting EU regions, including – specifically – cross-border regions.

2.2. Ex-ante: Territorial Impact Assessment

When drafting new policies and legislation, the European Commission has to provide an Impact Assessment. These examine whether there is a need for EU action, the available solutions and their possible impacts. Impact assessments are carried out when initiatives are expected to have significant economic, social and/or environmental impacts, in the form of legislative proposals. Implementing and delegated acts and non-legislative initiatives such as financial programmes or recommendations.¹⁵ An impact assessment report must reflect on the environmental, social and economic impacts. The Better Regulation Guidelines explains that in this assessment, where relevant, also the impact on territories should be considered.¹⁶ Furthermore, the territorial dimension could be addressed when explaining the EU added value for the initiative.

¹⁴ Ibid, p. 110.

¹⁵ European Commission, Impact Assessments, https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/impact-assessments_en

¹⁶ European Commission (2021). Commission Staff Working Document Better Regulation Guidelines. SWD(2021) 305 final.

As part of the ‘Better regulation toolbox’, tool 34 provides more guidance on assessing territorial impact specifically.¹⁷ In policy cases with a specific territorial dimension, it is encouraged to look into all thematic aspects of the impact assessment (economic, social and environmental) through the territorial lens (regions). The territorial

<p>Territorial impacts (specific (types of) regions and sectors) (Tool #34)</p>	<ul style="list-style-type: none"> • Does the option affect economic activity, environment, or people living in cities, rural, cross-border, insular, mountainous, or sparsely populated areas and in the EU outermost regions to a significantly different extent than elsewhere in the EU? • Is the problem concentrated in certain areas (e.g. rural), regions, or Member States? • Does the initiative affect certain areas (e.g. rural), regions, or Member States in a disproportionate manner? • Does the initiative address regions differently according to their traits/endowments and thus lead to uneven territorial development? • Does one or the other option distort the principle of territorial cohesion as one of the founding principles of the EU? • Does the initiative have an effect on the EU outermost regions taking into account their constraints (as per art. 349 TFEU) and on other island, cross-border and mountain regions taking into account their characteristics (as per art. 174)? <p><i>If the answer to any of these question is positive, the Territorial Impact Necessity Check will help assess the need of a more in-depth analysis of territorial impacts</i></p>	
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Figure 1: Toolbox - tool 34 Territorial Impacts

dimension may be relevant when the impacts associated with the problem are heterogeneously distributed across the EU or when a policy option act unevenly producing heterogeneous territorial impacts. The ESPON TIA Quick Check¹⁸ has been put forward as supporting tool. The TIA necessity check functionality allows for screening whether territorial impacts may be relevant and, following, the TIA Tool allows for a ‘quick and dirty’ ex-ante analysis. The necessity check¹⁹ differentiates between initiatives, that responds to:

- an uneven problem but acts evenly on the territories
- an even problem but acts unevenly on the territories
- an uneven problem and acts unevenly on the territories
- an even problem and acts evenly on the territories

Only in the latter case, no TIA is directly advised. In the other cases, four more steps may follow. The ESPON TIA Tool may help when assessing policy impacts based on an approach with the elements of exposure, sensitivity and impact – aiming to combine qualitative regional knowledge on the exposure and quantitative, statistical data describing the sensitivity of EU regions. While cross-border regions could be taken into account specifically when going through the ESPON TIA Tool, there is no cross-border impact assessment specifically. Finally, the Guidelines emphasise the stakeholder involvement via e.g. the Committee of the Regions (hereafter: CoR) and its ‘RegHub’, the possibilities to launch a ‘call for evidence’ in the consultation process as well as the voluntary nature of the entire TIA procedure.

¹⁷ European Commission (2023). Better regulation Toolbox. July 2023 edition.

¹⁸ <https://tiatool.espon.eu/TiaToolv2/welcome>

¹⁹ <https://tiatool.espon.eu/TiaToolv2/check>

2.3. Territorial support: Cohesion Policy

Cohesion Policy is one of the main investment instruments of the European Union. Almost a third of the total EU budget, €392 billion²⁰, has been reserved for Cohesion Policy for the period 2021-2027, aiming at strengthening the economic, social and territorial cohesion. Important for cross-border territories specifically is the European Regional Development Fund, that includes European Territorial Cooperation (hereafter: ETC). European Territorial Cooperation is the framework for interregional, cross-border and transnational cooperation guiding policy exchanges and the implementation of joint action. Within EU Cohesion Policy, around 2.5% to 3% of the budget is allocated to the European Territorial Cooperation package.²¹ For the period of 2021-2027, this is 2.4%²² that is a decrease compared to the period of 2014-2020 (2,75%)²³. The European Territorial Cooperation package, worth €9 billion, consists of the four Interreg strands, on cross-border, transnational and interregional cooperation and the newest strand 'outermost'. Cross-border cooperation (Interreg A) is the greatest fund with almost 75% of the total ETC-budget, totalling around €6,5 billion, and is managed via several regional Interreg-programmes.²⁴

Therefore, while a third of the total EU budget is allocated to Cohesion Policy, it is only a minor percentage that is really earmarked to the specific needs of cross-border regions. The allocations by country may provide a different picture. For example the ETC-budget allocated to the Netherlands makes 20% of the total cohesion budget for the Netherlands of €1.922 million, for Luxembourg this even totals up to 43% of the nationally allocated cohesion budget of €68 million.²⁵

When zooming into the specific themes and objectives within the Interreg programme and the budget allocated to it, there is a wide range to be seen as illustrated in Figure 2. In the Interreg programme period 2021-2027, a specific programme objective (PO6) was introduced on Cooperation Governance: a better cooperation governance. The ITEM Cross-Border Impact Assessment 2019 addressed this new 'governance' element in the Interreg Regulation.²⁶ According Article 15(2) of the Interreg Regulation²⁷, there is a thematic concentration of 'a better cooperation governance' that may receive up to 20% of the ERDF contribution. The planned Interreg finance data in the Cohesion Open Data Platform²⁸ show that around 13% is reserved for the Cooperation Governance-strand, significantly for ISO6.1 Institutional capacity of public authorities. This new governance-strand is important for addressing legal and administrative obstacles in cross-border regions specifically as well as strengthening

²⁰ After reduction for the Connecting Europe Facility and other instruments, €378 billion was effectively available for Cohesion Policy. See: <https://cohesiondata.ec.europa.eu/stories/s/2021-2027-EU-allocations-available-for-programming/2w8s-ci3y/>

²¹ Medeiros, E. (2023) Reinforcing territorial cooperation and addressing challenges on European integration. Final report to the Group of High-Level specialists of future of cohesion policy, p. 14.

²² European Commission, 2024, p. 278.

²³ ECA, 2021, p. 10-11.

²⁴ Ibid.

²⁵ See: <https://cohesiondata.ec.europa.eu/stories/s/2021-2027-EU-allocations-available-for-programming/2w8s-ci3y/>

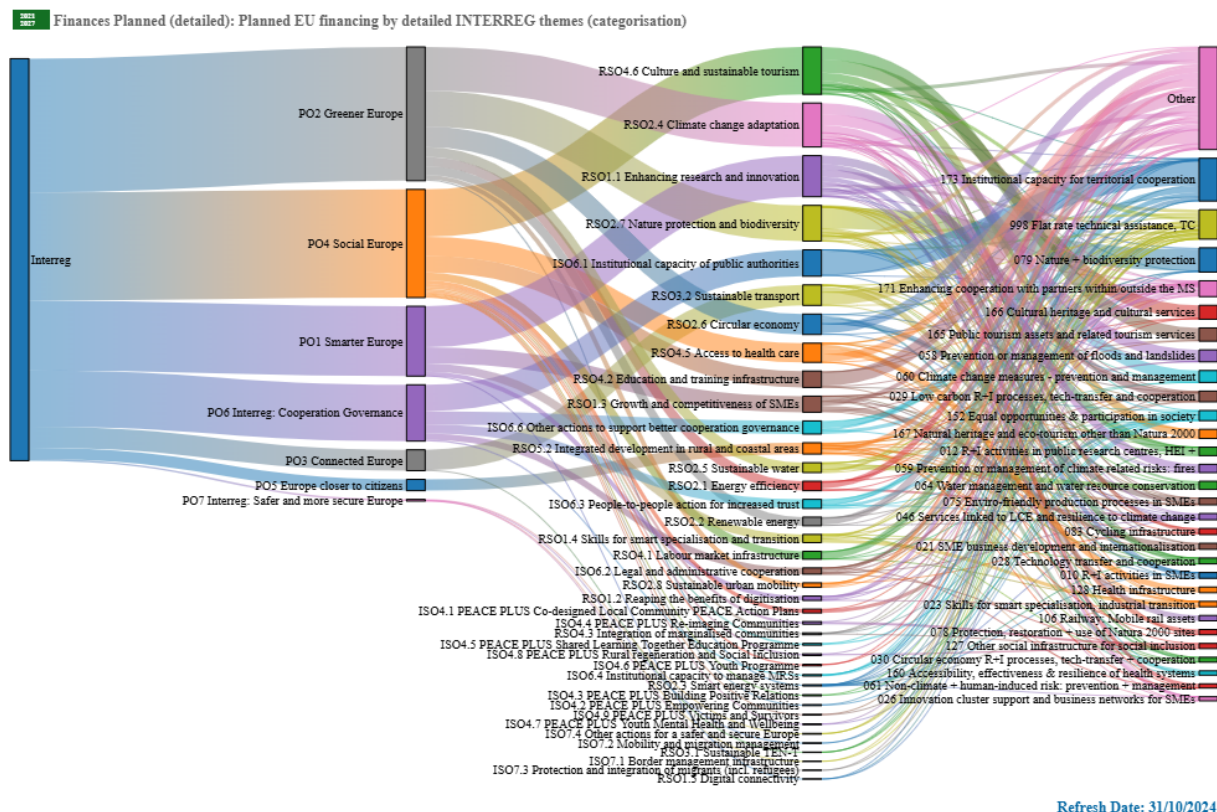
²⁶ Unfried, M., Hark, V., Giessen, M. van der (2019). Dossier 4: 'Governance' under the new INTERREG Regulation 2021-2027. Maastricht: ITEM Cross-Border Impact Assessment.

²⁷ Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments.

²⁸ European Commission, Directorate for Regional and Urban Policy, *Cohesion Open Data Platform*, <https://cohesiondata.ec.europa.eu/>.

structural cross-border capacities. The recent Interreg Flanders-Netherlands project *Schakelpunt Grensbelemmeringen Vlaanderen-Nederland* is such an example.²⁹

Figure 2: Planned EU Financing by Interreg theme 2021-2027



Despite the limited budget, both Interreg and the Cohesion Policy as such have yielded positive results.³⁰ Medeiros et al. argue that territorial cooperation projects within the ETC have benefited territorial cohesion processes, summarised in six areas: territorial integration, territorial innovation, territorial networking, territorial planning, territorial governance and territorial functionality.³¹

²⁹ <https://www.schakelpunt.eu/>

³⁰ European Commission: Directorate-General for Regional and Urban Policy, 2024; ECA, 2021.

³¹ Eduardo Medeiros, James Scott, Ricardo Ferreira, Pascal Boijmans, Nathalie Verschelde, Martin Guillermo-Ramírez, Ocskay Gyula, Jean Peyrony & Anthony Soares (2024) European territorial cooperation towards territorial cohesion?, *Regional Studies*, 58:8, 1518-1529, DOI: 10.1080/00343404.2023.2226698

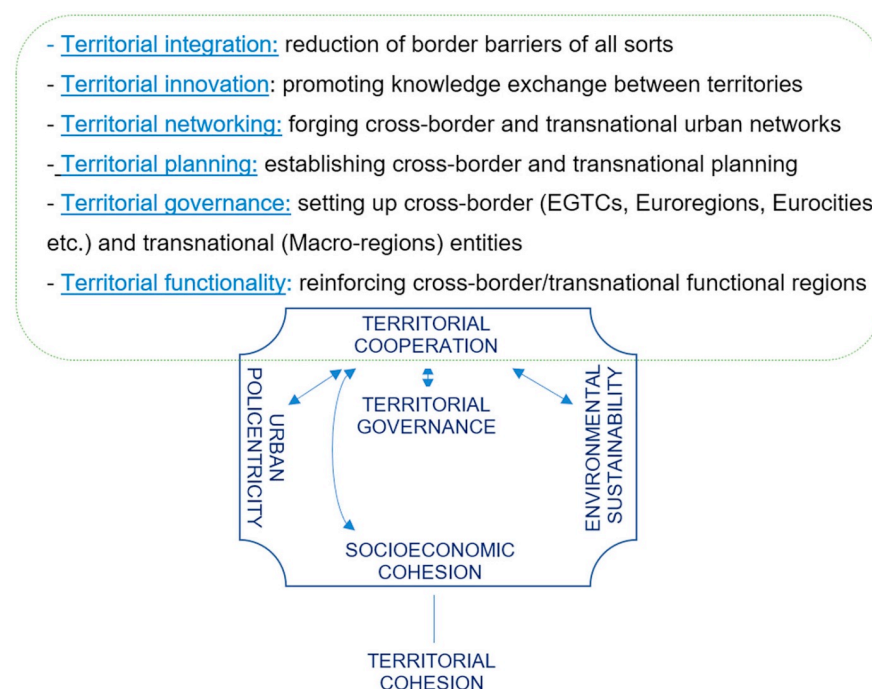


Figure 3: Main components of territorial cooperation as a main dimension of territorial cohesion³²

With case examples, the authors argue the concrete contributions of cooperation programmes to territorial cohesion and its different areas. Also, the European Court of Auditors as well as the CrossQuality-project³³, of which ITEM was the lead partner, came to positive verdicts about the added value of Interreg for cross-border territories and as a facilitator for cooperation. In the joint TEIN paper on the future of Interreg, best practices are also presented.³⁴ Nevertheless, there is a need for improvements in order to foster the development of cross-border territories specifically. The following sections will address these points.

³² Ibid.

³³ Interreg EMR project to the quality of cross-border cooperation within Interreg project, lead by ITEM with UHasselt, RWTH Aachen, ULiège and EGTC EMR.

³⁴ TEIN (2024). The cost of non-Interreg. <https://transfrontier.eu/costs-of-non-interreg/>

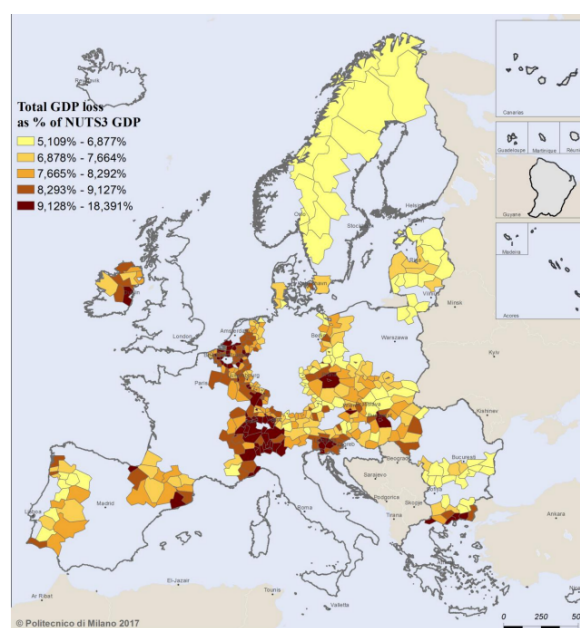
3. Why innovation: The idea of ‘border blindness’

While there is a framework addressing the territorial dimension in both an ex-ante as well as ex-post manner, there is room for improvement. These points of improvement should be considered when reformulating the future of Cohesion Policy post-2027, as well as in the future developments of the Better Regulation agenda. In the following, we elaborate on the question why improvements are needed.

3.1. Cross-border challenges and shortcomings remain

First of all, despite European Integration, Cohesion Policy and a Single Market, cross-border obstacles in border regions persist. In a study to the quantification of legal and administrative cross-border obstacles, there is the estimation that border barriers cost around 3% EU GDP, 458 billion euros, at EU level.³⁵ For land border regions this average is even higher, 8.8% GDP. Zooming into European border regions specifically, there are significant spatial differences in economic effects across the EU. Figure 3 shows the spatial differences in percentage of GDP loss at NUTS3 level. Regional GDP losses come close to 20% in for example the border regions between Flanders and the Netherlands and Germany and France. Overall, it shows that relatively small and well-integrated Member States as the Netherlands, Belgium and Luxembourg are affected greatly and for almost the entire territory.

Figure 4: Percentage of GDP loss at NUTS3 level



Another study commissioned by the European Commission in 2017 identified 239 legal and administrative border obstacles.³⁶ Based on the inventory, the authors categorised the obstacles to EU-related legal obstacles, Member State-related legal obstacles and administrative obstacles. The categorisation therefore makes clear that obstacles also can arise from the EU legislator. In the framework of the B-Solutions project, managed by the Association of European Border Regions (AEBR) and initiated by the Commission, currently there are over 150 cases in cross-border regions initiated and analysed. Also these cases indicate a diversity of EU- or Member State-related legal obstacles and administrative obstacles.

Cross-border obstacles limit the creation of a so-called 360-degree labour market. There were approximately 1.8 million cross-border commuters in the EU and EFTA in 2022, that is an increase of

³⁵ A. Caragliu, R. Capello, R. Camagni, et al., Quantification of legal and administrative border obstacles in land border regions, DG REGIO, European Commission, May 2017.

³⁶ Pucher, J., Stumm, T., & Schneidewind, P. (2017). *Easing Legal and Administrative Obstacles in EU Border Regions*, Luxembourg: Publications Office of the European Union.

around 8% compared to 2021.³⁷ In general it is the trend that cross-border commuting is on the rise over the years. Yet, national reflexes during the COVID-19 pandemic have led to a drop, of which the figures had recovered by 2022. This fact shows the precarious situation that still exist for a cross-border labour market. Even more, multiple theoretical studies have shown the levels of cross-border work that still does not happen. First of all, cross-border mobility is strongly concentrated in so-called macro regions of cross-border work. Around 70% of the total cross-border work is located in these 5 macro regions. Macro regions and higher levels of cross-border work are associated with higher levels of cross-border cooperation in general.³⁸ On EU level, the share of cross-border work is only 1% of the total workers in the EU. Given that cross-border territories and the population living in these territories represent a greater share of the EU's territory and population, one might assume that the full potential of cross-border work is far from met. Indeed, in the case of the Meuse-Rhine Region between the Netherlands, Belgium and Germany, that is such a macro region, there is still a lot of cross-border work not happening, according to theoretical studies. From a Dutch point of view, there was a study that concluded that around 90% of the mobility is not taking place in the current situation compared to a scenario without national borders.³⁹

Legal and administrative borders do not only hamper economic growth, but also social cohesion and sustainable development to name a few. Indeed, the so-called twin transition (green deal and digital transformation) is one of those challenges. Despite efforts via Cohesion Policy, regional disparities seem to increase across Europe due to the twin transition.⁴⁰ While there is a clear divide between western regions and Member States versus eastern regions and Member States, to a more limited extent the disparities are also true for cross-border territories. Administrative national borders limit the sustainable transition, as the previous ITEM Cross-Border Impact Assessment of 2022 highlighted.⁴¹ There are still hardly any cross-border energy projects, or possibilities to share grid capacities across borders. Another persisting challenge in border regions is the public transportation. Again administrative and legal obstacles play an important role in cross-border transport connections. An inventory highlighted 57 legal and administrative obstacles affecting public transport.⁴² Transport performance is lower in border areas, so were also the conclusions in both the 8th and 9th Cohesion Reports. Regarding rail, connection between cross-border city-pairs lack connection for about 5% compared to 0.3% in the same country. Furthermore, cross-border rail connections are much lower in rail speeds. Generally, in the development of transnational high-speed rail links there seems to be a 'tunnel effect', that conflicts with the connections in cross-border regions on a local level.⁴³

³⁷ Gasperini, M. & Geraci, M. (2024). Cross-border work in the EU and EFTA countries. Luxembourg: Publications Office of the European Union.

³⁸ Ibid.

³⁹ Weterings, A., & Van Gessel-Dabekaussen, G. (2015). *Arbeidsmarkt zonder grenzen*. Den Haag: PBL (Planbureau voor de Leefomgeving).

⁴⁰ Maucorps, A., Römisch, R., Schwab, T., Vujanovic, N. (2022). The Future of EU Cohesion. Effects of the twin transition on disparities across European Regions. Bertelsmann Stiftung: Berlin.

⁴¹ Unfried, M. (2022). *ITEM Cross-Border Impact Assessment 2022: Dossier 3: Energy Transition and Energy Security*. ITEM. <https://crossborderitem.eu/wp-content/uploads/2023/07/grefrap22-D3-EN.pdf>

⁴² European Commission (2022), Study on providing public transport in cross-border regions – Mapping of existing services and legal obstacles – Inventory of administrative and legal obstacles to cross-border public transport, DG Regional and Urban Policy, Publications Office of the European Union, Luxembourg.

⁴³ Bertram, D., Chilla T. & Hippe, S. (2023). Cross-border mobility: Rail or road? Space-time-lines as an evidence base for policy debates. *Journal of Borderlands Studies*, DOI: 10.1080/08865655.2023.2249917

In sum, the above illustrates that cross-border territories and its territorial cohesion is still much limited by its specific border location. More specifically to the ex-ante and ex-post policies regarding cross-border territories, there are important remarks to make.

Inadequate Impact Assessments

Regarding the ex-ante impact assessment, the territorial dimension remains voluntary and often limited. The so-called tool 33 was not applied in many legislative proposals and during COVID-19 even not at all.⁴⁴ An overview of CoR TIAs shows that only a limited amount of EU legislative and policy proposals – around two to five dossiers – are territorially assessed by the CoR.⁴⁵ In the framework of the Territorial Agenda 2030, ITEM is commissioned to conduct a study to the regulatory impact assessment and its territorial dimension as a Pilot Action.⁴⁶ The Pilot Action is aiming at making EU policies and regulations more territorially considerate instead of territorially blind. A screening of ten recent legislative proposals that related to spatial planning⁴⁷ showed that in eight cases there was an impact assessment made. Regarding all impact assessments, the Regulatory Scrutiny Board issued a positive verdict but with important reservations. In its report, the Board often mentions the need to make more distinction between Member States and assess more in detail the proportionality and subsidiarity. The CoR has issued an Opinion to six proposals. In its Opinion, the CoR emphasises the need to include more local and cross-border territorial considerations. In this respect, attention is drawn to differences between territorial categories and the role of European local and regional authorities.

It is therefore not surprising that the Territorial Agenda 2030, adopted by an informal meeting of Ministers responsible for spatial planning, territorial development and/or territorial cohesion, calls upon “strengthening the territorial dimension in the European Semester and Impact Assessments using available tools to assess territorial impacts and stronger stakeholder involvement, as well as further promoting – under EU Cohesion Policy and other relevant EU policies – integrated territorial development, uptake of relevant tools and instruments, territorial cooperation, and following and taking inspiration from pilot actions.”⁴⁸ It is also acknowledged by the Commission that the Impact Assessment of EU policies should be improved by taking better into account the territorial perspective, especially of, among others, cross-border areas. In its 2021 report on Better Regulation, the Commission highlights that “Territorial impact assessments and rural proofing will be strengthened [...]”.⁴⁹

The latest OECD Regulatory Policy Outlook (2021) shows that wherever national governments have established solid regulatory impact assessment, the impacts on competition, environment and the

⁴⁴ Unfried, Mertens, Büttgen & Schneider, 2024.

⁴⁵ <https://cor.europa.eu/en/our-work/commissions/coter/territorial-impact-assessment>

⁴⁶ <https://territorialagenda.eu/pilot-actions/regulatory-tia-exploring-the-varied-impacts-of-regulations-across-different-territories/>

⁴⁷ Proposals on nature restoration, soil protection, raw materials, net zero industry act, corporate sustainability due diligence, renewable energies, urban wastewater treatment, sustainable use of plant protection products, trans-European transport network, waste framework directive.

⁴⁸ Informal meeting of Ministers responsible for spatial planning, territorial development and/or territorial cohesion (2020). Territorial Agenda. A future of all places. https://territorialagenda.eu/wp-content/uploads/TA2030_jun2021_en.pdf

⁴⁹ European Commission (2021). Better regulation: Joining forces to make better laws. COM(2021) 219 final.

public sector are the ones that are most frequently assessed.⁵⁰ The territorial dimension is among the least assessed types of impact. The same finding therefore applies to the EU level.

'Border blindness': Full potential of cross-border policies not met

Ex-post, the current state of affairs also means a critical reflection of the Cohesion Policy and the ETC in particular. In 2021, the European Court of Auditors (hereafter: ECA) issued a special report on Interreg. The overall conclusion was that the full potential of cross-border policies is not met.⁵¹ The subject of evaluation was the Interreg programme period of 2014-2020. The ECA found that the cross-border character of Interreg projects was not always convincingly strong and that there were limitations imposed by Member States. Furthermore, limited budget and limited cross-border data makes that the most pressing cross-border issues in cross-border regions cannot be addressed adequately nor entirely. The ECA therefore recommends, among others, to incorporate a better focus on the cooperation programme and to use indicators that aim to capture the effect of cross-border projects.

Indeed, despite tangible successes in cross-border territories, there are still significant challenges for the EU to reinforce ETC in both internal and external borders.⁵² This is even the case for cross-border and transnational EU regions that are characterised by higher levels of integration, mobility and cooperation – as previously elaborated. Given the limitations in funding, not all obstacles can be addressed. The Interreg project CrossQuality, led by ITEM, showed that Interreg projects often do not result in sustainable cooperations that support cross-border developments. The project specifically assessed the quality of cooperation across borders in the framework of Interreg projects. When applying the developed qualitative methodology, the findings for the Interreg programme Meuse-Rhine made clear that the quality of cooperation is hindered by⁵³:

- The stop-and-go phenomenon: cooperation after Interreg funding slows down or ceases. Cooperation is too much dependent on the availability of Interreg funding. There is a struggle to continue joint activities after the Interreg period.
- The short project duration limit consolidation. The focus on innovation makes that new projects are created and previous results and structures are sometimes forgotten.
- The complexity and administrative burden limits the quality of cooperation, as partners are greatly occupied by fulfilling all administrative duties instead of focussing on the consolidation of the cooperation. Furthermore, it limits the willingness of potential partners to join Interreg projects. This is especially true for smaller stakeholders, that do not have the capacity and specific Interreg know-how.

⁵⁰ OECD (2021), *OECD Regulatory Policy Outlook 2021*, OECD Publishing, Paris, <https://doi.org/10.1787/38b0fdb1-en>.

⁵¹ European Court of Auditors (2021). Interreg cooperation: The potential of the European Union's cross-border regions has not yet been fully unlocked. Special report 2021-14.

⁵² Böhm, H. (2024) Reinforcing territorial cooperation and addressing challenges on European integration. Final report to the Group of High-Level specialists of future of cohesion policy.

⁵³ Mertens, P., and Unfried, M. (2022) Final Report: The quality of cross-border cooperation in the Euregio Meuse-Rhine and effects of the INTERREG Programme: Application of the impact assessment methodology to the quality of cross-border cooperation. ITEM. https://crossborderitem.eu/wp-content/uploads/2023/08/finalreport_web.pdf

Therefore, the CrossQuality findings underline the conclusions of the ECA that the full potential of cross-border regions is not yet fully unlocked by Interreg. These conclusions are supported by experts who were consulted in the framework of the High-Level Group on the future of Cohesion Policy. Among others, given the limited budget and the persisting border barriers that limit the development of territorial cohesion, there is support to further incentivise ETC within EU Cohesion Policy.⁵⁴ There is also a need to incentivize cooperation in mainstream programmes. Cross-border cooperation is limitedly supported via other national and European programmes. There is a ‘national/central bias’, or so-called ‘border blindness’: most mainstream national and European policies do not take into consideration the cross-border dimension and dynamics, nor these do promote these. As Böhm states: “This failure in the European innovation system justifies strong policy intervention.”⁵⁵

3.2. Interdependencies with the Single Market

Indeed, these shortcomings are related to the failures in European integration and the Single Market. Border obstacles are costly to the Single Market, as previously shown good for about 3% of the EU GDP. These border obstacles limit the functioning and completion of the Single Market. In this respect, Cohesion Policy (and territorial cohesion) and the Single Market are not separate aims but intertwined with each other. “Cohesion Policy and the single market are mutually reinforcing.”, the European Commission states.⁵⁶ Also, Letta states in its recent report that cohesion policy is “a fundamental element of the Single Market and not outside of this framework.”⁵⁷

In the Ninth Cohesion Report, the Commission also concludes that Cohesion Policy has contributed to a better functioning of the Single Market. Via a wide range of policy instruments, among others the access to goods and services is promoted by infrastructure, local economies are boosted and human capital has been reinforced. More specifically in border regions, it supported good governance and cooperation, that eased some border obstacles and resulted in cross-border capacity building.

Nevertheless, challenges remain and borders still act as barriers, there is ‘border blindness’ and governance and capacities should still be enforced. This is key for the development of the Single Market, as Letta concludes in its report ‘Much more than a market’. He even addresses that ‘any effort to overhaul the Single Market is destined to fail if it does not adequately address the needs and challenges faced by residents of these declining regions. ‘These’ regions are regions that are locked in a ‘development trap’. Regional development traps are found to be linked to the geography of EU discontent, that also results in euroscepticism.⁵⁸

⁵⁴ Böhm, 2024 & Medeiros, 2024.

⁵⁵ Böhm, 2024.

⁵⁶ European Commission, Explanatory Memorandum for Amended proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context, COM(2023) 790 final, Strasbourg, 12.12.2023.

⁵⁷ Letta, E. (2024). Much more than a market. <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>

⁵⁸ Rodríguez-Pose, A., Dijkstra, L., Poelman, H. (2023). The geography of EU discontent and the regional development trap. Luxembourg: Publications Office of the European Union.

While border regions are often put forward as ‘living labs of EU integration’⁵⁹, border regions and their challenges also illustrate the deficiencies of the integration in the Single Market. European integration has certainly benefited border regions. In this respect there are several studies on the benefits of Schengen and Europe, that show significant positive effects for border regions. Nevertheless, it is important to note that border regions cannot necessarily be seen as the prominent winner in the European integration discourse. The internal market has not led to a so-called 360 degree cross-border labour market and economy. Quite the opposite, with important disciplines as taxation, social security, education and health care as national competences, the situation in the cross-border region has become maybe more difficult rather than easier. This has to do with the fact that Member States have developed more sophisticated system in the field of health care, social security, taxes, etc. Policy sectors that are not harmonized in Brussels. Meaning that the “normal” instruments of European Integration, harmonisation by EU legislation does not mean more integration in cross-border territories. On the other hand, we have not seen many specific instruments that could help to overcome persistent border obstacles as an alternative to vertical EU legislation. Due to, among others, the lack of certain cross-border instruments and structures there is also still a development trap for cross-border regions, where the administrative border is still acting as a barrier.

Letta’s ‘Much more than a market’ on border regions⁶⁰

A Single Market for All

- *[...], the EU should be more proactive in supporting **policy cooperation across borders**. The Single Market is not a compound of national markets but an integrated area in which businesses, consumers, workers or researchers are deeply intertwined. However, cohesion policy programs tend to have a strong “national/regional bias” and do not fully exploit the benefits of connecting with other places beyond the national borders. [...], inter-regional cooperation on innovation is very limited and mainly occurs within national borders.*
- *Particular emphasis should be given to the **reduction of cross-border barriers**. Despite the Single Market and Schengen, there are still important legal and administrative cross-border obstacles that hamper individuals from border regions to seek jobs or provide services in neighbouring regions. Numerous border regions are economically disadvantaged due to their geographic distance from the capital. Efforts to mitigate the 'border effect' would enable citizens residing in these areas to derive greater benefits from the Single Market without necessitating relocation.*
- *Moreover, **we must prevent dysfunctions in the Schengen system to jeopardise the Single Market**. [...] Removing these obstacles requires a **proactive approach from national authorities**. [...]The EU should consider introducing a special EU regime for ‘digital cross-border workers’.*
- *The elevated levels of interdependence and integration in the Single Market imply that many challenges, from reducing economic imbalances to strengthening the resilience of value chains or decarbonising the economy, can no longer be fully addressed by individual countries or regions. Yet today EU Cohesion policy is structured in country-specific or region-specific programmes: only 3% of all EU cohesion funds are allocated to “Interreg”, the programme dedicated to support territorial cooperation projects. Consequently, investment focuses on areas in the national or regional territory, overlooking cooperation opportunities beyond the programme’s geographical coverage. The same happens with the Recovery and Resilience Facility (RRF): while most National Recovery and Resilience Plans (NRRPs) include measures contributing to multi-country projects, the bulk of the RRF funds*

⁵⁹ See also COM(2021) 393 final.

⁶⁰ Selection from different sections in Letta (2024).

support national and regional investments. **In the future, more EU support must be given to cooperation projects between public and private actors across borders.**

- **Intra-EU mobility enables individuals to "experience Europe," opening doors to expanded prospects in education, employment, and lifestyle, while also providing opportunities for skill development.** However, the free movement of people has been and remains the least developed of the four freedoms. **Mobility is not an end in itself, but an opportunity that remains largely limited to a minority of EU citizens.** To ensure that the benefits of mobility are available to a larger number of people, action is needed in several areas. Firstly, **reducing barriers to occupational mobility is essential.** Across the EU, 5,400 professions are subject to regulation, covering around 22% of the EU workforce. [...]In addition, **improving the coordination of social security** must become a key priority in the EU's policy agenda.
- It is also important to recognise and address the negative effects that some Single Market policies may have on certain territories. In particular, the freedom of movement allows EU citizens to live and work anywhere in the Union but it also has a downside: a significant number of highly skilled workers or young people leave certain regions and countries to seek job opportunities and education elsewhere, resulting in a phenomenon often referred to as **'brain drain'**.

The argument of Letta makes clear that a Single Market cannot function optimal nor improve when it does not function well at the cross-border regional level. A follow-up on the report of Letta can be found in the well-bespoken report of Draghi, that formed an inspiration for the Political Priorities of the re-elected president of the European Commission, Ursula von der Leyen. Draghi has also a strong plea for deepened European integration.⁶¹ The Cohesion policy in this respect should 'remain consistent with a push towards increasing innovation and completing the Single Market'. While the focus is not too much on the Single Market and its cross-border dimension, since Draghi refers to Letta's report for this, there is a strong argument for removing cross-border differences and more harmonisation. This is not only the argument for cohesion, but for EU's competitiveness.

Example: Draghi on EU integration for competitiveness

The wider EU strategy towards cross-border and modal integration and sustainable transport needs to plan for competitiveness and not only for cohesion [see the chapter on transport]. Transport should be based on a new unified approach to planning at the EU and national levels, focused on harmonisation and interoperability as well as cohesion. This approach should be matched by deeper coordination with adjacent network industries (energy and telecoms) and new incentives in the EU budget for Member States to remove barriers to EU integration and ensure interoperability and competition in all transport segments, when these goals goes beyond the application of EU law.⁶²

In this respect, cross-border challenges as the energy transition, industrial policy and infrastructure should be addressed by cross-border measures, harmonised regulations, tax arrangements and finance frameworks. National governments acting as barriers should be combated by replacing unanimity

⁶¹ Draghi, M. (2024b). The future of European competitiveness. Part B | In-depth analysis and recommendations.

https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en

⁶² Draghi, M. (2024a). The future of European competitiveness. Part A | A competitiveness strategy for Europe.

https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en, p. 48.

voting for Qualified Majority Voting. Harmonised frameworks could also work as a so-called '28th regime', that acts as a European procedure bypassing the national and regional frameworks. Draghi suggests in the case of, among others, cross-border renewable energy infrastructural projects.⁶³ This idea of a 28th regime was also mentioned by Letta regarding digital cross-border workers, as well as in the political priorities of Von der Leyen regarding innovation by businesses⁶⁴.

In sum, given the cross-border shortcomings the Single Market is not functioning properly. This has serious implications not only for economic, social and territorial cohesion, but also the competitiveness of Europe at the global stage. In this respect, there is an urge for making the claim of border regions as living labs of EU integration into reality.

⁶³ Draghi, 2024b, p. 33.

⁶⁴ Political Guidelines 2024-2029, https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf, p. 9.

4. How to improve the situation: avoid or remove obstacles

In the previous section, an analysis is provided on the shortcomings, that hinders the development of cross-border regions but also the Single Market as a whole as well as EU's competitiveness. This section will address the question how this could be improved.

4.1. A more effective European cross-border impact assessment

As shown, there is currently no specific cross-border impact assessment at EU level. Furthermore, the territorial impact assessment is limitedly applied and of voluntary nature. Preventing obstacles from emerging of course prevails over solving them ex-post. Therefore, it is recommended that the territorial impact assessment becomes mandatory as is promoted under the umbrella of the principle of 'do no harm to cohesion'. 'Do no harm to cohesion' has been brought forward by the CoR⁶⁵, where it rightfully points out to the fact that while cohesion is promoted via several programmes, such as the Cohesion Policy, other programmes and legislation in fact can limit cohesion at the same time. This is due to the fact that they are spatially blind. Unfried et al, made the same argument regarding border blind legislation by elaborating case examples.⁶⁶ For example, while the General Data Protection Regulation had the aim to improve cross-border data sharing, the fragmented implementation resulted in the contrary. EU regulations can therefore in itself potentially hamper territorial cohesion and development, including cross-border regions. It can even have negative effects that, partially, impede the initial goal of EU policy.

To combat this, the CoR introduced the principle of 'do no harm to cohesion', that should cover all European policies with spatial impact as well as relevant national policies, and encompassing a requirement to respect the cohesion principles of partnership and multi-level governance. The table below shows the recommendation brought forward.

'Do no harm to cohesion' by CoR in legislative framework

27. therefore, recommends reinforcing the assessment of potential differentiated territorial impacts and negative effects on cohesion in the **EC Better Regulation toolbox** in several ways:

- by adding a question in the list of questions in BR Tool # 18 along the lines of: "Does the initiative hamper the convergence process or contribute to regional disparities?"
- in BR Tool # 34, by **making the use of the TIA Necessity Check mandatory** to determine the need for a Territorial Impact Assessment and by giving a strong preference to the use of ESPON TIA Quick Check tool over public consultations for assessing potential territorial impacts, as it is based on a combination of experts' judgment and quantitative territorial data available for all EU regions.
- by introducing a recommendation that stakeholder consultations should explicitly cover territorial cohesion aspects, either with a reference in the "call for evidence" and/or a set of questions in the public consultation or with targeted consultations reaching regional and local authorities, reminding that target groups in remote and rural areas with more difficult access to the internet may need to be addressed by specific channels.
- by introducing an **obligation to report in the Impact Assessment report on the assessment of potential differentiated territorial impacts and potential harm to cohesion**, in a similar way as for

⁶⁵ Committee of the Regions (2023). Opinion – Do no harm to cohesion. COTER–VII/026

⁶⁶ Unfried, Mertens, Büttgen & Schneider, 2022.

the "do no significant harm" principle concerning environmental impacts; impact assessments should be clear as to whether there will be impacts on EU cohesion, and what the trade-offs may be between cohesion and other objectives.

- *by including a specific mandatory section in the explanatory memorandum explaining how the initiative upholds the "do no harm to cohesion" principle based on a "**comply or explain**" rule: the Commission should either demonstrate that the implementation of the initiative does not hinder the Union's cohesion (complies with the DNHC principle), or explain why the potential harm (remaining after mitigating measures) is justified, with regards to other objectives;*

Making the TIA mandatory instead of voluntary, is also argued in the Territorial Agenda 2030 by the responsible ministries for spatial planning, regional development or territorial cohesion. Given the limited use of the TIA Necessity Check and inadequate territorial considerations in impact assessments (as discussed in the previous sections), a first recommendation would indeed be to make the TIA a mandatory element within the EU's Better Regulation. Nevertheless, there are two important remarks to make. First on the dimension of cross-border regions and secondly on the capacities required to do so.

Given the fact that cross-border territories deal with consequences of European and national legislation, policies and programmes, the significant economic potential of cross-border regions and their functioning as 'living labs of EU integration', a stronger cross-border dimension in the regulatory impact assessment should also be incorporated. This was also promoted by the joint position paper of the Benelux and Baltic countries in 2021 on the importance of impact assessments of EU policies on border regions.⁶⁷ In their position paper, the Benelux-Baltic countries jointly request "for a reflection process on how to include a "cross-border test" into our policymaking at Member State and Union level. This would mean that, in practice, measures that could risk affecting the interests of our citizens who regularly cross internal borders, would need to be assessed as regards their possible negative, and often unintended, consequences." The background of this request was the COVID-19 pandemic and its enormous effects on cross-border mobility and border regions in particular. Indeed, research at ITEM showed the effects for cross-border mobility in border regions specifically.⁶⁸ The absence of cross-border impact assessments and the non-coordination of measures lead to disproportionate restrictions to freedom of movement, and did not take into account the precarious situation of cross-border communities.

At best, a cross-border dimension could be incorporated in EU's regulatory impact assessment. The introduction of a cross-border impact assessment would be a logical follow-up to other EU's initiatives, the development of the Better Regulation agenda, recent calls of urgency by stakeholders such as CoR, the Territorial Agenda 2030 and the Benelux-Baltic countries. In their publication, ITEM researchers elaborate on a European cross-border impact assessment as a special variation of the TIA.⁶⁹ The current

⁶⁷ <https://europeanunion.diplomatie.belgium.be/sites/default/files/2023-05/Benelux-Baltic%20position%20paper%20regarding%20the%20importance%20of%20impact%20assessments%20of%20EU-policies%20on%20border%20regions.pdf>

⁶⁸ Mertens, P., Sivonen, S., Kortese, L., & Schneider, H. (2021). *Cross-border mobility in times of COVID-19: Assessing COVID-19 Measures and their Effects on Cross-border Regions within the EU*. EU-CITIZEN: Academic Network on European Citizenship Rights. https://ec.europa.eu/info/sites/default/files/eu-citizen_-_report_on_cross-border_mobility_in_times_of_covid-19.pdf

⁶⁹ Unfried et al, 2022.

TIA tool could be improved by incorporating the cross-border dimension to a greater extent. In this view, the cross-border impact assessment could be a niche within the current TIA tool with a specific methodology. Over the last ten years, ITEM has proven to have such a methodology that is of added value to identify and assess cross-border impacts. When celebrating its tenth birthday, ITEM has assessed over 50 dossiers on the cross-border impacts. In 2019, this methodology has been incorporated in the Dutch regulatory impact assessment framework (now called *Beleidskompas*). As of 2021, the border effects test has become a mandatory requirement for new or amended policies and legislation. As shown in the ITEM Cross-Border Impact Assessment and disseminated in multiple publications⁷⁰, the methodology relies on two steps: (1) the demarcation of the cross-border territory and (2) defining principles, benchmarks and indicators for three central themes.

Both steps are very much dependent of the specific dossier that needs to be assessed. With a great variety of regions and border regions specifically, there is no ‘one-size-fits-all’ definition for a ‘cross-border region’. Border regions across Europe are characterised by, among others, different levels of integration, cooperation, mobility, administrative systems and other territorial characteristics (e.g. mountains, rural/urban, etc.). There is a catalogue produced on Euroregions across EU borders in 2018.⁷¹ The study mainly looked into the legal and organisational aspects of the Euroregional cooperations, but can showcase the broad diversity in terms of organisation, legal forms, partnerships, urban/rural or metropolitan characteristics.

Nevertheless, the central idea should be that it concerns the concept of a cross-border territory instead of a border region. The notion of ‘cross-border’ implies that it covers both sides of the administrative border and the assessment is made based with an integral view of the cross-border territory. This could for example mean that effects are unevenly distributed across borders. The identification and assessment of these effects are done along principles, benchmarks and indicators for three central themes. Principles act as goals or aims derived by legislation, Euroregional visions or treaties. Benchmarks provide in the standard of comparison, where indicators are the measurement units.

Table 2: Defining the Framework: Themes, principles, benchmarks and indicators

Themes	Goals/principles	Good practice/benchmark	Indicators
European integration	European integration, European citizenship, non-discrimination	No border controls, open labour market, easy recognition of qualifications, good coordination of social security facilities, taxes	Number of border controls, cross-border commuting, duration and cost of recognition of qualifications, access to the housing market, etc.
Socioeconomic / Sustainable development	Regional competitive strength, Sustainable development cross-border territory	Cross-border initiatives for establishing companies, Euregional labour market strategy, cross-border spatial planning	At Euregional level: GDP, unemployment, quality of cross-border cluster, environmental impact (emissions), poverty

⁷⁰ For example: Unfried et al, 2022; Unfried, M., & Kortese, L. (2019). Cross-border impact assessment as a bottom-up tool for better regulation. In Beck (ed.), *Transdisciplinary Discourses on Cross-Border Cooperation in Europe*. Brussels: Peter Lang, pp. 463-481; Unfried, M., Kortese, L. & Bollen-Vandenboorn, A. (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 Medeiros (ed.). *Territorial Impact Assessment, Advances in Spatial Science*. Heidelberg: Springer International Publishing, pp. 103-121.

⁷¹ Durà, A., Camonita, C., Berzi, M., & Noferini, A. (2018). Euroregions, excellence and innovation across EU borders. A catalogue of good practices. Retrieved from https://ddd.uab.cat/pub/lilibres/2018/189399/RECOT_CRII_Catalogue.pdf

Euregional cohesion	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 with the past), development of Euregional governance structures, quantity and quality of cross-border projects
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Step-based approach & Capacities

With a great diversity of cross-border regions, it may be difficult to assess the impacts for national and EU policymakers. Furthermore, adequate regional and cross-border data are rarely available in many policy fields.⁷² Therefore, the fundamental idea of the ITEM methodology is to apply a bottom-up approach. Given the diversity and lack of data, an in-depth and border-specific assessment can only be done with close cooperation of stakeholders of the local and regional level in the cross-border territory.⁷³ It is also acknowledged by the European Commission itself, as well as brought forward by the EU Territorial Agenda 2030 from the Member States. A place-based approach should encompass an active engagement of local and regional authorities. Thus, adequate impact assessments requires a multilevel governance approach. The European Committee of the Regions and its networks are such stakeholders. Next to some experience with TIAs in the framework of the framework of Better Regulation, the CoR has also recently launched two relevant networks. First, the Network of Regional Hubs was created, where members monitor the implementation of EU policies on the ground. It currently includes 46 members, 10 observers and one associated body, that together are also an established subgroup of the Fit for Future Platform (F4F) of the Commission.⁷⁴ The aim of this so-called RegHub is to contribute to the EU’s better regulation, yet there is no structural role in the ex-ante assessment of policies as such. More recently, in November 2024, the European Cross-Border Platform was launched.⁷⁵ The Platform gathers actors in cross-border cooperation from border cities and regions to EGTCs and Euroregions. It acts as a place for exchange and discussion, with two interregional groups, on the European Grouping of Territorial Cooperation and on ‘cross-border’. The general idea is to exchange, influence, initiate and foster dialogue.

With these networks, there are relevant networks of border regions and cities. These interregional platforms could be a good starting point for a special subgroup of border regions that is responsible for assessing border effects of EU legislation and policies. In the current framework, this is still missing. With their know-how and the perspective from a particular cross-border territory, regional actors could provide this important evidence of cross-border effects.

The experiences of the Dutch mandatory requirement of border effects as regulatory impact assessment also shows the relevance of a step-based approach. Screenings of legislative proposals by ITEM over the period of 2023-2024 show that around 10% to 15% of the total proposals would be relevant for conducting a quick scan on border effects. This emphasises the fact that cross-border impact assessment is a niche, that should not become too much of an administrative burden.

⁷² As also was concluded by ECA, 2023.

⁷³ Unfried et al, 2022.

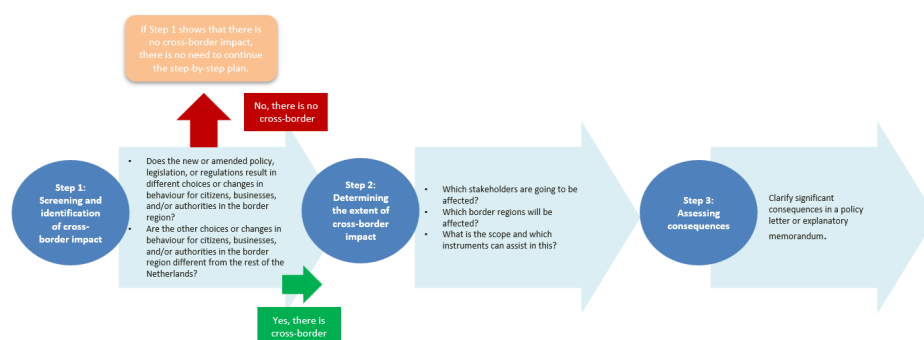
⁷⁴ <https://cor.europa.eu/en/our-work/cooperations-and-networks/network-regional-hubs>

⁷⁵ <https://cor.europa.eu/en/our-work/cooperations-and-networks/european-cross-border-platform>

Therefore, the Guidance on the Dutch border assessment follows a step-based approach. The first step aims to identify relevant dossiers by two simple questions. If relevant, a second step contains a quick scan that allows for a better judgement on, among others, the characteristics, scope and size of the border effect. Finally, an in-depth analysis can be made if found necessary. While a quick scan can be made by the civil servants working on the bill, with support of the Ministry of Interior, the (eu)regions and ITEM as helpdesk, in-depth analyses could be supported by expertise of research and knowledge institutions. The same logic could work on EU level.

Figure 5: Step-based approach Grenseffecten

Guideline Border Effects (Min BZK) Summer 2021



A European Novelty: Schengen Borders Code

Today many border regions face a severe problem with respect to the open border. With Schengen, open borders have been an important element of cross-border cohesion. While Schengen stands for open internal borders, it was always legally possible to reintroduce internal border controls for a limited period. Due to different crises in recent years, many Member States – Germany, France and the Netherlands as recent examples – have reintroduced border controls.

In December 2021, the European Commission presented the Revision of the Schengen Borders Code. On 20 June 2024, the adopted text was published in the Official Journal of the European Union.⁷⁶ As of 17 July 2024, the Revised Schengen Borders Code has entered into force.⁷⁷ The Revised Schengen Borders Code includes a novelty, namely a specific cross-border impact assessment in the framework of the proportionality assessment. It is therefore the first specific assessment for cross-border territories on EU level. In this subsection this will be elaborated more thoroughly.

In general the revision aimed to achieve among others:

- A more uniform mode of action at external borders for health threats

⁷⁶ OJ L, 2024/1717, 20.6.2024, ELI: <http://data.europa.eu/eli/reg/2024/1717/oj>

⁷⁷ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0399-20240710>

- Using a response against migrants at external borders as instruments (the instrumentalization of migrants)
- A mechanism for a European response to large-scale threats that threaten the majority of countries at the same time (as was the case with COVID-19)
- Procedural safeguards for unilateral border checks at internal borders: a tougher proportionality test emphasising that a border check is a 'measure of last resort'
- Mitigating measures and specific safeguards for cross-border regions
- Clarification on alternative measures to border checks.

One additional objective of the revision was to strengthen the perspective of cross-border regions and building in safeguards for these territories. , for instance with respect to the reintroduction of border controls. Chapter II of the Schengen Borders Code provides an overview of arguments that allow for the reintroduction.

While Schengen of course stands for open internal borders, it is legally possible to reintroduce internal border controls for a limited period. Chapter II of the Schengen Borders Code provides an overview of arguments that allow for the reintroduction of border controls.

This could be done at European level:

- At 'large-scale public health emergency threatening the overall functioning of the area': Article 28 contains a new coordinated mechanism at EU level in case of a serious threat to public policy or internal security that affects a majority of the Member States at the same time. This foresees in a better coordinated system of border controls, such as during a pandemic.
- In 'exceptional circumstances, where the overall functioning of the area without internal border control is at risk due to persistent serious deficiencies in external border control': Article 29 already existed and oversees the situation where there are serious deficiencies at the external borders that put internal borders at risk.

This could also be installed unilateral at national level, when there is:

- A foreseeable serious threat to public policy or internal security
- An immediate serious threat

The 'cross-border assessment' in the law

The revised Article 25 now provides more explanation of what constitutes a 'serious threat': 'may, in particular, be': terrorist incidents or threats, large-scale public health crises, exceptional situation of sudden large-scale illegal migrations between Member States leading to overcrowding, large-scale or high-profile international events. Article 25a sets out the procedure and how long border checks may be.

Regarding border controls, Article 25(2) stresses that it should be a '**last resort**': "In all cases, border control at internal borders shall be reintroduced only as a measure of last resort. The scope and duration of the temporary reintroduction of border control shall not exceed what is strictly necessary to respond to the serious threat identified." Furthermore, Article 25(2) now stipulates that: "Border

control may only be reintroduced or prolonged pursuant to Articles 25a and 28 where a Member State has established that such a measure is necessary and proportionate, taking into account the criteria referred to in Article 26(1), and, where such control is prolonged, also taking into account the risk assessment referred to in Article 26(2).”

Regarding necessity and proportionality, Article 26 is rephrased. In particular, Member States must assess, inter alia:

- Appropriateness: in particular whether there are alternatives, such as proportional checks under Article 23 (checks within territory). These are no formal border checks, deployed on general police information (or other information) and are not systematic. It covers mainly monitoring and surveillance technologies.
- The impact: on the movement of persons in Schengen; and: the functioning of the cross-border region, taking into account the strong social and economic ties.

This assessment should take place at:

- Installing internal border controls;
- After border controls for a period of 6 months, Member States must make a risk assessment, during which the suitability and impact must be reassessed again (including the ‘border test’).

When notifying the establishment or extension of border controls, Member States must also send the assessment of necessity and proportionality, as stipulated by Article 27(1)(e). Interestingly, following the notification, according to Article 27a the Commission may establish a consultation process, where neighbouring Member States that are directly affected should be consulted. This consultation could promote mitigating measures and mutual cooperation between neighbouring states.

The ‘cross-border assessment’ in practice

There is thus a ‘border test’ under which arguments must be given on the impact on the functioning of cross-border regions in the case Member States want both establishing and prolonging internal border controls. Regarding the definition of a cross-border region, Article 42b states: “By **11 January 2025**, all Member States with common internal borders shall, in **close cooperation**, determine the areas of their territory considered as cross-border regions, taking into account the strong social and economic ties between them, and notify the Commission thereof. Member States shall also inform the Commission of any relevant changes thereto.” (emphasis added by the authors).

The Schengen Borders Code itself does not provide a definition of a cross-border region, nor does it provide guidance on the border test. In this respect, the Explanatory Memorandum⁷⁸ and Impact Assessment⁷⁹ are studied. The Explanatory Memorandum acknowledges that it is a ‘novelty’:

“In this regard, as a novelty, it adds the impact on cross-border regions. The provision establishes different requirements for situations where border controls are reintroduced for the

⁷⁸ Explanatory Memorandum, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0891>

⁷⁹ Impact Assessment Report, SWD(2021) 462 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2021%3A0462%3AFIN>

first time and where the border controls are prolonged for foreseeable threats, in order to take into account that the conditions for maintaining internal border controls must increase over time, in line with the proportionality principle. This article also introduces the concept of measures that mitigate the impacts resulting from the reintroduction of border controls which should be applied accordingly.”⁸⁰

Yet, for finding a definition of a cross-border region, one has to scroll down to Annex 15 of the Impact Assessment. Annex 15 to the Impact Assessment deals specifically with ‘Border Areas’. Since a definition of the border area in the Schengen Borders Code is absent, the Impact Assessment states that any future reference to the border areas could be constructed as referring to the Local Border Traffic (Regulation 1931/2006) or NUTS (nomenclature of territorial units for statistics). The Local Border Traffic Regulation deals with external borders and small traffic, where the border area is defined as:

“an area that extends no more than 30 kilometres from the border. The local administrative districts that are to be considered as the border area shall be specified by the States concerned in their bilateral Agreements as referred to in Article 13. If part of any such district lies between 30 and 50 kilometres from the border line, it shall nevertheless be considered as part of the border area”.

While mentioning NUTS as possibility, the Commission already concludes in the Impact Assessment that an approach based on NUTS territorial units does not appear suitable, as the size of these units varies greatly. Therefore, guidance could be retrieved on the basis of the Local Border Traffic Regulation, but it is up to the Member State to agree on an appropriate definition **in consultation with the neighbouring country/countries**. In doing so, specific regions must be mentioned in a cross-border manner (i.e. not limited to regions on the border).

The revised Schengen Borders code: important innovative approach for cohesion in border regions

The aim is to better assess impact in cross-border regions, so that: “with a view to ensuring the uninterrupted functioning of the Single Market and safeguarding the interests of cross-border regions and of “twin cities” including for instance authorisations or derogations for the inhabitants of cross-border regions.”⁸¹ (emphasis added by the authors) The perspective of cross-border regions should therefore be better taken into account in the framework of the (proportionality) assessment, but also in the framework of mitigation measures. In this instance, it is promoted that there could be exemptions for cross-border territories specifically. Yet, neither the Impact Assessment, the Code, nor the Explanatory Memorandum reflects on the question how such an assessment should be made. Nevertheless, the assessment should be present and clearly argue whether this is the ‘lightest possible’ measure and whether mitigating measures to cross-border regions (including exceptions) are needed.

⁸⁰ Explanatory Memorandum, p. 22.

⁸¹ Recital 38 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders {SEC(2021) 440 final} - {SWD(2021) 462 final} - {SWD(2021) 463 final}.

The Revised Schengen Borders Code and its safeguards for cross-border regions can be considered as the first specific cross-border impact assessment in EU legislation. While the new rules are already in force, Member States as Germany (as of September), France (as of November) and the Netherlands (as of December) have reintroduced internal border controls at all borders. However, Member States appear not to be implementing all of the new elements. The reintroduction of internal border controls are all argued on the basis of “sudden large-scale unauthorised movements of third-country nationals between the Member States, putting a substantial strain on the overall resources and capacities of well-prepared competent authorities and which is likely to put at risk the overall functioning of the area without internal border control, as evidenced by information analysis and all available data, including from relevant Union agencies” (Article 25(1)(c)). The notification of the Netherlands was published publicly, in which special mentioning of the border region was made.⁸² In its notification, the Dutch government aims to limit the negative impact in border regions. However, there is no definition of the ‘cross-border region’ provided, nor a detailed impact assessment or plan for mitigating measures.

NOTIFICATION OF REINTRODUCTION OF BORDER CONTROL AT INTERNAL BORDERS OF THE NETHERLANDS

2. Impact on the free movement of persons and impact on the functioning of cross border regions

As stated above, the RNLN will be instructed to conduct border checks in such a way as to minimise the impact on cross-border traffic, for example by refraining from measures that could disrupt traffic flows. In addition, the Dutch authorities attach great importance to remaining in close contact with the Belgian and German authorities in order to prevent internal border checks from having a significant impact on the movement of persons and goods. Furthermore, the Netherlands is committed to ensuring that the economic, social and infrastructural impact on border regions and their residents is minimised to the greatest possible extent.

In the upcoming period, the new cross-border safeguards have to be proven in practice. In this regard, the Commission also has to prove itself to be the guardian of the rules of the Schengen Borders Code. Several studies have shown that the Commission insufficiently addressed the non-compliance of Member States with the rules of the Schengen Borders Code during the COVID-19 pandemic and before.⁸³ It would be very positive for the situation of cross-border territories, if the Commission does better in relation to the reintroduction of border controls.

4.2. Sustainable cross-border cooperation, governance and policies

“In CBC, nothing can be assumed or taken for granted. It is of utmost importance to initiate, facilitate, and sustain interactions across national borders to overcome the barrier effect they create. Local CBC institutions and governance structures play an irreplaceable role in promoting

⁸² <https://open.overheid.nl/documenten/dpc-0aa437d8de787c54417fac845450dc287338d58e/pdf>

⁸³ See in this respect also the summary of the European Parliamentary Research Service: EPRS (2022). Schengen reform. Key challenges and proposals. PE 733.599.

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733599/EPRS_BRI\(2022\)733599_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733599/EPRS_BRI(2022)733599_EN.pdf)

*cohesion by addressing both mental and administrative/technical obstacles that hinder cross-border integration.*⁸⁴

This quote accurately addresses the need for dedicated cross-border structures as a precondition of structures cross-border cooperation in cross-border regions. In the previous sections already, it already has been brought forward why this is crucial for territorial cohesion and the Single Market as a whole. The improvement of the institutional conditions of cross-border cooperation is only a sideshow even in the ETC-programme.

In Interreg period 2021-2027, the specific objective of ‘a better cooperation governance’ is introduced, aiming at giving more priority to improving governance for better territorial cooperation. Yet, analyses such as in the framework of CrossQuality have shown that capacity building related to stable cross-border networks is today not always a prominent objective in Interreg programmes. It should be more prioritised in the next programming period. This was supported by the HLG, who promoted in its analysis the idea of building better institutions. The relevance of good governance is also highlighted by the European Commission in its Cohesion Reports. Enhancing the capacity building may also benefit the ability to assess cross-border impacts as discussed earlier. Indeed, capacity building for expertise on cross-border impacts was also brought forward as important prerequisite.

Overall, the HLG concluded that cohesion policy should become even more of a place-based and transformative policy, sensitive to the needs of (border) regions. Furthermore, there was a need for meaningful simplification and a viable budget. Indeed, the budget for ETC should not be limited to 2,5%, given the fact that internal border regions represent a greater share of EU’s territory and population, and a well-functioning cross-border cooperation is key to the current and future challenges to the Single Market.⁸⁵ In this respect, the CoR, for instance, is of the opinion that the funds allocated to Cohesion Policy should at least remain the same, while the amounts dedicated to ETC should at least be 8% of the total amount.⁸⁶

Furthermore, administrative simplification and active support and measures to overcome the stop-and-go phenomenon can stimulate better cooperative Interreg projects and lasting impacts. Here, there is a need for improving the set-up and focus of ETC. First, the notion of innovation should be reconsidered. Often, it is required that new Interreg projects are innovative. By doing so, previously established results and projects are forgotten in the creation of new projects and new structures. Furthermore, the responsible national ministries (often Economic Affairs) for Interreg, reformulate the priorities towards their national priorities, that are mainly innovation driven. In this respect, the unique feature of Interreg may be overtaken by general elements of innovation that is also covered under programmes as Horizon Europe.

In the future, the innovative aspect of Interreg should be again the cross-border dimension, where the needs of cross-border territories are specifically addressed. Here, there could be a better focus on realising stable cross-border networks in ‘real’ cross-border areas. This requires a bottom-up approach, taking into account the interests of the cross-border territory and avoiding that national interests do overrule cross-border needs. As among others, the CoR rightfully states: the stakeholders in the cross-border territory better know what the needs are and the priorities should be. Accenting

⁸⁴ Böhm, 2024.

⁸⁵ As promoted by Letta & Draghi, but also brought forward by Medeiros, 2024 & Böhm, 2024.

⁸⁶ CoR (2023). Opinion - The future of Cohesion Policy post-2027. COTER-VII/030.

bottom-up approaches for the formulation of for example the Interreg regulation could improve the programme and it's fit for addressing the challenges in border regions.

Main recommendations for a better ETC and Cohesion Policy

- *Transform from a programme-based to a place-based and transformative policy*
- *Strategic reorientation to building better institutions and reducing border obstacles*
- *Reconsider the notion of innovation, replacing the focus to good interconnection and the added value to the cross-border region*
- *Consolidation or improvement of cross-border activities and cooperation could also be seen as innovative*
- *Move beyond the threshold of 2,5-3% funding for ETC*
- *Meaningful simplification and active support, ETC requires specific know-how that limits the willingness for participation and success of projects*
- *Enhance the bottom-up approach, where policies are more sensitive to the needs of regions*
- *Overcome 'border blindness' by better matching and harmonising regional cross-border territorial coordination programmes with other national and European programmes*
- *Incorporate the cross-border and territorial dimension also in the mainstream national and European programmes (do no harm to cohesion)*

Finally, the cross-border dimension should not only be a niche with comparatively small Interreg funds. It must be mainstreamed within European and national programmes as well. Currently, there are not many other programmes that deal or fund cross-border cooperation specifically. Too many programmes and cooperation thereof remain within the national boundaries. Yet, the cross-border dimension is relevant in many policy domains and to many other territorial categories addressed in Cohesion Policy. Better coordination should overcome this 'border blindness'. A more holistic approach is exactly what is argued by Letta and Draghi. Hence, cross-border cooperation should not only be promoted by funds but also in the legal innovations. This refers to the ex-ante assessment discussion of the previous section, where Draghi and Letta (and Von der Leyen in the political guidelines) revamp the discussion on a so-called 28th regime for cross-border activities.

A 28th regime

The central idea of a 28th regime is to install a specific European framework of rules and procedures next to general national frameworks. It acts as a 28th, European, framework next to the 27 frameworks of the Member States.

Letta promotes this idea for a European framework to cross-border businesses under a European Code of Business Law. With an harmonised set of rules instead of the current patchwork of national rules, it would unlock the full potential of cross-border activities by businesses. Indeed, a 2024 Eurochambres Single Market Survey indicated that 68% of the respondents found different practices to be a significant obstacle. Furthermore, Letta promotes the idea of a 28th regime for digital cross-border workers, that are currently hindered by tax and social security regulations. Also Draghi promotes the idea of a 28th regime, such as for innovative SMEs, for large cross-border renewable energy projects and for interconnected grids.

The idea of a 28th regime is not entirely new. In literature, there was already a debate on a 28th regime (then called a thirteenth state) for cross-border workers in the light of social security and taxation.⁸⁷ The discussion of legal flexibilization is also held in the framework of solving cross-border obstacles in general, that has led to the European proposal on a European Cross-border Mechanism.⁸⁸ In the current EU framework, there are already some examples of a 28th regime. Draghi refers to the initiative in 2008 to introduce a ‘European Private Company’ as a 28th regime for Limited Liability Companies in the EU. Indeed, in the field of legal forms, there are European regimes for cross-border activities, such as European Company (*Societas Europaea*), European Grouping of Territorial Cooperation, European cross-border associations. Yet, while benefiting from a EU legal form, in many aspects these organisations are still subject to national regulations. The same is true for the so-called Pan-European Personal Pension Product (PEPP), that went into force in 2020. The PEPP constitutes a pan-European option for retirement saving, acting as a 28th regime next to the national options. Nevertheless, also in this case, the PEPP is still subjected to national requirements such as taxation.⁸⁹

Final remarks: Horizontal instruments

4.3. The cross-border multistage rocket

A discussion around a 28th regime already touches upon the idea of horizontal instruments to foster cross-border activities, cooperation and development.

In this respect, illustrative is the multistage rocket as presented by Dirk Peters⁹⁰, former expert at DG REGIO of the European Commission, that specifically addresses the cross-border territories. Here, via territorial cohesion the first established stage is funding and joint strategies for cross-border regions, secondly territorial cohesion policies developed cross-border legal forms to facilitate cross-border cooperation. Finally, there is the idea to come to an

Figure 6: The multistage rocket as described by Dirk Peters



The Cross-border multistage or step rocket

A **multistage rocket**, or **step rocket** is a launch vehicle that uses two or more rocket stages, each of which contains its own *engines* and *propellant*.

- **Stage 1: INTERREG**
(joint strategy and money)
- **Stage 2: European grouping of territorial cooperation**
(common structure and mutual trust)
- **Stage 3: ECBM**
(legal obstacles and initiators)



⁸⁷ See for instance: Weerepas, M. (2018). Grenswerkers: coördineren, niet omdat het niet kan, maar omdat het moet? Inaugural address, Maastricht: Maastricht University.

⁸⁸ See in this respect the ITEM Cross-Border Impact Assessment 2024 dossier on the Regulation Facilitating Cross-Border Solutions.

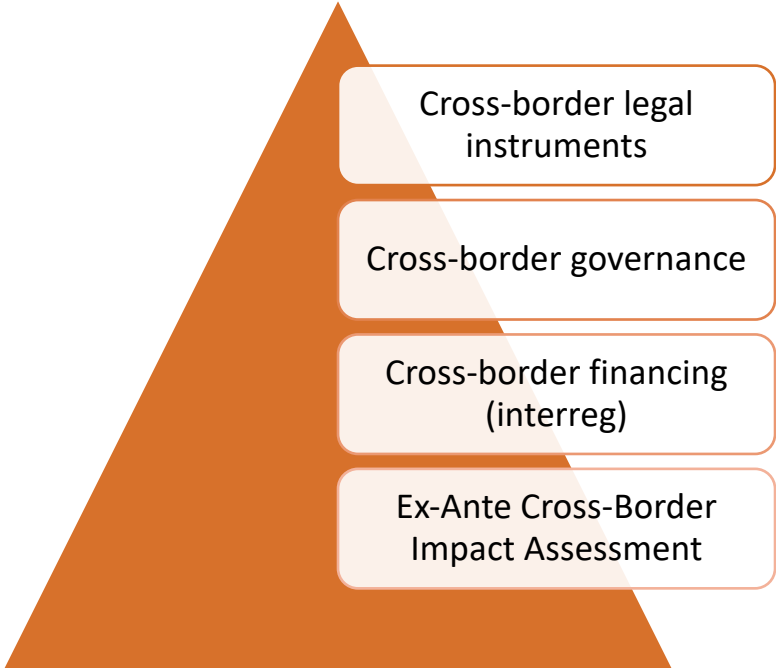
⁸⁹ Mertens, P. (2020). *Pan-European Personal Pension Product: on its need, tax-treatment and obstacles*. (2 ed.) (pp. 1-33). Maastricht Faculty of Law Working Papers. <https://www.maastrichtuniversity.nl/file/pimmertenspdf>

⁹⁰ <https://archive.espon.eu/sites/default/files/attachments/Dirk%20Peters%20ESIF.pdf>

instrument that allows cross-border activities to enjoy more room for legal flexibility. In this thought, the 28th regime can be mentioned, as well as experimentation clauses, (deminimis) derogations, or regulatory sandboxes. In this respect we refer to the dossier of this years' ITEM Cross-Border Impact Assessment on the Regulation on Facilitating Cross-Border Solutions. Indeed, next to funding, legal forms, there is also a pressing need to come to better frameworks and legal instruments to overcome persisting cross-border obstacles.

To make Peters' multistage rocket complete, we would like to add a first fundamental layer, that is the ex-ante cross-border impact assessment. The multistage rocket moves from general instruments supporting the functioning cross-border territories (*do no harm*), to specific instruments addressing the needs in cross-border territories. First, the regulatory instrument allows to better include the specific characteristics of the cross-border territory (including aspects as mobility, cooperation etc.) in policymaking. Secondly, financing stimulates the cross-border interaction, where, thirdly, governance instruments as the EGTC can foster cooperation in a more sustainable manner. Finally, a legal instrument as the ECBM, FCBS, 28th regime etc. can solve the very specific legal and administrative obstacles that persist in the envisioned joint activities. In sum, it is a framework that searches for specific horizontal instruments at the internal border of the EU, based on the experience that vertical EU integration measures (as EU legislation) is not sufficient.

Figure 7: adapted cross-border multistage rocket



5. Conclusions

This dossier discussed the territorial dimension of policies and legislation and what to do against 'border blindness'. While there are instruments in place to assess territorial, and to a limited extent cross-border, impacts of new policies and legislation, they seem not to be fit for the future. Neither does the present cohesion policy meet the needs of border regions and cross-border territories. While EU Cohesion Policy achieved positive results and promoted the development of regions and cross-border regions in particular, the full potential is still underutilized. This also has important implications for the functioning of the Single Market and its potential to adequately address the future developments and competitiveness.

Cross-border regions are portrayed as living labs of EU integration. When looking at the persisting obstacles to cross-border regions, it also illustrates the persistent weaknesses of the Single Market. This dossier elaborated on how ex-ante via a specific cross-border impact assessment better regulation and policies can be designed, that take into account the cross-border characteristics and interconnectedness. In this regard, the recently established cross-border impact assessment within the Revised Schengen Borders Code is a novelty but still needs to prove itself. Member States – to the disappointment of border regions⁹¹ – are reintroducing internal border controls at fast pace. Nevertheless, knowing more about costs and benefits could stimulate better policy choices.

The example of the Dutch mandatory requirement to assess potential border effects (*Grenseffecten*) highlights that it can be in the own interest of a government to avoid potential negative effects. It also shows that ex-ante impact assessment does not imply heavy bureaucratic burden. This can be managed by a step-based approach, very specific capacities and the involvement of the cross-border regional level.

Regarding the current EU cohesion policy, we held a plea for a stronger focus on the cross-border dimension. In line with experts, the HLG and stakeholders, the current mode of funding and design is not adequate enough to deal with the challenges that cross-border regions are faced with. This cannot only be tackled by EU Cohesion Policy as such, the cross-border dimension should be incorporated and mainstreamed in all national and European programmes and policies. The dossier highlighted in this respect also the use of legal flexibilization, such as via a 28th regime. Including possibilities for derogations for cross-border regions and activities, such as enshrined in the Revised Schengen Borders Code when it comes to border controls. This can be seen as an important precedence and serves as a basic principle to be included in future legislation.

Taking into account cross-border regions, interactions and cooperations is not only favourable for cross-border territories and their economic potential, but also for the success and competitiveness of the Single Market, European integration and the quality of life of citizens in cross-border regions.

⁹¹ <https://www.aebr.eu/resolution-on-the-use-of-border-controls-as-a-measure-of-last-resort-within-the-eu/>

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