



## Dossier 5: The Impact of recent EU legislation in the field of EU industrial policy on border regions

Cross-Border Impact Assessment 2024



## Dossier: New EU legislation in the field of industrial policy

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### Abbreviations

CSDDD	Corporate Sustainability Due Diligence Directive
LkSG	Lieferkettensorgfaltspflichtengesetz
EC	European Commission
EP	European Parliament
EPRS	European Parliamentary Research Service
EU	European Union
EMR	Euregio Meuse-Rhine
CoR	European Committee of the Regions

## 1. Introduction

During the last couple of years, the European Commission, Council and Parliament have often stated that climate change and environmental degradation are an existential threat to Europe and the world. To overcome these challenges, the European Green Deal aims at transforming the EU into a modern, resource-efficient and competitive economy, ensuring net emissions of greenhouse gases by 2050 and economic growth decoupled from resource use. Against this background, the transition of EU industries will play a crucial role. In February 2023, the Commission tabled a Communication entitled 'A Green Deal Industrial Plan for the Net-Zero Age' to speed up the net-zero transformation of industry and set Europe on the path towards climate neutrality.<sup>1</sup> Accordingly, the Commission made different legislative proposals. In 2024 the "critical raw materials act" for the future of EU supply chains was adopted.<sup>2</sup> New rules aim to increase and diversify the EU's critical raw materials supply, strengthen circularity, including recycling, support research and innovation on resource efficiency and the development of substitutes to strengthen the EU's strategic autonomy.

In February 2024, the Council and the European Parliament reached a deal on the net-zero industry act.<sup>3</sup> According to the Commission these new rules will facilitate the conditions for investments in green technologies by simplifying permit granting procedures, supporting strategic projects, based on specific criteria contributing to decarbonisation, facilitating access to markets for net-zero technological products, defining rules for public incentives and enhancing the skills of the European workforce. The objective is to cover 40% of the EU's needs in strategic technology products, such as solar photovoltaic panels, wind turbines, batteries and heat pumps.

On 25 July 2024, the Directive on corporate sustainability due diligence (Directive 2024/1760) entered into force.<sup>4</sup> The aim of this Directive is to foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains. Member States have to transpose the Directive into national law and communicate the relevant legal acts to the Commission by 26 July 2026. One year later, the rules will start to apply to the first group of companies, following a staggered approach (with full application on 26 July 2029). The new rules will ensure that companies identify and address adverse human rights and environmental impacts of their actions inside and outside Europe. The intention is that EU rules will provide a uniform legal framework and ensure a level playing field for companies across the EU Single Market.

What are the specific effects of these proposals for industry in Dutch, German and Belgian border regions. Are there specific aspects that are positive or negative if it comes to industrial activities and investment close to the border and with respect to the business relation in the proximity?

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Council, the Council the European Economic and Social Committee and the Committee of the Regions. A Green Deal Industrial Plan for the Net-Zero Age, COM/2023/62 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0062>.

<sup>2</sup> European critical raw materials act, Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials.

<sup>3</sup> Net-zero industry act (Regulation (EU) 2024/1735), Regulation (EU) 2024/1735 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem

<sup>4</sup> Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

## **2. Objectives & Method**

### **2.1 Current or Future Effects: Ex-post or ex-ante**

The presented legal acts are already adopted. Hence, it is not an ex-ante impact assessment that aims to influence the final shape of the legislation. On the other hand, it is too early to assess ex-post effects. So, the character of the assessment is closer to an ex-ante research since the results could still influence important national follow-up decisions. Even for the adopted regulations, national administrative rules must be formulated, and with respect to the directive, the transposition into national law offers some room for manoeuvre. Meaning that Belgian, Dutch, German or Luxembourgish governments still have the possibility to communicate with each other to avoid specific frictions for border regions or related to cross-border activities that could be a consequence of the new legal acts. The mapping takes place at the important stage where neighbouring countries still have the possibility to communicate about potential negative impacts or opportunities in border regions and how to avoid them also by coordinating with respect to national implementation. This corresponds to the idea of an ex-ante assessment supporting the national implementation.

### **2.2 Demarcation: Defining the Territory of the Research**

For this assessment, the cross-border area that is selected is a broader territory. The reasoning behind this is that Euroregion or the territory of a specific Interreg Programme would have been too small to discuss eventual cross-border activities. In this case, cross-border and transnational effects go hand in hand with respect to the activities of bigger industrial companies. Hence, the territory of the Benelux countries plus Germany was chosen for several reasons. There are several initiatives between these Member States where policy objectives for instance in the field of hydrogen or energy infrastructure are formulated at the level of the Benelux or at the binational level between two neighbouring countries. Cross-border sites like the Belgian-Dutch North Sea Port are certainly interesting cases where industrial activities come together in a closer border area. Between the Netherlands and Germany, cross-border activities already exist in the field of hydrogen infrastructure, waste management or with respect to joint business parcs. The assumption is, that the objectives and instruments of the new EU legal acts can be assessed based on already formulated objectives in the Benelux area and previous and current practices of ongoing industrial activities and cooperation.

Map 1: Map of the Benelux Union with neighbouring countries



Source: Shaund, CC BY-SA 4.0 <<https://creativecommons.org/licenses/by-sa/4.0/>>, via Wikimedia Commons

## 2.3. The research themes, principles, benchmarks and indicators of the Dossier

### 2.3.1. The legal acts in the light of the designated Research Themes

Table 1: Selected EU legal acts for the research

<b>A Green Deal Industrial Plan for the Net-Zero Age</b>
<b>Directive on corporate sustainability due diligence</b>
<b>Net-zero industry act</b>
<b>European critical raw materials act</b>

As already described, the EU legal acts were only adopted recently in 2024 meaning that there are so far no effects that could be measured or analysed. Furthermore, it is subject to national implementation. The research question is what effects could be triggered in the chosen territory. It will be reflected how this corresponds to broader objectives and strategies with respect to European Integration. Since the focus of the research lies on European legislation, the basic assumption is that the legislation will serve the objective of more comprehensive European integration the field of industrial policy. In this respect, it is possible to discuss the objectives, instruments and processes

against the needs of European cohesion especially in border regions. The question is whether in addition to the broader objectives of European transnational industrial policy, there are also aspects of the legislation that are directly formulated with respect to European integration and cohesion in border regions.

Practitioners in the field of business and industry currently mention that it is certainly not possible to assess the precise socio-economic effects or the effects on sustainable development of the adopted legal acts. The regulations and the directive mainly formulate objectives in the field competitiveness, resilience, corporate responsibility, and circular economy. In fact, these objectives are rather broad and to some extent still abstract. In addition, it is difficult to make a clear distinction between transnational effects and effects on cross-border territories. So, socio-economic effects and aspects of a future sustainable and circular economy will be discussed in the first place, by comparing whether the European approaches match with strategies and objectives of the Benelux Union or the neighbouring countries in question.

The third focus on “Euregional cohesion” is about the potential impact that the legislation will have on the cohesion of cross-border territories. The Euregio Scheldemond with the cross-border harbour North-Sea Port is a case in point, where industrial activities are very close to the border and are explicitly organised in a cross-border port area. In this case, cross-border cooperation and the benefits of cross-border cooperation in the field of industry is part of the DNA and very much supported by stakeholders in Belgium and the Netherlands. Hence, it will be discussed what the new regulations especially mean for the cohesion of cross-border territories where cross-border cooperation is explicitly linked to the cohesion of the labour market, the joint development of infrastructure and a cross-border understanding of citizens, administrations and political stakeholders.

### 2.3.2. Defining Principles, Benchmarks and Indicators for Establishing a Positive Situation in Cross-Border Regions

ITEM’s annual impact assessment follows a certain methodology. To assess impacts, it will be discussed what the underlying principles are for a certain policy, what type of benchmarks could be defined in order to compare a specific situation and what type of indicators could be applied with respect to the three already outlined research themes.

- **Principles:** what are the legal/political provisions that constitute the backdrop to the notion of establishing a positive situation in the cross-border region?
- **Benchmarks:** which good practices are in place? What is the ideal situation, and can we compare the situation in border regions to other regions?
- **Indicators:** Which assessment criteria will be used in the dossier to make certain assumption concerning the effects of the legal acts in questions?

Table 2: Research themes, principles, benchmarks, and assessment of cross-border effects and opportunities with respect to the recent EU legislation in the field of industrial policy.

Theme	Principles	Benchmarks	Indicator- results
<b>Euregional Cohesion</b>	<p>Good cooperation and coordination of industrial activities in the border region.</p> <p>Capacity building for industrial cross-border clusters.</p> <p>Cooperation and coordination in the field of raw materials and zero industry technologies.</p>	<p>Industrial cooperation and competitiveness in a non-border situation</p> <p>National clusters versus cross-border clusters, transnational opportunities versus cross-border opportunities</p> <p>Transnational value chain versus Euregional value chain.</p>	<p>How intensive is the cooperation across the border?</p> <p>What type of cross-border industrial policy exist?</p> <p>Do the proposed legislative acts promote the idea of cross-border industry cooperation?</p>
<b>European Integration</b>	<p>Article 173 of the Treaty on the Functioning of the European Union (TFEU).</p> <p>EU industrial policy is specifically aimed at: (1) 'speeding up the adjustment of industry to structural changes'; (2) 'encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings'; (3) 'encouraging an environment favourable to cooperation between undertakings'; and (4) 'fostering better exploitation of the industrial potential of policies of innovation, research and technological development' (Article 173 TFEU).</p>	<p>National policies with respect to the implementation of the legal acts.</p> <p>For instance, German "Lieferkettensorgfaltspflichtengesetz" and the coordination of the transposition of the Corporate Due Diligence Directive.</p> <p>Benelux initiatives or bilateral initiatives as a benchmark for the objectives and instruments of recent EU legislation</p>	<p>Qualitative:</p> <p>How does EU legislation match with national legislation the three member states?</p> <p>What are the expectations with respect to the national implementation?</p> <p>Can we expect frictions from different implementation into national legislation?</p> <p>What is the record of the Benelux Countries plus Germany with respect to the implementation of EU industrial policy?</p>
<b>Sustainable Development /Socio-Economic Development</b>	<p>The neighboring countries have formulated objectives in the field of raw materials, zero emission industry and corporate diligence.</p> <p>The Benelux provides a platform to coordinate exchanges and projects in the field of a circular economy formulating a pioneering role within the European circular economy programme.</p>	<p>Impact of EU industrial policy on the socio-economic situation non-border regions.</p> <p>The situation of border regions before the new legislation was adopted (zero/materials/diligence).</p> <p>Impact on the policy on the main sectors in the Benelux/Neighbouring Countries</p>	<p>What are the opportunities of cross-border cooperation concerning material, circular economy, diligence, energy?</p> <p>What are the special obstacles in border regions related to the proposed legislation?</p> <p>What about the competitiveness of cross-border territories if the legislation is implemented?</p>

Own compilation

### **3. Cross-border effects of the three legal acts: what to expect from a cross-border perspective?**

#### **3.1 The assessment of territorial impacts**

The European Commission has established a rather sophisticated system of impact assessment. Before a proposal is made public, it has to undergo regulatory impact assessment conducted by the responsible Directorate General. The process is also based on a broader public consultation process. In the following, it will be discussed how the European Commission assessed the territorial dimension of the proposed legal acts and whether any references were made with respect to border territories. In addition, aspects will be discussed where the perspective of border regions or cross-border territories were not considered. Finally, it will be also discussed where elements of the legal acts need special attention in relation to the implementation and enforcement in the Member States in the Benelux area.

##### **3.1.1 The critical raw materials regulation**

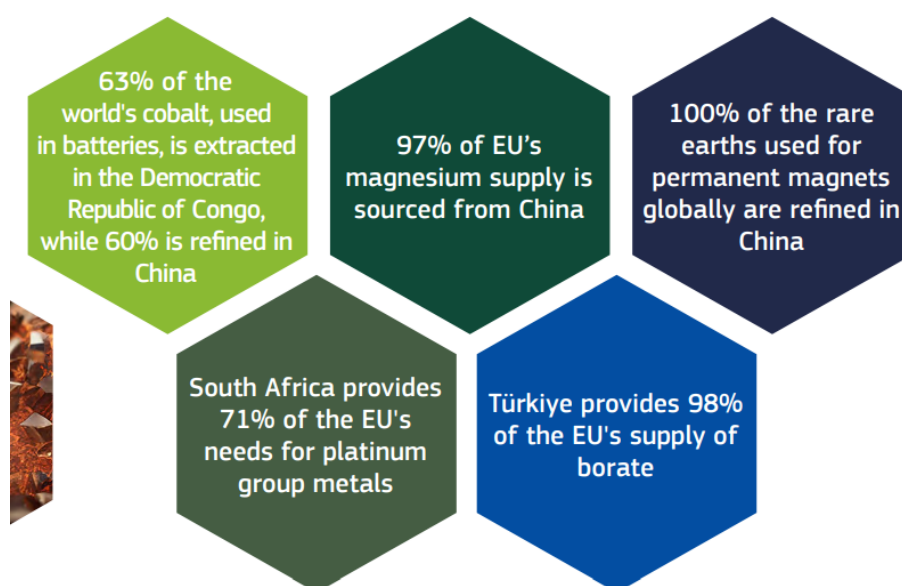
The Critical Raw Materials Act (that is in fact a regulation) is part of the Green Deal Industrial Plan. Presented in parallel with the EU's Net Zero Industry Act, the Critical Raw Materials Act's intention is to scale up the EU manufacture of key carbon neutral or 'net-zero' technologies to ensure a secure, sustainable and competitive supply chain for clean energy to reach the EU's climate and energy ambitions. According to the Commission, it has been assessing raw materials for their criticality since 2011. Since then, it has published an update of the list of EU Critical Raw Materials every three years. In 2023, 87 materials were analyzed for their supply risk and importance to the EU economy.<sup>5</sup>

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<sup>5</sup> See the collection of all documents related to the Raw materials act on: [https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act\\_en#documents](https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en#documents).



Graph 1: Important raw materials and their origin



Source: European Commission

What was controversial during the negotiations? Under the final agreement between Parliament and Council, aluminum was added to the list of strategic raw materials. The benchmark for EU recycling capacity was increased to 25 % of its annual consumption by 2030. The EU should be able to recycle significantly increasing amounts of each strategic raw materials from waste. By 1 January 2027, the Commission will adopt recycling benchmarks for each strategic raw materials in relevant waste streams, through a delegated act. The permit-granting process for strategic projects should not exceed 27 months for extraction, and 15 months for processing or recycling. Where an environmental impact assessment is required under Directive 2011/92/EU to examine projects' effects on the environment, preparation of the report will not be included in the duration of the permit granting process.<sup>6</sup> This shows that there were no essential conflicts around the territorial effects of the proposal in the final stage of negotiation. The European Commission presented an impact assessment report together with the proposal of the regulation on 16 March 2023.<sup>7</sup> A screening of the document showed that concerning questions related to permitting, spatial planning or pooling of strategies, border territories were not explicitly mentioned, or potential problems or opportunities of border regions were not discussed. This is surprising, since some accelerated procedure in the field of environmental impact assessment and permitting in a border region could influence citizens on the other side of the border. ITEM research in previous years have indicated that in the field of spatial planning and permitting of renewable energy sites (i.e. wind parks), recently many conflicts occur when citizens across the border complain about permits on the other side. This happens today for instance frequently at the German-

<sup>6</sup> See European Parliament 2024: Critical raw materials act EPRS (European Parliamentary Research Service), Guillaume Ragonnaud, PE 747.898 – June 2024.

<sup>7</sup> SWD(2023) 161 - Impact assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials. [https://single-market-economy.ec.europa.eu/publications/european-critical-raw-materials-act\\_en](https://single-market-economy.ec.europa.eu/publications/european-critical-raw-materials-act_en).

Dutch border.<sup>8</sup> The impact assessment document does not mention whether a necessity check according to the Better Regulation toolbox 34 was carried out. The Commission's "Better regulation toolbox" formulates 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."<sup>9</sup> Since special territorial questions related to border regions (and other territories) are not mentioned in the impact assessment, the assumption is that the judgment was made, that the territorial dimension was not that decisive. As already mentioned, this is surprising concerning the proposed acceleration of permitting procedures and changes to the environmental impact assessment. It is also striking related to the fact that in the past, mining activities (for instance coal mining) was also geographically done in cross-border territories as in the case of the coal mining area Euregio Meuse-Rhine. In this cross-border territory, coal mines were in Belgium (Flanders and Wallonia), Germany (NRW) and the Netherlands (Province of Limburg). Still today, there are cross-border impacts. The future flooding of the brown coal fields in NRW (after the end of mining in the Rheinisches Revier) could still have repercussions on the ground water situation in Limburg for instance.<sup>10</sup> Against this background, it could have been very interesting to do a proper territorial assessment, taking for instance into account the problems in border territories in the field of cross-border spatial planning or cross-border information and participation of citizens in planning procedures. The European Committee of the Regions adopted an Opinion in July 2023, highlighting the need to involve local and regional authorities in all processes, however there were also no direct recommendations made for cross-border coordination of permitting or planning processes.<sup>11</sup>

### 3.1.2 The Net-Zero Industry Act

In 2023, the Commission made a proposal for a 'net-zero industry act' that aims to expand the manufacturing capacity of net-zero technologies in the EU and enhance the resilience of its energy system. The legal act was adopted by the Council and Parliament in the first half of 2024. The regulation establishes a framework for the manufacturing of 10 net-zero technologies. Major objectives are to streamline administrative processes and access to regulatory sandboxes and European net-zero industry academies. Eight 'strategic' net-zero technologies will gain additional benefits with shorter administrative processes, facilitated access to markets, and administrative support to access finance. The proposed regulation will aim at ensuring that, by 2030, the manufacturing capacity in the EU for these strategic net-zero technologies reaches an overall benchmark of at least 40 % of the EU's annual deployment needs.<sup>12</sup> The proposal was put forward by the Commission without an impact assessment and no online public consultation was carried out. The Commission analysis and supporting evidence

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<sup>8</sup> 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>.

<sup>9</sup> 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](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).

<sup>10</sup> De Limburger: Zorgen en vragen over effecten voor Limburgse waterhuishouding na einde van bruinkoolwinning, 23 Januari 2022. [https://www.limburger.nl/cnt/dmf20220113\\_97063234](https://www.limburger.nl/cnt/dmf20220113_97063234).

<sup>11</sup> <https://cor.europa.eu/en/our-work/opinions/cdr-2188-2023>.

<sup>12</sup> The background and different steps of the negotiation is documented by the European Parliament in its briefing document "Net-zero industry act, Legislation in Progress". [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747903/EPRS\\_BRI\(2023\)747903\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747903/EPRS_BRI(2023)747903_EN.pdf).

were presented in a staff working document published on 19 June 2023.<sup>13</sup> The Commission has not described the specific effects for border regions; however, some developments are mentioned where cross-border cooperation of Member States in the field of net-zero technology plays already an important role. This is according to the Commission the case in the field of offshore wind, where a number of Member States, including Germany, the Netherlands and Belgium “will jointly develop the North Seas as a “Green Power Plant of Europe”, an offshore renewable energy system connecting the respective countries with a particular focus on joint hybrid/ multi-purpose and cross-border offshore projects and hubs, offshore wind, and renewable hydrogen production at massive scale as well as electricity and hydrogen interconnectors and national projects.”<sup>14</sup> In addition it was mentioned, that the 2022 revised Trans-European Energy Infrastructure Regulation refers to cross-border carbon dioxide networks and storage as a priority thematic area.<sup>15</sup>

Very relevant for border regions are the articles in the regulation on enhancing skills for quality job creation. In Article 30 it is stipulated that the Commission shall support, including through the provision of seed-funding, the launch of European net-zero industry academies, as organisations or consortia or projects of relevant stakeholders. According to the Commission, European Net-Zero Industry Academies are designed with characteristics aimed to tackle the specific challenges of the net-zero industries skills gaps. According to the regulation, the “Academies shall involve relevant actors, such as net-zero technology industry, education and training providers and social partners from a range of Member States.” This offers certainly border regions the possibility to establish academies in a cross-border territory and with very specific objectives with respect to their needs. The regulation does not explicitly refer to initiatives with the focus on cooperation of stakeholders in border regions, however there are initiatives in the Benelux area in the form of Interreg projects, for instance the Interreg project ‘North Sea Port Talent’<sup>16</sup>, that could be a starting point of one element of a future “Benelux Net-Zero academy”.

Article 31 of the regulation with the title “Regulated professions in the net-zero technology industries and recognition of professional qualifications” deals with one crucial problem of cross-border labour markets, namely the recognition of professional qualifications. This is discussed in the framework of net-zero academies. It is stated in the Commission’s staff working document that Cross-border recognition of credentials will be governed by existing EU level rules – whenever the host Member State concludes that there is equivalence between the professional qualifications and the learning programmes developed by the European net-zero industry academies and the specific qualifications required for access to regulated professions, these credentials would be automatically recognised.<sup>17</sup> This is certainly one of the most interesting parts of the regulation for border regions, and a precondition to cooperate in the field of Net zero academies or even establish joined initiatives. Article 31(3) refers to access to a profession of particular importance for the net-zero technology industry that is regulated within the meaning of Article 3(1), point (a), of Directive 2005/36/EC. This the

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<sup>13</sup> COMMISSION STAFF WORKING DOCUMENT for a Regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem (Net Zero Industry Act), [https://single-market-economy.ec.europa.eu/system/files/2023-06/SWD\\_2023\\_219\\_F1\\_STAFF\\_WORKING\\_PAPER\\_EN\\_V9\\_P1\\_2785109.PDF](https://single-market-economy.ec.europa.eu/system/files/2023-06/SWD_2023_219_F1_STAFF_WORKING_PAPER_EN_V9_P1_2785109.PDF).

<sup>14</sup> See page 17.

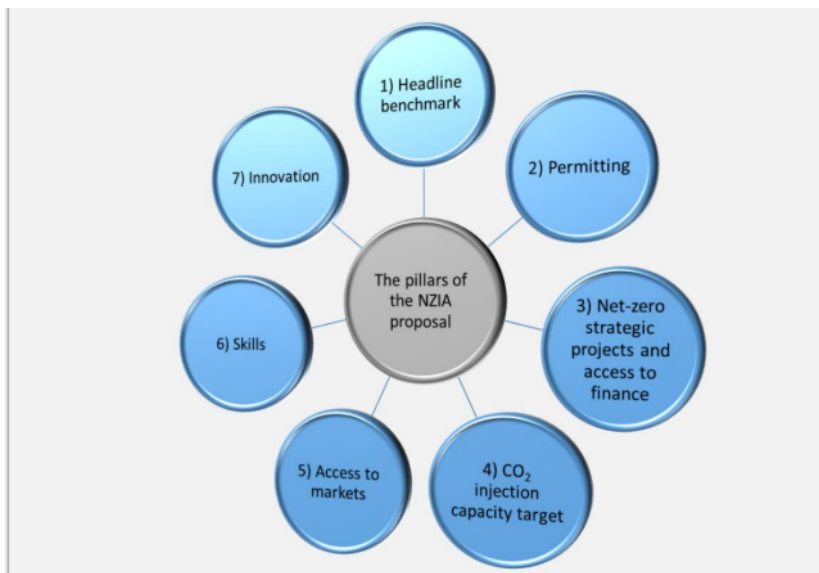
<sup>15</sup> Ibid.

<sup>16</sup> See the homepage of the Interreg project: <https://www.northseaporttalent.eu/>.

<sup>17</sup> See the whole paragraph in the staff working document on page 49.

European directive dealing with recognition of regulated professions. In the framework of net-zero relevant professions it says that Member States shall work towards developing a common set of minimum knowledge, skills and competences necessary for the pursuit of that specific profession for the purpose of establishing a common training framework as referred to in Article 49a(1) of Directive 2005/36/EC to enable automatic recognition of qualifications. In the Benelux area, there were in the past different initiatives to describe common training frameworks for bilateral or trilateral recognition (for instance the "lerende Euregio"/learning Euregio)<sup>18</sup>. ITEM is currently working together with the Benelux Union on relevant questions. This could be a window of opportunity to involve Euregional stakeholders in the field of education and benefitting from the expertise with respect to cross-border recognition. They could be actively promoting the idea of the development of a "common set of minimum knowledge". The extensive knowledge of the educational networks in border regions should be used in pilot projects referring to the stipulation of the net-zero industry act. It could be also interesting to linked future Interreg project to the objectives of the regulation.

Graph 2: The seven pillars of the Net-zero proposal



Source: European Commission, Staff working document 2023

Another important element for border regions of the 'pillars' of the regulation is permitting. As in the case of the raw materials regulation, specific aspects of cross-border projects are not discussed. However, the regulation refers to regulatory sandboxes. Article 33 of the regulation describes the use of 'regulatory sandboxes'. In the definition section, it states that 'net-zero regulatory sandbox' means a scheme that enables undertakings to test innovative net-zero technologies and other innovative technologies in a controlled real-world environment, under a specific plan, developed and monitored by a competent authority. Even more interesting is the description of additional instruments used in the case of regulatory sandboxes described by the Council. "Experimentation clauses, often the legal basis for regulatory sandboxes, are defined as legal provisions which enable the authorities tasked with implementing and enforcing the legislation to exercise on a case-by-case basis a degree of flexibility in

<sup>18</sup> See: <https://lerende-euregio.com/>.

relation to testing innovative technologies, products, services or approaches.”<sup>19</sup> This sounds very familiar with respect to the debate in many border regions, where the concept of experimentation clauses has been discussed for many years. However, it is again surprising, that the concept of ‘regulatory sandboxes’ is not explicitly mentioned with a reference to cross-border situations. The only reference to cross-border cooperation is the notion that “net-zero regulatory sandboxes shall be designed and implemented in such a way that, where relevant, they facilitate cross-border cooperation between the national competent authorities.” (Article 33(8)). It also stipulates that Member States that have established net-zero regulatory sandboxes shall coordinate their activities with the objective of sharing relevant information with other Member States. From the perspective of border regions, this is rather weak. It does not provide a specific instrument to use regulatory sandboxes in the case of cross-border projects. Especially in cross-border situations, the synchronization of permitting is a very cumbersome process, and it would be very interesting to discuss the possibilities of establishing experimentation clauses that refer to cross-border activities. The Committee of the Regions has emphasized in its Opinion the importance that also regions and municipalities could be involved and initiate regulatory sandboxes.<sup>20</sup> The rapporteur of the dossier was Mark Speich, State Secretary of the government of the Land North-Rhine Westphalia. He argued for a firm position of regions: “Since the law intervenes in many areas subject to regional competences, the sub-national level must be actively involved.”<sup>21</sup> In the case of regulatory sandboxes, this was finally inserted in the text under article 33(2). It is formulated in the final version as follows: “Member States, together with local and regional authorities and other Member States where appropriate, may at their own initiative establish net-zero regulatory sandboxes.” However, also the Committee of the Regions did not refer to the necessity to promote and think about the conditions of cross-border regulatory sandboxes. In this sense, also this could have been an opportunity to strengthen the framework for cross-border projects, especially with a view on potential experimentation clauses that are not only referring to specific national projects, but also to the cross-border challenges. Nevertheless, stakeholders in border regions should actively use the term ‘regulatory sandboxes’ and communicate that especially in cross-border situations, experimentation clauses could help to overcome persisting cross-border obstacles.

Finally, there is a concept related to industrial clusters introduced by the regulation. The term is extensively described in the preamble of the regulation under point 29. It is stated that the regulation promotes the development of net-zero Acceleration Valleys. The objectives of Valleys are according to the regulation to create clusters of net-zero industrial activities in order to increase the attractiveness of the Union as a location for manufacturing activities and to further streamline the administrative procedures for setting up net-zero manufacturing capacities. Valleys should be limited in geographical and technology scope in order to promote industrial symbiosis. This could mean that also cross-border territories could qualify for this valleys, if a certain cluster can be detected. The regulation explains further that when defining the scope, Member States should take into account the need to favour multiple uses of the areas identified to ensure the expansion, reindustrialisation or creation of the Union’s net-zero technology industrial clusters and the availability of relevant transport and network

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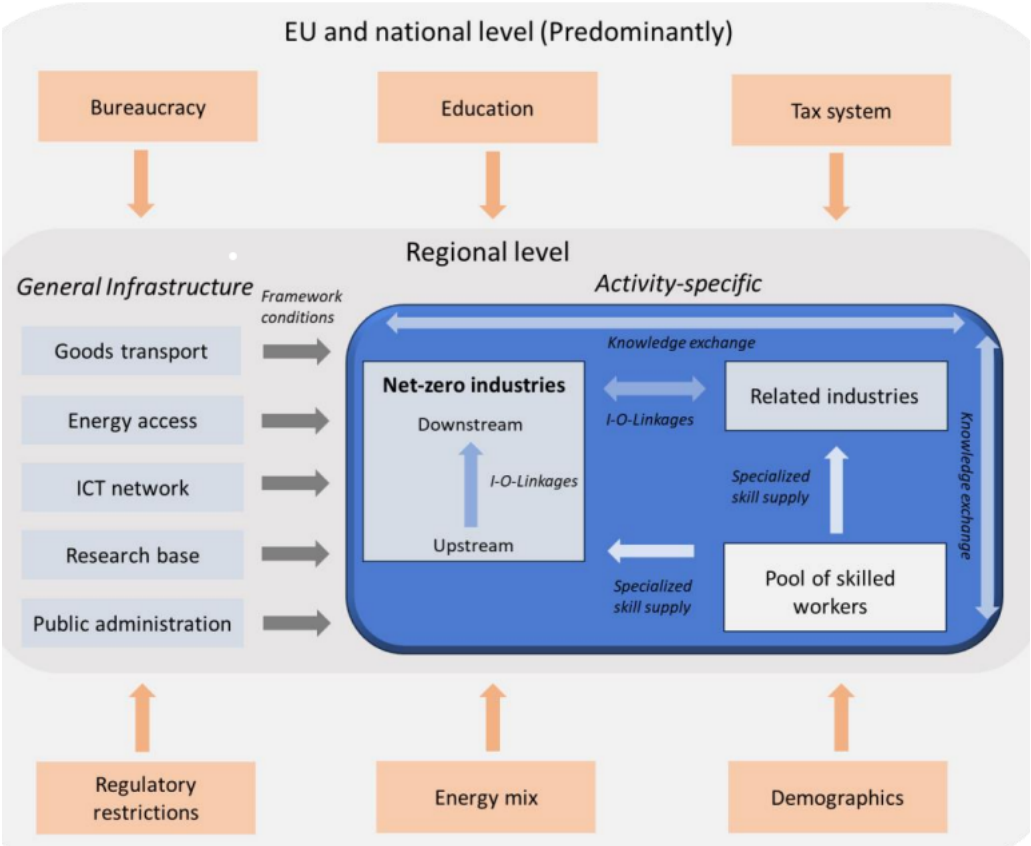
<sup>19</sup> See the description of the Council of the European Union on the term ‘regulatory sandboxes’.  
<https://www.consilium.europa.eu/en/press/press-releases/2020/11/16/regulatory-sandboxes-and-experimentation-clauses-as-tools-for-better-regulation-council-adopts-conclusions/>

<sup>20</sup> European Committee of the Regions (2023): OPINION on the Net-Zero Industry Act. CDR-2189-2023.

<sup>21</sup> See: Committee of the Regions: <https://cor.europa.eu/en/news/eu-industry-transition-regional-action-needed-reduce-dependence-critical-raw-materials-and-boost-net>.

infrastructures, storage and other flexibility tools. Valleys should be designated by Member States and each designation should be accompanied by a plan setting out concrete national measures to increase the attractiveness of the Valley as a location for manufacturing activities. Valleys should, in particular, be used as a tool for strengthening net-zero industrial activities in regions, taking into account the just transition and its objectives, in particular in coal regions in transition. As already mentioned, the mentioning of coal regions is very interesting from the perspective some cross-border territories in the Benelux area. Meaning for instance that the former mining areas in Belgian and Dutch Limburg and the mining areas in NRW are certainly interesting locations.

Graph 3: Location factors for Zero-net industry valleys



Source: CEP Study 2024, André Wolf<sup>22</sup>

### 3.1.3 The Corporate Due Diligence Directive

On 25 July 2024, the Directive on corporate sustainability due diligence (Directive 2024/1760) entered into force. The aim of this Directive is to foster sustainable and responsible corporate behaviour in companies’ operations and across their global value chains. The new rules will ensure that companies in scope identify and address adverse human rights and environmental impacts of their actions inside and outside Europe. The directive offers comprehensive requirements for due diligence, with a risk-based approach, that are corresponding with international frameworks such as the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the UN Guiding Principles on Business and Human

<sup>22</sup> André Wolf, Net-Zero Industry Valleys in Europe. An Analysis of Location Factors and Cluster Policies for EU, CEP Study 2024.

Rights (UNGPs).<sup>23</sup> Companies are required to: 1. Embed responsible business conduct into policies and management systems. 2. Identify, assess and prioritize actual or potential adverse impacts on human rights or the environment. 3. Prevent, mitigate, or bring to an end adverse impacts and provide remediation where necessary. 4. Meaningfully engage with stakeholders and implement robust complaint mechanisms. 5. Monitor the effectiveness of measures taken and communicate publicly on due diligence. In addition, the directive requires companies to adopt and implement a climate transition plan that is in line with the Paris Agreement.

The European Commission has presented an impact assessment on the legislative proposal. The question of territorial impacts, for instance what the legislation could mean for rural or metropolitan areas, whether there will be migration due to new job opportunities, or what effects could be expected for cross-border territories, was not discussed. Interestingly, the quality of the impact assessment was criticized for other reasons. The European Commission has established a special Regulatory Scrutiny Board.<sup>24</sup> Its task is to monitor and assess the quality of Commission impact assessments. There was a negative opinion of the Regulatory Scrutiny Board on the first draft impact assessment report on the Sustainable Corporate Governance initiative of 7 May 2021, a revised impact assessment was submitted to the Board for a second opinion on 5 November 2021.<sup>25</sup> While noting the significant revision responding to its initial comments, the Board nevertheless maintained its negative opinion on 26 November 2021, referring to the following main shortcomings: 1. problem description remaining vague, 2. policy options remaining too limited, not identifying key policy choices; 3. assessment of impacts not being sufficiently complete, balanced and neutral, and uncertainty related to the realisation of benefits not being sufficiently reflected; and 4. proportionality of the preferred option not sufficiently demonstrated. As already mentioned, there was no specific criticism related to the territorial dimension of the directive. It was for instance not discussed, how to make sure that the national administrative approach does not lead to cross-border inequalities when the directive is implemented in a cross-border territory like the Benelux area. This, in fact, implies that the European Commission is not expecting administrative frictions after the transposition. The number of companies will be very low. For instance, in the Euregio Meuse-Rhine, the estimate from the Chamber of Commerce and Industry (IHK) is that on the German side, around 8 companies will fall under the directive. This indicates that the increase of the threshold (1000 employees) has also significantly reduced the number of companies. And these companies have very often transnational activities, meaning the territory of the cross-border region is not a geographical limitation to them. This is different, when defining the cross-border challenge with a view on the Benelux area. Certain companies have a focus on Benelux countries and their neighbors, meaning that the administrative procedures and responsibilities and the question whether they differ are not, can be very important.

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<sup>23</sup> See for instance the information communicated by KPMG, The EU's Corporate Sustainability Due Diligence Directive, Human rights and environmental due diligence in global value chains.

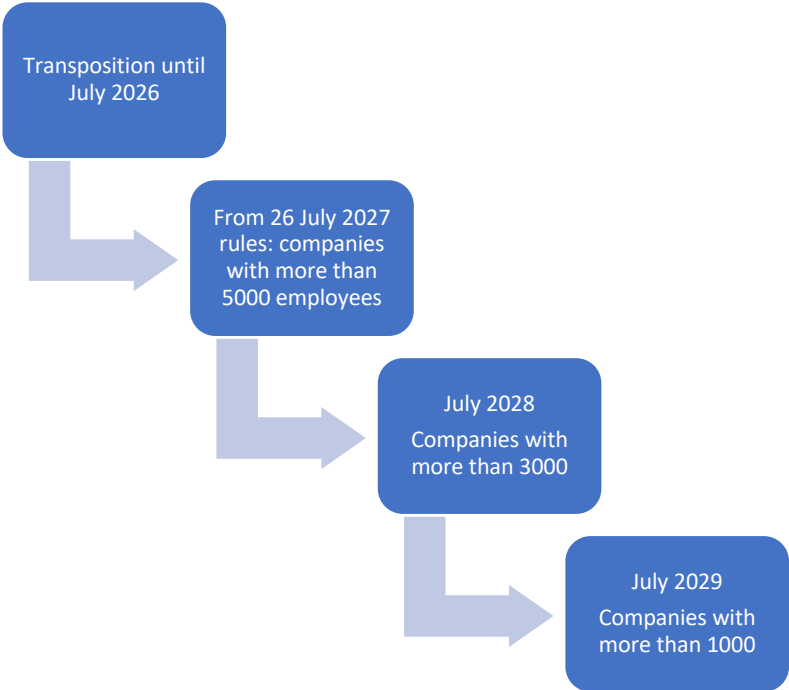
<https://kpmg.com/nl/en/home/insights/2024/03/the-eu-corporate-sustainability-due-diligence-directive.html>.

<sup>24</sup> See the official site: [https://commission.europa.eu/law/law-making-process/regulatory-scrutiny-board\\_en](https://commission.europa.eu/law/law-making-process/regulatory-scrutiny-board_en).

<sup>25</sup> The European Commission is reporting in a transparent way about the assessments of the Scrutiny board. See: Commission Staff working document. Follow-up to the second opinion of the Regulatory Scrutiny Board. Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2022\)39&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2022)39&lang=en).

In a research study of the European Parliament from 2020, it was already emphasized that action at the EU level would allow to harmonize the rules within the single market and thereby ensure its good functioning and the creation of a level playing field favouring fair competition.<sup>26</sup> The keyword in this sense is “legal certainty”. Legal certainty is expected to increase substantially, since EU-level due diligence requirements could address the concern raised by many businesses on the lack of clarity regarding their duties. A specially designed law-based standard will support current good practices and give companies greater leverage over their suppliers.<sup>27</sup> Member States must transpose the Directive into national law and communicate the relevant texts to the Commission by 26 July 2026. One year later, the rules will start to apply to the first group of companies, following a staggered approach (with full application on 26 July 2029). The rules will apply to EU and non-EU companies and parent companies with over 1000 employees and with a turnover of more than 450 million euro and to franchises with a turnover of more than 80 million euro if at least 22.5 million was generated by royalties. The final compromise between the Parliament and Council meant that less companies are affected than in the original Commission proposal (from 500 employees onwards). Different from the other legal acts, the Corporate Due Diligence legislation is a directive. This means that the Member States have to transpose the EU directive into national legislation within two years’ time. In this respect, they must take account of the already existing legislation in the field and change that accordingly. The following graph shows the timetable for national transposition and implementation. One aspect are the number of employees, another criterion for the eligibility is the turnover of a company, that is not presented in the table.

Graph 4: The deadlines of the Corporate Due Diligence Directive



Own compilation

<sup>26</sup> European Parliamentary Research Service, 2020: Corporate due diligence and corporate accountability European added value assessment, Author: Cecilia Navarra, European Added Value Unit, PE 654.191 – October 2020.

<sup>27</sup> Ibid page II.



The step-by-step approach is also valid for companies with a seat outside the European Union. However, in this case the turnover of the activities within the European Union is the criteria whether and when they fall under the obligations of the directive.<sup>28</sup>

The rules on corporate sustainability due diligence will be enforced through administrative supervision: Member States will designate an authority to supervise and enforce the rules, including through injunctive orders and effective, proportionate, and dissuasive penalties (in particular fines). In this sense, decisions taken by the Member States about the designation and practices of supervision and enforcement will determine to some extent the implementation in a Member States. This means for the Benelux countries and their neighboring countries that it could be very important to coordinate the transposition, implementation and enforcement process. This could also be supported by stakeholders and companies in the border regions who are active in several Benelux/Neighboring countries and are faced in the future with different administrative approaches towards the implementation of the directive. In Germany for instance, a similar legal act exists, namely the Lieferkettensorgfaltspflichtengesetz (LkSG). This applies to companies with more than 3,000 employees since 2023 and to those with more than 1,000 employees since January 2024. The new EU diligence directive will affect fewer companies. Recently, the German minister of Economic Affairs made the proposal to pause the national legislation until the EU law will be transposed into national legislation.<sup>29</sup> Hence, a close coordination of the transposition process could have very positive effects, whereas a non-coordination could lead to certain frictions for companies active in different Member States. Member States with stricter rules – see the concerns in Germany - could in fact face problems with respect to their attractiveness for businesses. ITEM has in the past dealt with different border obstacles related to the transposition and implementation of EU legislation. Surprisingly, this is also the case with respect to regulations.<sup>30</sup> The EU's general data protection regulation is a case in point where ITEM for instance was confronted with different approaches in Belgium, the Netherlands and Germany in a cooperation project of universities.<sup>31</sup> Coordinating the transposition and implementation process could be supported by the establishment of a working group that under the umbrella of the Benelux Union. Since the Land North-Rhine Westphalia has a liaison officer in Brussels, a German input could be organized by the land NRW. Interested stakeholders from France would be welcome as well. This could be also seen as a pilot in the field of coordinating the transposition of EU legislation. In the past, research has shown that the coordination of the transposition has been so far not done in a structured way.<sup>32</sup> The Member States of the Benelux Union plus neighbors would certainly benefit

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<sup>28</sup> After 3 years (26 July 2027): EU companies with more than 5 000 employees and €1 500 million worldwide turnover, as well as non-EU companies with more than €1 500 million turnover generated in the EU. After 4 years (26 July 2028): EU companies with more than 3 000 employees and €900 million worldwide turnover, as well as non-EU companies with more than €900 million turnover generated in the EU.

<sup>29</sup> See LTO Newsletter: Kommt das Lieferkettengesetz "weg"? 22.10.2024,

<https://www.lto.de/recht/nachrichten/n/lieferkettengesetz-kommt-weg-scholz-csddd-lieferketten>.

<sup>30</sup> 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>

<sup>31</sup> ITEM was project leader of the Interreg project "Crossquality" with the Universities of Hasselt, Liège, Aachen and the Euregio Meuse-Rhine.

<sup>32</sup> See for instance the study of Leiden University, that looked into possibilities to coordinate German and Dutch transposition. Steunenber B., Beerkens M., Berg C.F. van den, Ruiters R. de & Voermans W.J.M. (2012), 'Wir machen das so': Studie zu den Grenzeffekten der europäischen Politik. Den Haag: Universiteit Leiden.

from a solid coordination. It is for that reason, that also the Annual Plan 2024 of the Secretary-General of the Benelux Union also explicitly mentions the ambition to investigate where European legislation can be implemented in a coordinated manner.<sup>33</sup>

At European level, the Commission will set up a European Network of Supervisory Authorities that will bring together representatives of the national bodies to ensure a coordinated approach. However, it seems interesting to search for closer cooperation in the Benelux context. Under the directive, Member States are expected to set up, individually or jointly, dedicated websites, platforms or portals to disseminate the guidance documents of the European Commission.<sup>34</sup> The Benelux Union could certainly develop this information tools in cooperation with its Member States and the neighbors. On such a common site, certain differences with respect to the administrative procedures in the different Member States could be outlined and made visible for companies active in the cross-border area.

#### **4. Special findings with respect to European Integration theme**

As seen in the last paragraph on the Corporate Due Diligence Directive, the directive could ensure that there is a level-playing field for companies who fall under the reporting requirements. The idea is that companies in all Member States face the same requirements. It was shown that there is special opportunity for the Benelux countries and their neighbours. A stringent coordination of the transposition and implementation process of the directive could promote harmonised national administrative procedures or competencies. In this respect, the Benelux area could also be a pioneer by ensuring that the additional administrative burden (related to the directive), will be not increased by additional and specific national rules. Germany, who has recently introduced rules due to a national corporate due diligence law, could have a special interest to make sure that the own requirements are not exceeding the ones of the neighbouring countries. In general, this can be seen as a condition to make the Benelux area an attractive location also for bigger companies who would like to benefit from the fact that the obligations and administrative procedures in the Benelux area are streamlined. So far, national rules on corporate, sustainability-related due diligence obligations are fragmented. As mentioned earlier, the German national legislation has made the cross-border situation more complex. Stand-alone administrative procedures related to the directive are not helping companies to exploit their full potential. The coordination of the transposition and implementation process of the Corporate Due Diligence Directive could be an important step to support companies to fulfil the requirements of the directive.

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<sup>33</sup> <https://www.benelux.int/nl/publication/jaarplan-2024/> As envisioned for at least the AI Act, European Sustainability Reporting Standards and the European criminal records information system.

<sup>34</sup> European Commission: Directive on Corporate Sustainability Due Diligence, Frequently asked questions, see: [https://commission.europa.eu/document/download/7a3e9980-5fda-4760-8f25-bc5571806033\\_en?filename=240719\\_CSDD\\_FAQ\\_final.pdf](https://commission.europa.eu/document/download/7a3e9980-5fda-4760-8f25-bc5571806033_en?filename=240719_CSDD_FAQ_final.pdf).

## 5. Special findings related to the theme of Sustainable/Socio-Economic Development

Border regions and cross-border territories could certainly benefit from the different instruments that are introduced by the Net-zero industry act. The prerequisite is that stakeholders in border regions are translating the opportunities into a cross-border situation to trigger the specific economic potentials. This means that strategic projects could enjoy national 'priority status' under the Regulation, ensuring rapid administrative treatment and faster permitting. In this sense, stakeholders in border regions must lobby for national 'priority status' that is coordinated with a priority status at the other side of the border, or a national priority status can be also dedicated to cross-border projects. This would mean that one could also enjoy some benefits under the regulation such as urgent treatment in judicial and dispute resolution procedures, and simplified assessments for specific environmental legislation derogations. In this respect, countries may coordinate their projects with a priority status. It would be important from a cross-border perspective to develop cross-border projects that enjoy priority status in two or more countries. If that is only possible in non-border situation, border regions clearly face disadvantages that could jeopardize their economic development.

There are also opportunities to strengthen cross-border cohesion by designating cross-border "Acceleration Valleys". As shown, these are clusters in a specific geographical area that can benefit from the proximity of different frontrunner companies. The same is true for net-zero Industry academies. As discussed in chapter 3, especially the challenge of recognition of professional qualifications across the borders is an explicit objective of the regulation. In this respect, cross-border academies under the zero-industry act could play a very important role in coordinating national standards and bringing them together in the field of zero-net industry professions. By doing so, border regions could be pioneers for the definition of standardized skills.

## 6. Special findings related to the theme of Euregional Cohesion

The new legal acts do give a wide range of possibilities of cooperation. The question is whether the Benelux and its neighbouring countries are ready to work together with respect to certain aspects of the regulations and the coordination of implementation it requires. Net-zero strategic projects can enjoy national 'priority status' under the Regulation, ensuring rapid administrative treatment and faster permitting. According to the zero-net industry regulation, where applicable, urgent treatment in judicial and dispute resolution procedures, and simplified assessments for specific environmental legislation derogations are also provided. It would be very important to designate a cross-border project under the "priority status" in two or more countries. This would mean that certain procedures or derogation would apply across the border and would boost the cohesion of strategic thinking with respect to strategic Net-zero sectors. This could in addition strengthen the cross-border development of Euregional clusters. Next to the potential economic benefits, also the idea of cross-border "Acceleration Valleys" could give a boost to the emergence of a true cross-border industry strategy and the promoting of clusters across the border. North Sea Port would be an interesting candidate to become a cross-border acceleration valley. Also, the former mining area in the Euregio Meuse-Rhine would be an interesting candidate, given the fact that on the German side the region is at the beginning of a transformation process due to the end of the brown coal industry.

Another idea from the net-zero as described "regulatory sandboxes" could be relevant to boost cross-border cohesion. As shown, the idea is that "regulatory sandboxes" give room for experimentation

clauses and innovative approaches related to net-zero industrial activities. This matches with previous ideas of experimentation clauses in many border regions to overcome cross-border obstacles and offer a new perspective for innovative forms of cross-border cooperation and cohesion.

## 7. Conclusions and recommendations from a Benelux and Euregional perspective

The current strategic cooperation agreements on the stimulation of specific industrial products or technologies are in the Benelux area still in an early stage. First documents as the “Benelux Green Deal for Carbon Neutrality with focus on CCSU and Hydrogen”<sup>35</sup> or the “Hyperloop in the Benelux: Opportunities for cross-border connectivity and high-tech cluster development”<sup>36</sup> are good starting points. In addition, there are bilateral agreements on hydrogen production and transport and offshore wind.<sup>37</sup> The different objectives and sector of the net-zero industry act could be a common framework for a broader cooperation. There could be for instance a joint initiative on simplifying permit granting procures where the obligations of the regulation could be applied in pilot projects and experiences shared across the borders. Benelux countries plus Germany could for instance designate cross-border net-zero Acceleration Valleys as specific areas to accelerate net-zero industrial activities, in particular to accelerate the implementation of net-zero technology manufacturing projects. It has to be discussed whether cross-border locations as North-Sea Port or the old mining territories of the Euregio Meuse-Rhines could be designated as cross-border Acceleration Valleys. The objectives of the Valleys shall be to create clusters of net-zero industrial activity and to further streamline administrative procedures.

The Raw materials act could be a window of opportunity for cooperation across the border in the Benelux area. It sets benchmarks for domestic capacities along the strategic raw materials supply chain to be reached by 2030. The recycling of raw materials could be promoted in a coordinated way by coordinated national means of neighboring countries to develop a strong secondary market. This could also be achieved by a joint Benelux/Germany/France strategy on the recovery of critical raw materials from extractive waste facilities. The Benelux with its neighbors could become a frontrunner with respect to certification schemes and mutual recognition to increase the sustainability of critical raw materials on the EU market. Industry representatives recommend chain dialogues to get things going, to overcome the risk that companies in a chain keep waiting for each other while everyone would like to move in the same direction. The Benelux could search for agreements with the neighbors to give activities with raw materials produced and recycled in Europe priority in licensing processes and preferential access to financial instruments.

With the Corporate Due Diligence Directive, the Member States have now the opportunity to transpose the EU directive in a way, that their practice is streamlined, and administrative or other obstacles are avoided. In the Benelux area, one should use the time until 2026 to coordinate the transposition into national and regional legislation and avoid cross-border administrative frictions. A joint initiative coordinated by the Benelux Union could bring together the responsible ministries in charge of the transposition process.

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<sup>35</sup> See: <https://www.beneluxbusinessroundtable.org/wp-content/uploads/2020/11/Benelux-Green-Deal-for-Carbon-Neutrality-4.pdf>.

<sup>36</sup> <https://www.benelux.int/nl/publication/hyperloop-in-the-benelux-opportunities-for-cross-border-connectivity-and-high-tech-cluster-development-2/>.

<sup>37</sup> See for instance the agreements of the North Seas Energy Cooperation; <https://www.rvo.nl/onderwerpen/windenergie-op-zee/internationale-samenwerking>.

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