



Cross-border impact assessment 2016

Summary



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

Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

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



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1. Introduction

1.1 Objective and background

The Institute for Transnational and Euregional cross border cooperation and Mobility (ITEM) makes a scientific contribution to cross-border mobility and cooperation. ITEM is the pivot of scientific research, counselling, knowledge exchange, and training activities relating to cross-border cooperation and mobility. One of the research activities with which ITEM makes this contribution is the development and performance of an annual cross-border impact assessment.

ITEM's cross-border impact assessment tool is designed to facilitate:

- the ex ante recognition of potential negative or positive cross-border effects of planned legislation or policy initiatives, and
- the ex post identification of negative or positive cross-border effects of existing policy or legislation.

The cross-border assessment tool may be used to assess intentions of the European Union (EU) and/or governmental bodies at the national and/or regional levels.

This report is a summary of the results of ITEM's cross-border impact assessment 2016, and describes the assessment of ten individual dossiers. For 2016, the focus is primarily on the evaluation of the impact on border regions of policy and legislation (EU, national, regional) that has already come into effect (ex post), and the identification of desired or undesired effects on border regions. Additionally, this initial cross-border impact assessment also analyses two European Commission proposals ex ante (the posting of workers directive and the railway package).

Because this cross-border impact assessment is the first conducted by ITEM since its establishment in 2015, the process of development of the cross-border impact assessment tool also included developing a specific approach and defining the object of the cross-border impact review. This report should therefore also be seen as an invitation for discussion about the tool and its continued development.

In 2016, ITEM investigated primarily national topics that were the subject of much discussion along the Dutch border, such as the new tax treaty between the Netherlands (NL) and Germany (DE) or the national application of diploma recognition. As a result, much of the cross-border impact assessment 2016 pertains to legislation that has just come into effect, but the effects of which cannot yet be easily quantified. The new tax treaty between Germany and the Netherlands is one of these, and accordingly its impact on the pensions of former mobile workers (including frontier workers) is not yet readily accessible.

The new NL-DE tax treaty entered into effect on 1 January 2016, but the first tax returns under its regime have not yet been filed. We do know more about the potential consequences, but in view

of the lack of hard data (more or less tax on the wages or pensions of present and former mobile workers?), any analysis we can provide remains somewhere between ex ante and ex post. Despite this, ITEM did see the need to investigate this area, because frontier workers, mobile workers, and front office advisors are already dealing with the issues.

In several dossiers, ITEM also investigated the way in which Member States of the European Union implemented the European directives, and how the results have expressed themselves in the reality of the situation at national level. One example is the dossier analysing the practices of recognition of diplomas in Belgium, Germany, and the Netherlands, and the effects of this practice. As such, for some dossiers the assessment of cross-border impact was not restricted to an analysis of the legislation. The policies of implementing bodies, administrative capacities, and rules can likewise have a negative or positive effect, and so these were also investigated in a number of dossiers.

1.2 For whom is this cross-border impact assessment intended?

The cross-border impact assessment offers additional insights into national and EU initiatives, and is intended as a valuable tool and resource for the policymakers behind the decisions concerning border regions.

Firstly, this annual cross-border impact assessment of relevant dossiers can provide the border regions with a tool to help better identify existing or expected problems, or for example to materially support the political debate so that the right adjustments can be made to the legislative proposal during the parliamentary legislative process, prior to implementation.

Frontier regions are in this case institutional, for example, the Euregional partners at various administrative levels. However, border regions are of course also other parties, like those organizations and individuals active on the topic of cross-border cooperation.

Secondly, this report may offer added value to the European Commission's ex ante impact assessment and the evaluation of existing legislation. For the Member States and regional legislators, the report can also contribute to a better ex ante and ex post evaluation of legislation and policy.

2. Method

2.1 Framework

Definition

In this initial cross-border impact assessment, we define border regions as the areas surrounding where the borders of the Netherlands, Belgium, and Germany meet. This definition will be further refined in the individual sections of this report, as appropriate to the subject. The idea underlying this specific definition is that general observation reveals few if any generic causes of the effects on border regions. A recent European Commission survey reveals that many frontier regions are encountering issues in the mobility of labour¹. These issues are rooted in the national conversion and implementation of European law and the level of coordination between the neighbouring countries. Even though the European legislation has been on the books for years, a number of obstacles arise from the way in which the Member States have implemented EU law, the quality of the national law, and its implementation in practice. ITEM therefore advocates more of a bottom-up approach from and for the border regions, and calls for more study of the effects on specific regions.

More cross-border impact reviewing

ITEM's cross-border impact review is complementary to the several evaluations carried out (or in preparation) at the European, national, and regional levels. Table 1 shows what impact assessment tools are applied or are being prepared at various levels. However, these tools do not appear to be well-suited for monitoring the impact of legislation on specific border regions.

'Brussels' lacks, for example, detailed knowledge of the expectable (or already existing) negative cross-border effects of policy and legislation in each region. With that being the case, it is not realistic to expect the European Commission to be able to map out detailed cross-border effects for the entire EU (and its great diversity of border situations) within the framework of its own impact assessment. The Committee of the Regions has established this on numerous occasions.

National governments have difficulty integrating cross-border impact assessments cohesively within their own impact assessment frameworks. For a number of years, the Dutch government and the Lower House of Parliament have been discussing the introduction of a cross-border review for national legislation and policy initiatives. The latest development here is that there is a new proposal initiative from the Ministry of the Interior and Kingdom Relations on the table designed to improve consideration of cross-border effects in the proposals of the various line

¹ DG Regio 2016: Overcoming Obstacles in Border Regions. Summary Report on the Online consultation, 21 September – 21 December 2015.

ministries. Enabling more legislators (at the national or regional levels) to take the impact on border regions into account in their considerations would be an important step forward.

That said, it is not particularly realistic to expect a line ministry to have detailed knowledge of all border regions. For instance, the Federal Government in Berlin could hardly be expected to be able to conduct an ex ante assessment of the situation at the borders with all nine of Germany's neighbouring countries. For certain effects, the diversity is simply too great. This shows that there is a need for small-scale, bottom-up border assessments from the perspective of individual border regions. In the future, these could be one of the building blocks of a national analysis designed to better identify the impact of legislation and policy.

Frontier regions do have the need for a structural analysis, but they frequently lack the tools and knowhow. The Dutch Province of Limburg, perhaps the quintessential example of a border region, has been raising this issue in The Hague for a number of years, and has furthered the discussion with the presentation of its own cross-border impact assessment in 2013/2014 (Panteia²).

ITEM's cross-border impact assessment could make a contribution to the specific analyses for border regions and serve as an example for others. This makes ITEM's first cross-border impact assessment also something of a call for creating a situation in which other border regions endeavour to produce their own annual cross-border impact assessments. A multitude of independent and detailed cross-border reviews would be of tremendous use in the evaluation of European legislation (ex ante impact assessment) and the evaluation of the ex post impact. And perhaps even more importantly, at the national level these could be an important element in the evaluations conducted by national and regional authorities and legislators.

² Bangma, Klaas: Grenseffectentoets 2014. Update van de toets van april 2013. Panteia, 2014.

Table 1: Impact evaluation – various tools

Instrument	Application	Decision phase	Objective/focus
European Commission	Regulatory Impact Assessment	Assessment of Commission proposal for policy(strategy) or legislation	Cost-benefit analysis, employment, European competitiveness, sustainability, Territorial dimension (so far modest)
National Government Netherlands	Discussion on cross-border impact assessment prior to national/European legislation/policy	National Ex Ante Part of proposal by ministries	Harmonization national policy / border situation Harmonization transposition of European law on conversion in neighboring countries
Province Limburg (NL) Internal cross-border impact assessment	Intention: assessment of border effects of provincial Acts	Ex ante	Preventing negative cross border effects by provincial policy
ESPON Quickscan ARTS Territorial Impact Assessment	Assessment of territorial effects of EU legislation	Ex ante	Improving the impact assessments of the European Commission and Member States
EURO Institut/Center for Cross Border Studies, Impact Assessment Toolkit for cross-border cooperation	Assessment of crossborder projects / policy	Ex ante	The improvement of projects, programs
ITEM Annual cross-border impact assessment	Assessment of border effects of relevant European, national and regional legislation/policy.	Ex ante and ex post	Mapping of negative effects of laws and policies on border mobility in the broad sense (Focus in 2016 on region BE / NL / DE)

2.2 Methodological questions

What is a border region?

The research area of this impact assessment is, in the broad sense, the border regions along the German/Dutch/Belgian border. This research area could be defined as the same area defined by the Dutch CBS³/PBL⁴ in the 2015⁵ study *Arbeidsmarkt zonder grenzen*, namely NUTS 3 areas⁶ immediately along the border (*Landkreise* in Germany) or at a defined distance from the border. The disadvantage of this definition is that these border regions are defined purely on a national basis. Unlike Euregions or urban partnerships, these border regions are not cross-border political entities. A nationally defined border region (such as the Province of Limburg, for example) understandably has, first and foremost, a national perspective on the border. The disadvantage from that perspective (for example, in the case of unequal excise duties) can, on the flip side, translate into an advantage for the Belgian or German neighbours. For this reason, the research area for ITEM's cross-border impact assessment is first and foremost not the border region, but the cross-border Euregio Meuse-Rhine.

As indicated above, some dossiers within ITEM's cross-border impact assessment required further refinement of the definition of 'border region'.

In the case of the INTERREG dossier, for example, these are the geographic areas of the three INTERREG programmes, which are not the same as the Euregions or NUTS 3 areas along the border.

The impact of a tax treaty between the Netherlands and Germany should, as a first move, be investigated for the German-Dutch relationships and the German-Dutch mobile workers living in the border area. But the new treaty also has an effect on people who moved after retirement and suddenly find themselves living outside the Euregions. Independently of the geographic boundaries, former mobile workers might also have to deal with the consequences of the tax treaty as well. And these can also, in turn, have indirect effects on the Euregional situation.

The Euregio Meuse-Rhine as a benchmark?

Euregions and other cross-border partnership structures formulate strategies and programmes that identify priorities for improving cross-border situations. Many Euregional partnerships have, in recent years, developed collectively-supported vision documents with policy goals, like Euregio Meuse-Rhine's EMR 2020 strategy. For a number of dossiers in ITEM's cross-border impact

³ Statistics Netherlands (*Centraal Bureau voor de Statistiek*).

⁴ Netherlands Environmental Assessment Agency (*Planbureau voor de Leefomgeving*).

⁵ Weterings, A. & G. van Gessel-Dabekaussen (2015), *Arbeidsmarkt zonder grenzen*, The Hague: PBL.

⁶ NUTS 3 areas for the Netherlands are the same as the COROP areas; <https://www.cbs.nl/nl-nl/dossier/nederland-regionaal/gemeente/gemeenten-en-regionale-indelingen/nuts-regionale-indeling-voor-europese-statistieken>

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assessment, it proved possible to use the perspective and the objectives of border regions as a benchmark for desired or undesired effects.

For some subjects, the geographic definition was added as an element. For example, employment services are broken down into labour market regions (the Dutch UVW) and, in Germany, into *Arbeitsmarktbezirke* (*Bundesagentur für Arbeit*). This means that the work of the UWV and German and Belgian partners plays out along the border in regions that do not exactly correspond to the existing Euregions. This is why for these partners cross-border goals are also defined alongside the geographic boundaries of the labour market regions along and on the other side of the border.

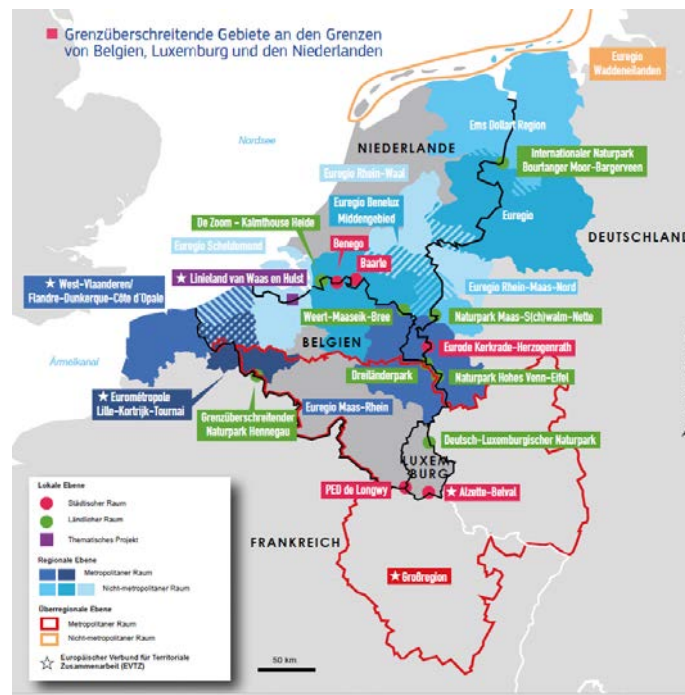


Figure 1 Cross-border partnerships along the border (BE/NL/DE/LU)

2.3 Research themes, principles, benchmarks and indicators

The ITEM impact assessment for each dossier focuses on one or more of the following three themes:

1. the cross-border impact from the perspective of individuals, associations and enterprises correlated with the objectives and principles of European Integration (freedoms, citizenship, non-discrimination)
2. the cross-border impact on socioeconomic development/sustainable development
3. the cross-border impact on Euregional cohesion and cross-border governance structures (cooperation with governmental agencies, private citizens, the business sector, etc.).

This year, ITEM put its emphasis on themes 1 (citizenship) and 3 (Euregional cohesion).

Of course, for the public sector in border regions, it is also important to be familiar with legislation or policy that detract from, or reinforces, the cross-border competitive strength of a border region (theme 2). Nonetheless, the topics in the legal arena this year demonstrate that for treaties and legislation that have just come into effect, it is very difficult to forecast the impact on the Euregional economy even in the short term, let alone the long term. This likewise applies to any ex ante analysis of a proposal by the European Commission.

On the other hand, it is possible to open a discussion about the potential impact on individual positions of employees or employers. A number of the evaluations look at what effects legislation or its application in practice has on the freedom of individuals and businesses in a cross-border context (theme 1). To what extent are measures in violation of the principles of non-discrimination as described in the EU treaty or defined by directives, regulations, and case law. This approach is different from that of, for example, the 2013/2014⁷ Panteia study, which primarily concerned concrete economic impact.

This year, ITEM also looked at the impact of legislation on Euregional cohesion (theme 3). What impact does policy or legislation have on the Euregional partnership or the Euregional governance structure? This plays a significant role in the evaluation of the programming and management of the new INTERREG programmes, or in the evaluation of the capacities of the Dutch UWV in the area of cross-border employment services.

As much as possible, the ITEM researchers attempted to describe for each subject what the impact would be from the perspective of the two themes indicated above (citizenship and Euregional cohesion). The subject of the research here was not only the treaties, directives, and regulations themselves, but also their application in practice. The political vision formulated by a Euregion of a very mobile cross-border labour market likewise came into the picture. Finally, the

⁷ Bangma, Klaas: Grenseffectentoets 2014. *Update van de toets van april 2013*. Panteia, 2014.

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researchers formulated indicators to review whether legislation or other rules might facilitate or impede best practices.

Very workable indicators are, for example, in the areas of the recognition of qualifications, costs, duration, simplicity, and accessibility of procedures and institutions.

Table 2: Examples of principles, benchmarks, and indicators

Goals/principles	Good practice/benchmark	Indicators
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 housing market, etc.
Regional competitive strength, Sustainable development of border region	Cross-border initiatives for establishing companies, Euregional labour market strategy, cross-border spatial planning	Euregional: GDP, unemployment, quality of cross-border cluster, environmental impact (emissions), poverty
Cross-border cooperation/Good Governance, Euregional cohesion	Functioning of cross-border services, cooperation with organizations, coordination procedures, associations	The number of cross-border institutions, the quality of cooperation (in comparison to the past), development of Euregional governance structures, quantity and quality of cross-border projects

2.4 The dossiers of the cross-border impact assessment 2016

In late 2015/early 2016, ITEM surveyed professionals and officials dealing with cross-border mobility and cooperation issues. The survey was designed to solicit information about current themes or legislation calling for further analysis.

With a look ahead to ITEM's focus for 2016 and 2017, the survey asked the professionals and officials to primarily raise issues relating to the cross-border labour market and mobility that also had a legal component. Subsequent cross-border impact assessments produced by ITEM will continue to focus on how to investigate economic issues in the most comprehensive possible way. Fundamental research in this area is currently impeded by the unavailability of cross-border economic figures and data.

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ITEM stresses the importance and necessity of cross-border data, and would welcome working with Statistics Netherlands (CBS) and other partners to develop a system for ongoing monitoring and collection of more cross-border figures.

After sending out its survey questionnaires, ITEM received 40 responses from various partners (border info points, regional authorities, Euregions, trade unions). Additionally, a number of topics were proposed through other channels. After a screening of the dossiers and subjects submitted, ten were ultimately selected by a cross-border impact assessment working group set up by ITEM, consisting of personnel in various ITEM partner organizations. Using an analysis tool, ITEM's working group assessed the submissions, looking at the topicality of the issues, the relationship to ITEM's research focus, the number of requests submitted in relation to a subject, and the various research themes within specific subjects, to come up with the selection of the ten dossiers.

One effect of this approach was that some evaluations focused on specific legal effects and issues, while others looked primarily from the perspective of the impact on Euregional cooperation and cohesion. ITEM also leveraged its partnerships with other parties, and solicited student input in this first round in 2016. This last resulted in an extraordinary impact assessment by a team of students from Fontys University of Applied Sciences about the practical effects of the introduction of road tolls for lorries in Belgium.

Table 4: Themes of the Impact Assessment 2016

	Subject	Nature	Formulation of question
	<i>Large-scale analyses</i>		
1	The new NL-DE tax treaty a. Labour; b. Pension)	Ex post / Ex ante (in force since 1 January 2016), but tax impact for 2017 not yet known	What are possible effects of the new tax treaty between the Netherlands and Germany on frontier workers and former frontier workers, with a focus on labour and pension?
2	Recognition of professional qualifications National application of Directive 2013/55/EU BE/NL/DE	Ex post Recent EU Directive and national legislation, application in administrative practice	How does the recognition of certain significant professions work for the frontier labour market and what are the biggest effects on frontier workers (costs, procedures, complexity of the recognition of qualifications)?
3	Cross-border cooperation Investigation of INTERREG programmes on the Dutch border	Ex post	What were and are the effects of the new INTERREG programme and national programmes on the quality of the programmes (EMR, Netherlands-Germany, Flanders-Netherlands), approval, and closure of projects?

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	Subject	Nature	Formulation of question
<i>Legal analyses</i>			
4	Social security: illness and disability	Ex post	What consequences do the Dutch systems governing illness and disability have for the free movement of labour across the border, and can these lead to legal uncertainty?
5	The qualifying foreign tax obligation of section 7.8, Income Tax Act, and EU law	Ex post/Ex ante	What impact does the Dutch 90% scheme have on frontier workers? Is this scheme in conflict with European law?
6	Proposal for a directive amending Directive 96/71/EC (COM(2016) 128 def)	Ex ante	How good is the proposed revision of the EU posting of workers directive?
7	Flexibilisation of the Old-Age Pension Commencement Date Act	Ex ante	What are the effects on the position of workers who have accrued both a Dutch General Old Age Pension and a statutory pension in another country?
<i>Evaluation with focus on Euregional Cohesion</i>			
8	Cross-border employment services: Effects of mandate and capacities of the Dutch UWV	Ex post	What is the impact of the UWV's current financing and mandate on the implementation of cross-border employment services?
9	Cross-border train transport – Fourth Rail Package	Ex ante	What effect can be expected concerning the coordination surrounding the allocation and organization of cross-border interlocal public transport?
<i>Practical ad hoc evaluation of effects, Fontys Hogeschool</i>			
10	The Belgian toll system for lorries	Ex post	What are the additional costs for cross-border transport for the logistics sector in Belgium/the Netherlands/Germany? What are the consequences in reference to the routes used by German and Dutch lorries?

3. Dossiers

3.1 Netherlands-Germany tax treaty

a. Labour

Taxation in international situations is always a hot topic, especially with the ever deepening project of European integration. States put tax treaties in place in order to regulate the allocation of taxing rights in cross-border situations. In general, tax treaties are concluded between states that have strong economic, financial, and political cooperation. In the given case, Germany and the Netherlands not only have strong relations with each other, but they are also in close geographical proximity to each other, being direct neighbours.⁸ This close relationship prompts many questions concerning active frontier workers. The old tax treaty between the Netherlands and Germany (hereinafter: old tax treaty) dates back to 1959 and neither met the new international taxation standards set out by the OECD, nor did it sufficiently represent the current state of economic ties between the two countries.⁹

In the light of the new tax treaty between the Netherlands and Germany, which entered into force on 1 January 2016¹⁰ (hereinafter: new tax treaty), this dossier looks at the changes the new treaty brings for frontier workers. The focus in this regard is on all the frontier workers who are crossing the border between Germany and the Netherlands. From publicly available data, it can be determined that there is a decrease in officially traceable frontier workers. However, at this stage it must be pointed out that exact information about the number of frontier workers is not available and results differ greatly depending on the sources publicly found. The differing numbers among the sources publicly available is reducible to differing approaches used to calculate the numbers of frontier workers. To give an indication of the decrease of frontier workers, some available data were gathered together and resulted in the numbers shown in Figure 2.

⁸ Is explicitly mentioned in *Kamerstukken II 2013/14*, 33 615, no. 3 (MvT), section I.1; for the strong relationship see Statistisches Bundesamt, *Statistisches Jahrbuch 2011*, p. 474.

⁹ *Kamerstukken II 2013/14*, 33 615, no. 3 (MvT), section I.1; See Deutscher Bundestag, 17. Wahlperiode, Gesetzentwurf der Bundesregierung, Drucksache 17/10752, A. Problem und Ziel.

¹⁰ Bundesgesetzblatt Jahrgang 2012 Teil II Nr. 38; Tractatenblad van het Koninkrijk der Nederlanden Jaargang 2012, no. 123.

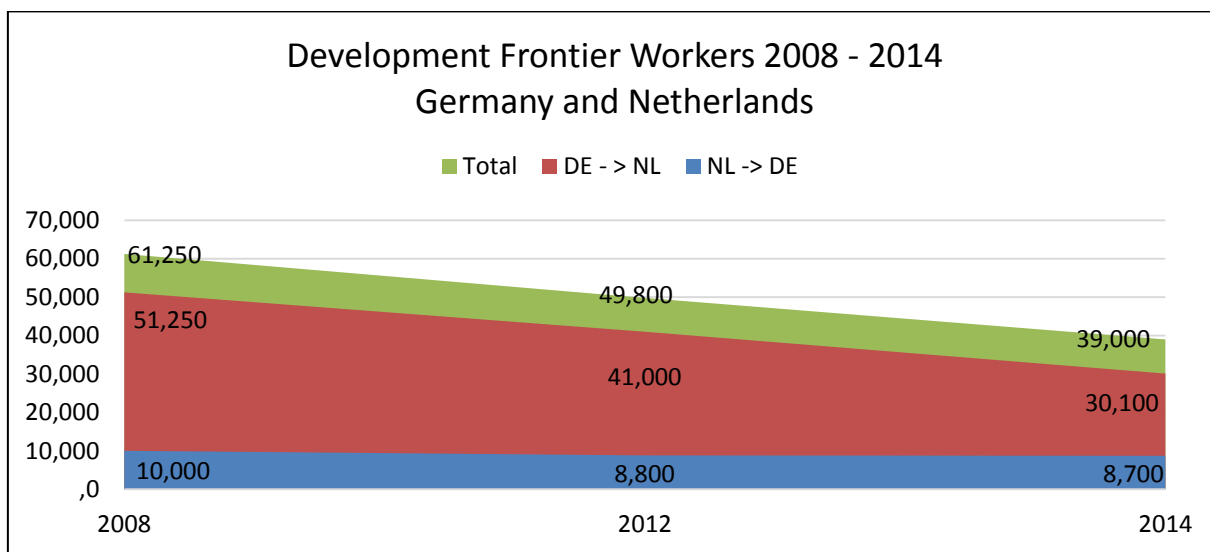


Figure 2: Source: *Internationaliseringsmonitor 2016 – Derde kwartaal*, p. 24; *CBS 2015 Arbeidsmarkt zonder grenzen*, p. 18, 22, 33; *Feiten en Cijfers / Zahlen und Fakten, Overijssel-Duitsland in de grensstreek*, 8 februari 2016, p. 26; *Maatwerktabel - Grenspondel en migratie* at <https://www.cbs.nl/nl-nl/nieuws/2016/37/meer-duitsers-pendelen-naar-nederland-dan-andersom>

Figure 2 shows that there has been a clear decrease of frontier workers between Germany and the Netherlands from over 60,000 in 2008 to roughly 40,000 in 2014. For future assessments, it would be advisable to develop a coherent approach to counting the numbers of frontier workers, even though it is clear that it is impossible to end up with an accurate number due to many special forms of frontier workers.

As mentioned above, the new tax treaty entered into force on 1 January 2016. The impact assessment of this dossier should therefore have taken an ex-post form. However, since there is no data available to assess the real impact of the new tax treaty as yet, and due to the general transition period of one year which enables taxpayers to follow the old tax treaty provisions up to January 2017,¹¹ this assessment takes the form of an ex-ante evaluation. It provides in the first place an overview of the changes for frontier workers, and secondly evaluates the new compensation scheme based on calculations provided by the Dutch parliament for Dutch resident frontier workers working in Germany. The rationale behind the compensation scheme is to relieve the Dutch resident frontier workers from the higher tax burden in Germany and compensating tax advantages available in the Netherlands, which are absent in Germany.

Various changes for cross-border workers can be highlighted by comparing the old and new tax treaties. Whereas only minor changes can be found in the actual general employment provision in Art. 14 (1-3), quite a number of changes can be observed for the tax treatment of personnel working aboard ships and aircrafts, directors, as well as artists and sportsmen and women. The

¹¹ Art. 33, section 6 of the treaty: *'Niettegenstaande het tweede en derde lid, indien een persoon uit hoofde van de Overeenkomst van 1959 recht zou hebben op grotere voordelen dan uit hoofde van dit Verdrag, blijft de Overeenkomst van 1959 naar keuze van een dergelijke persoon met betrekking tot deze persoon volledig van toepassing gedurende een tijdvak van één jaar, te rekenen vanaf de datum waarop de bepalingen van dit Verdrag van toepassing zouden zijn uit hoofde van het tweede lid.'*

allocation of taxing rights for personnel aboard a ship or aircraft in Art. 14(4) shifted from the state of effective management of the employer to the resident state of the employee. The new Art. 16 imposed by Germany¹² now taxes artists and sportsmen and women in the state of performance, which is in accordance with the OECD approach, and no longer in the state of residence. For directors, a new Art. 15 had been implemented. Irrespective of their position as a member of a supervisory or management board, directors are now taxed in the state in which the company for which the director works is officially based. Not much changed in relation to the income of professors and lecturers for short-term visits, now to be found in Art. 19, except for the fact that a separate provision has been implemented in the new tax treaty. The most influential new aspects for all forms of employment income derived by frontier workers between Germany and the Netherlands are the adoption of a compensation scheme for the higher tax burden Dutch resident workers face in Germany as well as the lowering of the threshold to fall under the German ‘*Splittingverfahren*’. The compensation scheme can be expressed in short through the following equation (see Figure 3):

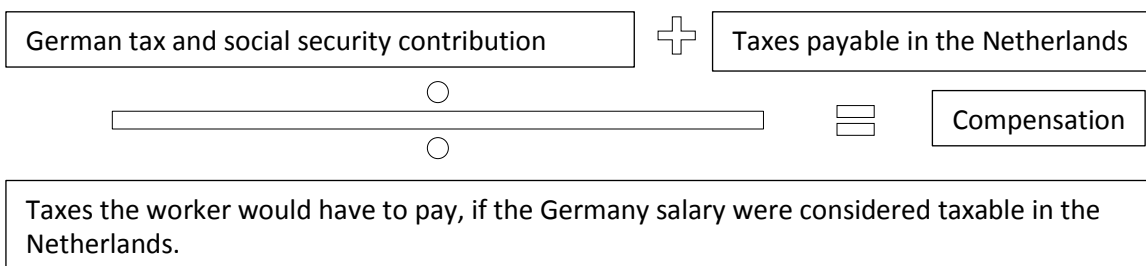


Figure 3

The simplification provided in the new tax treaty regarding the German splitting tariff consists of a detachment of the 90% and the absolute income requirement for both spouses.¹³ In this respect, it is only necessary that one spouse (taxable in Germany) is personally fulfilling the requirements. Thus, if one of the spouses complies with the 90% condition or the absolute income requirement, the entire income of both spouses can be taken together and then split into half for a more favourable treatment in terms of progression.

For the ‘*Splittingverfahren*’ and the compensation scheme, the Dutch parliament has drawn up various examples of general Dutch resident frontier workers and how the new situation could play out in real life. Table 4 gives a summary overview of the cases dealt with and shows the possible advantages of the splitting tariff and potential amounts of compensation possible.

¹² Lower House of Parliament, session year 2013–2014, 33 615, no. 5, p. 31–32; Drucksache 17/10752, p. 59.

¹³ In article XVI, section 1 of the Treaty Protocol, the limitations of the second sentence of article 1, section 3, in conjunction with Article 1a, section 2, of the German Act on income tax (‘*Einkommensteuergesetz*’) are declared not applicable to spouses living in the Netherlands.

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Table 4: SP = Spouse; CH = Children; SOL = Solitary; GS = German Salary; RV = Rentenversicherung; AG = Arbeitslosengeld; SN = Salary Netherlands; OHC = Own House Costs; B1 = Box 1 Income; GT = German Tax; IT = Income Tax; PV = Premie Volksverzekering; HK = Heffingskortingen; SB = Schaduwberekening; COM = Compensation; TT = Total Taxes; IB = Income Tax; AV = Sole Wage Earner; BV = Both earning salaries; CH = Children; ASPT = Advantage German Splitting Tariff.¹⁴

Case	1A w/o CH		1B with CH		2A SOL	2B SOL	3A AV/ w/o CH	3B AV/ with CH	4A BV DE & NL with CH	4B BV DE & NL with CH	4C BV DE & NL w/o CH	4D BV 75% DE & 35% NL
	SP 1	SP 2	SP 1	SP 2	SOL	SOL	SP 1	SP 1	SP 1	SP 1	SP 1	SP 1
<i>Salary conversion</i>												
GS	30000	20000	30000	20000	30000	95000	30000	30000	30000	60000	60000	60000
RV	2835	1890	2835	1890	2835	6578	2835	2835	2835	5670	5670	0
AG	450	300	450	300	450	1044	450	450	450	900	900	0
SN	26715	17810	26715	17810	26715	87378	26715	26715	26715	53430	53430	60030
OHC	5000	-	5000	-	5000	16000	5000	5000	5000	16000	16000	16000
B1	21715	17810	21715	17810	21715	71378	21715	21715	2715	37430	37430	44000
<i>Calculation of compensation</i>												
GT	3541	2361	3,365	2243	4226	29982	1396	1396	2702	12166	12356	6586
IT	1373	1041	1373	1041	1373	20141	1373	1373	1373	4345	4345	0
PV	6764	5547	6764	5547	6764	10392	6764	6764	6764	10392	10392	10392
TT	-	-	-	-	-	-	-	-	-	-	-	16044
IB	-	-	-	-	-	-	-	-	-	-	-	7104
PV	-	-	-	-	-	-	-	-	-	-	-	10392
<i>Deductions</i>												
HK	3724	3603	3724	3603	3724	2551	3724	3724	3724	3197	3197	2934
HKN	-	-	-	-	-	-	2001	2001	-	-	-	-
SB	4413	2985	4413	2985	4413	27982	2412	2412	4413	11540	11540	14562
COM	0	0	0	0	0	2000	0	0	0	626	816	1482
ASPT	68		157		-	-	2830	2610	1304	1850	1902	7608

As can be seen from the various cases above, the compensation scheme as it has been expected to work in 2013 does not warrant great benefits for Dutch frontier workers working in Germany. In the presented situations, the compensation scheme rendered only minor effects up to a salary of €60.000 gross reaching a compensation of a maximum of €1,600, but often remaining below €1,000. For workers earning a salary above €80,000, the compensation scheme may become more lucrative as compensations of €2,000 and higher are possible. Only if specific conditions for

¹⁴ Lower House of Parliament, session year 2013–2014, 33 615, no. 5, p. 50-58 retrieved from <https://zoek.officielebekendmakingen.nl/blg-266255>.

one of the wage earners are met, then the actual compensation can in certain situations result in a higher amount.¹⁵ In addition, the splitting tariff can now be applied easier, potentially leading to tax advantages in Germany and consequently an increase in net salary. In the end, as can be observed through the general examples provided, much depends on the specific situation and benefits can vary a great deal.

Considering the compensation scheme especially the new mutual agreement on the regulation for the compensation scheme, which stipulates that German social security contributions are not comparable to Dutch social security contributions and are in this respect excluded from the compensation calculation, puts the above given examples into question. If the German contributions are not comparable and in this respect not taken into account for the compensation scheme, the overall compensation might decrease, which discourages frontier workers from requesting the application of the compensation scheme as the benefits are going to be minimal. In addition, very recently the 'Deutsch-Niederländische Gesellschaft' (DNG) commented on the new compensation scheme questioning the fairness of a one-sided compensation scheme in the protocol to the new tax treaty (No. XII).¹⁶ According to the DNG, the newly adopted compensation scheme would treat German resident frontier workers working in the Netherlands less favourably than Dutch resident frontier workers working in Germany. They therefore sent a letter to the finance ministry of North Rhine-Westphalia (NRW), in which they request an implementation of a compensation scheme for German resident frontier workers too.¹⁷ An answer to the request of the finance ministry is still awaited.

All in all, at this stage for the active frontier workers no conclusive effects can be observed. This summary of the impact assessment on the new tax treaty between Germany and the Netherlands elucidated the important changes to come for the active frontier workers and a potential functioning of the new compensation scheme and applied '*Splittingverfahren*'. Definite conclusions however have to be considered with caution.

¹⁵ In this respect, see cases 1A and 1B.

¹⁶ DNG (2016) 'Benachteiligung deutscher Grenzgänger in den Niederlanden?' retrieved from: <http://aha24x7.com/benachteiligung-deutscher-grenzganger-den-niederlanden/>

¹⁷ *ibid.*

b. Pension

The new tax treaty between the Netherlands and Germany entered into effect on 1 January 2016. This treaty serves to replace the tax treaty signed in The Hague on 16 June 1959. The new tax treaty and the changes within it were discussed extensively, as evidenced by the very extensive treatment in the Dutch parliament and the media attention devoted to the treaty when it was signed. One aspect of the new treaty in particular attracted a great deal of attention: the new article governing pensions. The change, known as the '€15,000 threshold,' which was implemented in this article as a change from the old treaty, entails a number of financial consequences for retirees residing in Germany and who have accrued pension in the Netherlands. Some of these retirees are retired German frontier workers who worked in the Netherlands at some point in the past.¹⁸

The most significant change in the pension article is a change in the tax on pensions in excess of the total amount of €15,000. Under the old tax treaty, a retiree residing in Germany incurred Dutch tax on his or her general old-age pension, and in Germany essentially no taxes on his or her occupational pension. Under the new treaty, both the general old-age pension and the occupational pension are taxable in the Netherlands as soon as the total gross amount exceeds €15,000. This is in contrast to the system under the old treaty, in which a retiree in the Netherlands was taxed in Germany on his or her 'Rente' (annuity) and taxed in the Netherlands on his or her German occupational pension. Under the new treaty, both the annuity and the occupational pension are taxable in Germany as soon as the total gross amount exceeds €15,000.

The research as part of ITEM's cross-border impact assessment 2016 considered specifically from a Dutch tax law perspective what the impact of the new pension article on post-active German frontier workers will be. The report presents income projections and example calculations to attempt to give a clear picture of the financial consequences the change in the pension article will have on this group. The proviso here is that the treaty has only recently come into effect, so for the time being, the actual impact on this group of retirees and the frontier region will be difficult to measure.¹⁹ An additional complication is that under the 'general transitional scheme' the old tax treaty from 1959 may still be applied for the year 2016. There is also a transitional scheme on the Dutch side - the 'special transitional scheme' - that, under certain conditions, allows taxpayers

¹⁸ This also affects Dutch people who moved to Germany after retirement. A total of approximately 5,500 retirees are expected to be 'hit' by the change to the pension article. See *Parliamentary Documents II* 2013/14, 33 615, no. 8 (Memorandum in response to further report), p. 6. Unfortunately, concrete numbers about the group of retired frontier workers are not available.

¹⁹ It can be argued that a retired frontier worker's connection to a specific geographic border area is less strong than the binding of active frontier workers in this area. Of course, after retirement the retired frontier worker is no longer necessarily bound to a border region. However, for this cross-border impact assessment, the cross-border effects result from the active period in which the worker did work in the cross-border situation.

to have their occupational pension taxed at a lower rate in the first six calendar years following the year the treaty enters into effect (2016).²⁰

The income projections used indicate that the new tax treaty will have financial consequences primarily for retirees living in Germany with a Dutch pension in excess of €15,000. The special transitional scheme, which was designed to mitigate this impact on retiree income, is primarily effective for those retirees residing in Germany with a relatively high pension. Another aspect that the report reveals is the interest on the part of the legislator in creating a national tax measure in relation to the tax treaty. On this subject, the report discusses the Dutch ‘net pension scheme,’ a scheme that comprises a maximization of the tax-allowable occupational pension accrual and which, from a treaty-technical perspective, could raise questions about the tax treatment of the scheme.

As such, ITEM’s analysis of this dossier in the cross-border impact assessment 2016 can be seen as an initial (very early stage) step towards further, more detailed future research from a Dutch tax perspective. In the future, the treaty could also be ‘placed under the microscope’ from a German perspective. This also requires adequate statistical data to be available on which the effects of the new tax treaty in practice can be analysed and interpreted. Subjects that could be included in the context of future follow-up research include:

the fact that the transitional scheme serves a resident of Germany who has accrued pension in the Netherlands can be seen as an indication that the situation under the tax treaty is problematic for that situation, but not for the converse. In the future, of course, it would be advisable to clarify the latter situation as well²¹, with the ultimate object of being able to make a comparison between:

- the income situation of the ‘neighbour’ and former colleague of the Dutch retired frontier worker, both under the old and the new tax treaty.
- the income situation of the ‘neighbour’ and former colleague of the German retired frontier worker, both under the old and the new tax treaty.

further research from an economic perspective into the impact of the new tax treaty on the sustainable economic development of the border region and the business climate.

²⁰ Opting for application of both the general and special transitional schemes can then lead to a maximum of five calendar years of utilization of these special conditions.

²¹ By way of illustration, see: *Parliamentary Documents II* 2013/14, 33 615, no. 5 (Memorandum in response to further report), annex 1.

3.2 Recognition of professional qualifications

The recognition of professional qualifications has been one of the capacities of Europe ever since the early days of the European Community (as set out in the Treaty of Rome). Over time, a huge number of tools have emerged to facilitate the mobility of practitioners of regulated professions.²² The most recent is Directive 2013/55/EU, which updates a number of aspects of the existing Directive 2005/36/EC. In practice, professional practitioners report difficulties in practical matters such as obtaining information and the duration and expense of the procedures. Central within this research into the recognition of professional qualifications is the question of how certain practical matters that are of particular importance to the frontier worker are to be implemented and enforced in certain countries/states after the modernization of Directive 2005/36/EC brought about by Directive 2013/55/EU.

Research into the recognition of professional qualifications as a component of ITEM's cross-border impact assessment is focused on three countries/states, being based specifically on the area bordering directly on the Province of Limburg. Because the procedures for recognition for frontier worker are the same as for a professional from a country not directly bordering on the Province of Limburg, the research does, however, have broader implications. Consequently, the research comprises the entire Dutch-Belgian frontier and the entire border area between the Netherlands and the German state of North Rhine-Westphalia (*Nordrhein-Westfalen*).

The European legislation on the subject of recognition of professional qualifications is implemented 'in various places'. Because the directive provides two systems for automatic recognition (only available for specific professions) and one general system for recognition (under which most professions fall), the European regulations in this area are generally implemented in horizontal and sector-specific legislation. As a result, the process of recognition generally differs for each profession and sector.

For the recognition of professional qualifications dossier, ITEM conducted a mapping study of the potential frontier effects of Directive 2013/55/EU. As a consequence of the fragmented nature of the legislation on the recognition of professional qualifications and the fact that the procedures are usually defined at the profession or sector level, the research focuses on the following professions: junior medical/medical specialists, nursing staff, child care professionals, and electricians. These selected professions represent several different scenarios for recognition under European legislation, and are among the most mobile sectors under Directive 2005/36/EC.²³

The underlying concept of recognition of professional qualifications is based on a few key principles. The topic is particularly relevant in the context of Union citizenship, the free

²² A regulated profession is a profession for which specific requirements governing the practice of the profession are dictated by law. As a consequence of the free movement of persons, access to nonregulated professions is unrestricted in the EU.

²³ Commission staff working paper – Impact assessment – Accompanying document to the Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of the professional qualifications and Regulation on administrative cooperation through the Internal Market Information System, SEC(2011) 1558 final, p. 6.

Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

movement of persons, non-discrimination, and the principle of mutual recognition. To test whether the Netherlands, Belgium, and North Rhine-Westphalia have implemented Directive 2013/55/EU in light of these principles, ITEM reviewed the legislation for the four selected professions against nine different indicators.

These indicators were defined based on the perspective of the frontier worker. Specific factors considered were the decision period, costs of the procedure, the language of the required documents accepted by the authorities, the quantity of documents required, the number of different desk contacts required throughout the process, availability of a central information point, option for electronic procedures, whether an Assistance Centre is available, and the way in which professional qualifications are recognized. After the analysis of the indicators by profession and by country/state, a score was assigned to each profession (max. 900). The table below shows the results of the analysis.

Profession	Country/state	Score (max. 900)
Junior medical/medical specialist	Netherlands	575
	Belgium	625
	North Rhine-Westphalia	525
Nurse	Netherlands	750
	Belgium	675
	North Rhine-Westphalia	600
Child care professional	Netherlands	750
	North Rhine-Westphalia	550
Electrician	Belgium	700
	North Rhine-Westphalia	550

The research reveals that the recognition procedures for the various professions score differently in the different countries. In general, the doctors scored lower, the nurses scored average, and the child care professionals and electricians scored higher and lower, depending on the area studied. The analysis also showed that procedural aspects can be the primary source of negative frontier effects. This specifically refers to the costs of recognition procedures, the method of requesting recognition, the language in which the documents will be accepted, and lack of clarity on obtaining information.

It can be concluded that the countries/states studied have properly implemented the actual provisions of Directive 2013/55/EU, so from a material perspective, it should be possible to set up a functioning recognition process. Nonetheless, the analysis reveals that a number of practical issues can give rise to obstacles, as a result of which the countries/states studied do not always offer the most advantageous facility for the frontier worker. The fact that some authorities only accept documents in one language is an example of such an issue; likewise, identifying the correct competent authority for the recognition and lack of clarity about the costs of the process can also be a problem. Multiple language choices for documents and more effective information flows would help streamline the recognition process.

Finally, it is worth making one final observation on this dossier. Despite the fact that the scores would appear to suggest the negative frontier effects are limited, the sheer number of cases in practice where problems with recognition are encountered indicates that the reality is different. This demonstrates a discrepancy between the legislation and the practice of obtaining recognition. Although the legislation is not particularly problematic, the reality tells a different story. Remedying this gap between the legislation and the practice is an essential objective associated with the recognition of professional qualifications.

3.3 Cross-border cooperation Investigation of INTERREG programmes on the Dutch border

In 2015, the European Union's INTERREG programme²⁴ celebrated its 25th anniversary. INTERREG, the funding programme for improving cross-border cooperation, has been serving the EU since 1990. It is part of the larger European Regional Development Fund (ERDF), and it has taken various forms and gone through various periods since the start of its implementation in the border regions. The current INTERREG VA programme, with a term of 2014-2020, is the fifth programme period. The budget of European funding made available for cross-border cooperation within Europe continues to increase steadily. For the current programme period, this means that there is approximately €6.6 billion available for cross-border cooperation in Europe.

The border regions working with this programme over its several periods have gradually changed their organizational structure and implementation processes. Through these changes, the basic concept, the promotion of cross-border cooperation with INTERREG resources as 'driver,' has remained unchanged. It would appear that the significant changes lie primarily in adjusting to the continuing movements in the legislation on the European side. This has, for example, necessitated a geographic restructuring of the programmes. It has also changed other aspects, such as the procedures for preparation of the programme, decisions within the programme and the process of closing projects. As the programme progresses, we are also gaining a perspective across multiple programme periods, and this reveals that the requirements and codetermination needs of the regional and national partners for the implementation of the programme are taking on an increasingly significant role.

The research within the cross-border impact assessment is a survey and comparative study of the three INTERREG VA programmes on the Dutch border. The research framework was defined to include the INTERREG programme Germany-Netherlands, the INTERREG VA programme Euregio Meuse-Rhein (a German-Dutch-Belgian programme) and the INTERREG VA programme Flanders-Netherlands. The research focuses firstly on a comparison of the progress in the programmes (reference date 1 August 2016). The next step is a comparison of approval and closing procedures for the project within the programme. Thirdly, the research concentrates on the most significant differences in the implementation of the programmes in comparison with the previous programme period INTERREG IVA. Finally, the research presents an assessment of the image of INTERREG VA in general on the part of the programmes themselves. Because the European Commission has been working for years to simplify programmes like INTERREG²⁵, the research within the INTERREG dossier is also intended to determine whether the regulations of INTERREG VA have actually been simplified, and whether as a result the implementation of cross-border

²⁴ The Interreg Community Initiative (INTERREG for short) is a European programme working towards breaking down borders in Europe. With European Union funding, INTERREG tries to promote cooperation between regional areas in different countries as part of a broader strategy of strengthening the economic situation and cohesion across the European Union.

²⁵ See, for example, CEC Simplifying Cohesion Policy for 2014-2020 in DG Regio.

projects has been simplified in comparison to the preceding programme. Additionally, with this research ITEM is making a first attempt to look at the cause of the objections (which were also identified by parties in the field in the survey for the ITEM cross-border impact assessment 2016) and determine whether they might also still apply for the current INTERREG VA programme.

This research includes, alongside the literature survey, depth interviews with programme and project coordinators of all three programmes. The indicators, formulated to serve as a guide for these interviews were based on a 'big picture' perspective of the three programmes, and cover both quantifiable and not directly quantifiable indicators. The quantifiable indicators include the exhaustion/reservation of the INTERREG VA resources, the number of approved projects, the average application time, the changed regulations and procedures on approval and closing of projects, and the consideration of the programme as a whole. Not directly quantifiable indicators include indicators like the interest in the INTERREG VA programme (in comparison to INTERREG IVA), the cooperation of the programme partners (as compared to the past), and the image of the programme. These general indicators reflect an assessment of the interview partners.

This research is a limited, overview study that only assesses (of all management layers cooperating within the INTERREG VA programme, being local/regional, national and European) the local/regional level, being that the discussions were only conducted with the various actors at the level of the programme management. This means it is a comparison in the performance of the programmes, without incorporating any analysis of the geographic, demographic, or economic characteristics of the areas or the various different forms of administration of the programmes. The various different administrative forms of the programmes are only highlighted where they proved to be of influence on the procedures of a programme. A more comprehensive follow-up study could incorporate input from the various administration and policy layers cooperating with each other vertically and horizontally across the border.

It can be concluded that the INTERREG programme Germany-Netherlands, as well as the Flanders-Netherlands programme, are more on schedule in the performance of the current programme, given that now, some one-and-a-half years after the start of the programme, approximately 50% or more of the total budget has already been committed. This is notably ahead of the programmes running via the INTERREG VA programme Euregio Meuse-Rhein. As it became clear in the interviews, this has nothing to do with any increasing administrative burden under European regulations. Virtually all interview subjects confirm that the European regulations on the implementation of INTERREG VA have actually become simpler. Likewise, in the programmes themselves, there is the desire to continue the simplification, so the ultimate beneficiaries of the programme (the project backers and partners) experience a reduced administrative burden and carry more independent responsibility in the projects. However, it is at this level in particular that future projects will have a long way to go. One such area of improvement might be more transparency of the procedures of the various programmes. Additionally, it should be possible to set the national rules aside somewhat more. There might also be a potential for better coordination of the programmes between each other and a reduction of the burden for project

backers and partners, which at present have to set new regional regulations and/or coordination procedures for each programme and sub-programme.

Despite the reductions in burden and the renewed application, monitoring, reporting, and closing structures for projects in INTERREG VA (which are discussed in great detail in the dossier), the image of ‘administratively onerous’, ‘difficult to implement in practice’, and ‘procedurally complicated’ still hovers over the INTERREG VA programme. The underlying causes of this are, to some extent, explained by the interview subjects themselves in several ways. From there, it appears that we can generalize reasons based on experiences from programmes in which things go wrong, and these can be projected onto all programmes. It also appears that experiences from the past with INTERREG IIIA and INTERREG IVA are being carried over into the new programme. It must also be noted that other funding programmes involving public or European funding may not be any less draconian.

Further it became clear in the interviews that if many programme partners have to make decisions together and the procedures in each individual programme are just a little bit different, the structure of INTERREG A in its entirety remains complex and not particularly transparent. Nonetheless, most interview subjects agreed that it is in fact the shared, cross-border administration by programme partners on each side of the border that makes the INTERREG A programme unique. This makes the programme in itself the very model of cross-border cooperation.

3.4 Social security: illness and disability

Any person working in the Netherlands and who becomes sick or occupationally disabled then falls under the Dutch systems for illness (article 7:629, Dutch Civil Code) and occupational disability (Work and Income according to Labour Capacity Act). This also applies for any frontier worker residing in another EU Member State. Because social security is a national authority, Member States are entitled to design and change their own social security systems. Much more so than in other Member States, the Dutch government is increasingly integrating concepts such as privatization, activation, and reintegration into its social security. The current EC Regulations 883/2004 and 987/2009, which coordinate cross-border Social Security, have been in place since May 2010 and devote very little attention to reintegration.

This research, as a component of ITEM's cross-border impact assessments 2016, focuses on the Dutch short-term and long-term incapacity for work (illness and occupational disability) and the effects of this system in a cross-border situation. The reason for this choice is that the Dutch systems put in place to support these two social security risks have been fundamentally restructured over the past two decades, and additionally, they differ significantly from the systems in other Member States. This contrast between the Dutch rules (many, strict, complicated, and primarily nationally oriented) and the European rules (very few and not specific) in cross-border working situations quickly leads to problems or gaps for the EU worker and his or her employer. The focus on reintegration (stimulus philosophy) and the shift of the responsibility for reintegration to the employer and employee definitely has its positive sides, but at present is not always workable or comprehensible for foreign employers, employees, and the relevant institutions.

Neither the Dutch government (legislator and implementing body the UWV) nor the European legislator (through the coordination regulations) makes any distinction for border areas or frontier workers. This means that the Dutch legislation applies for not only German and Belgian frontier workers, but, for example, a Spanish or Polish worker doing work in the Netherlands, whether on a temporary or permanent basis. In practice, however, it appears that the approach to reintegration for frontier workers who commute daily, or to employees from Member States farther away, is completely different, and is not currently regulated adequately by either Dutch or European rules. For the purposes of this research, 'border area' is defined as the entire border between the Netherlands and other Member States.

The core principles that this research assumes are: the free movement of persons, non-discrimination, sustainable development within Europe, the Europe 2020 strategy, and the loyal cooperation between Member States.

Research has shown that the Dutch systems for illness and occupational disability can (and possibly do) impede the free movement of labour and also lead (or could lead) to legal uncertainty, while also (potentially) threatening social cohesion in Europe. Significant problem areas include: insufficient knowledge of the continued payment of salary obligation (of max. 104

weeks), insufficient knowledge of the reintegration obligation on the part of employee and employer both during illness and during occupational disability, the heavy financial and administrative requirements of the reintegration obligation for both employer and employee, the lack of a contact point at the official government level during the period of continued payment of salary during illness, the national approach to medical exams and the non-acceptance of medical reports from abroad, the language and structure of the medical reports, the lack of a transparent foreign policy of the UWV, and the absence of European rules (in the Regulations) for reintegration upon illness and occupational disability.

These problem areas can have an obstructive effect for both the frontier workers affected by them and their employers, because they lead to the following negative effects: the employee receives no salary or is paid late, the employee does not receive adequate support during reintegration and is penalized financially by the UWV or the employer for this lack of support, the employer is financially sanctioned by the UWV (in the form of an extended obligation for continued payment of salary), and employer and employee become embroiled in a conflict concerning their obligations under Dutch law. For these reasons, employers may be tempted to eschew employees in a cross-border situation due to the complications and confusion on their social security protections under Dutch law.

Multiple measures will be required to prevent, or at least minimize, the obstacles in the application of the Dutch rules of illness and occupational disability to frontier workers. Potential solutions can be found in the introduction of a cross-border impact test, the drafting of medical reports that are applicable in other Member States, allowing acceptance of foreign medical reports, transparent policy rules on the part of the UWV, more European rules for reintegration (both benefits and dispensations), the reduction of the continued payment of salary obligation, more bilateral and multilateral arrangements, cross-border networks between government bodies, and an improved knowledge of the Dutch legislation through better information provision by the Dutch government.

3.5 The qualifying foreign tax obligation of section 7.8, Income Tax Act, and EU law

On 1 January 2015, the optional scheme of section 2.5, Income Tax Act 2001, was replaced by the new system of the qualifying foreign taxpayer. Pursuant to section 7.8 of the Income Tax Act 2001, the qualifying foreign taxpayer is entitled to the same deductions and tax credits as domestic taxpayers.

The optional scheme was replaced because it was deemed to be not compatible with EU law.²⁶ In this section we examine the extent to which the new scheme of the qualifying foreign taxpayer is in accordance with EU law.

The scheme is quite relevant in the Dutch border region. Globally speaking, this scheme entails that taxpayers who do not reside in the Netherlands but enjoy over 90% of their worldwide income in the Netherlands are treated as residents of the Netherlands for tax purposes.

Because the current system has only come into effect recently, concrete figures are not available. Consequently, the research focuses essentially exclusively on the legal consequences and discussion points of the scheme.

For the KBB: Schumacker doctrine and the optional scheme for domestic taxpayers

As a general rule, according to standard international tax law the country of residence of the taxpayer must provide for the personal deductions. Under EU law, and specifically the ECJ's Schumacker decision, a Member State is obliged to allow a domestic taxpayer who enjoys all or virtually all (90%) of his or her income in the Netherlands the same personal deductions as a domestic taxpayer.²⁷

With the Schumacker decision in mind, the Netherlands introduced to the option for domestic taxpayer status. The optional scheme did include a significant anti-abuse clause, in the form of the 'clawback' provision under section 2.5(3), Income Tax Act 2001.

The clawback provision gave rise to a great deal of discussion, ultimately leading to the state secretary's decision to approve that foreign taxpayers initially opting in and later deciding to opt out because they did not meet the Schumacker criterion would not have the clawback provision applied to them.²⁸

²⁶ ECJ 18 March 2010, matter C-440/08 (Gielen), NTFR 2010/795, Jur. 2010, p. I-2323.

²⁷ ECJ, 14 February 1995, matter C-279/93 (Schumacker), Jur. 1995, p. I-225.

²⁸ Decision of 26 April 2013, no. DGB2013/201M, NTFR 2013/1090, V-N 2013/29.14.

In the *Gielen* decision, the ECJ then explicitly addressed the place of the optional scheme within EU law²⁹, ruling that the Netherlands was violating the freedom of establishment and that the Netherlands could not justify this violation by hiding behind the option for domestic tax liability.

Introduction of 'qualifying foreign tax subject'

The optional scheme of section 2.5, Income Tax Act 2001, was eliminated effective 1 January 2015 and replaced by a 90% scheme with criteria based on section 7.8(6), Income Tax Act 2001. With this system, the Dutch government is trying to move closer to EU law and the Schumacker doctrine specifically. The personal scope is more restrictive than the optional scheme, and it eliminates a number of options under the latter scheme that could have constituted a violation of EU law.³⁰ This means that henceforth, all foreign tax subjects who earn at least 90% of their income in the Netherlands can be eligible for personal deductions if they are residents of EU and EEA countries, the BES Islands, or Switzerland. These persons are designated as qualifying foreign tax subjects under section 7.8(6) of the Income Tax Act 2001. With this change, the optional element of the present scheme is also eliminated. This effectively puts the Netherlands in compliance with the ECJ's Schumacker criterion in its strictest form.

Personal scope of application

The personal scope of application under section 7.8(6), Income Tax Act 2001, is restricted to residents of EU and EEA countries, the BES Islands, and Switzerland. The scheme does not apply to residents of any other country. The optional scheme of section 2.5, Income Tax Act 2001, applied to residents of EU Member States and of countries with which the Netherlands had a system in place for the prevention of double taxation that also provided for the exchange of information. The personal scope of application of section 7.8, Income Tax Act 2001, is therefore quite limited as compared to that of section 2.5, Income Tax Act 2001.

The legislator estimates that as a result of this change, a large number of persons in typical emigration/remigration countries will be losing a benefit of an average of €940 that they had formerly obtained by opting in.³¹

Income requirement

The income requirement of section 7.8, Income Tax Act 2001, entails that a foreign tax subject whose income is, by Dutch standards, entirely or virtually entirely (in the Netherlands, this is understood as at least 90%) subject to wage or income tax in the Netherlands can enjoy the same tax advantages as a domestic tax subject.

In reference to the income requirement, the legislator's position as set out upon the introduction of the Income Tax Act 2001 is worth noting:

²⁹ ECJ 18 March 2010, matter C-440/08 (*Gielen*), NTFR 2010/795, Jur. 2010, p. I-2323.

³⁰ Parliamentary Documents II, 2013-2014, 33 752, no. 3, under point 6.

*In consideration of the case law of the Court of Justice of the European Union, which indicates that as a rule it is up to the state of residence to take the personal and family situation of tax subjects into account, but that in the event of insufficient income from the state of residence, the state of work must take that situation into account, an arbitrary threshold of 75 or 90% of the world income should not be seen as preferable.*³²

Section 7.8 of the Income Tax Act 2001 once again introduces a scheme with just such an arbitrary threshold. According to the legislator, the Gschwind decision entails that ‘entirely or virtually entirely’ can be interpreted as ‘at least 90%’.³³

Likewise, the partner of the qualifying foreign tax subject may, under certain conditions of and in accordance with the second change memorandum, also be designated as a qualifying foreign tax subject. It should be noted, however, that this expansion to include the partners does not change the fact that discussion can still arise over the allocation and amount of tax credits for emigrating and immigrating domestic tax subjects. This scheme can also potentially violate EU law if it results in a difference in treatment depending on migration year.

European integration

A thorough investigation into the impact of this scheme on European integration must still be conducted; however, any such investigation would require a solid statistical foundation, which is not available at present. As such, there is no way to give an indication of the impact on European integration at this time.

The assumption is that the scheme will have a negative impact on European integration, the reason being that by opting for the hard and arbitrary threshold of 90%, the Dutch legislator may be acting in violation of EU law. For a more detailed discussion of this point, see section 2.3.4 of the full report.

Conclusion

This research demonstrates that the scope of application of the qualifying foreign tax subject under section 7.8, Income Tax Act 2001, is more restrictive in comparison with the old optional scheme of section 2.5, because the personal scope of application of article 7.8 is limited to residents of the EU and EEA Member States, the BES Islands, and Switzerland. Secondly, section 7.8 only applies if the income of the foreign tax subject should be entirely or virtually entirely subject to tax in the Netherlands. This condition contradicts the legislative history of section 2.5, Income Tax Act 2001, because at the time of the introduction of the Income Tax Act 2001 the legislator indicated that this type of arbitrary percentage threshold was not preferable. Further, this hard threshold, set at 90% of the world income, could arguably be in violation of the case law

³² Parliamentary Documents II, 1999/2000, 26 727, no. 7, p. 445.

³³ Parliamentary documents II 2013/14, 33 752, no. 3, p. 24; and ECJ, 14 September 1999, no. C-391/97, Jur. 1999, p. I-5451, BNB 2001/78, with note by I.J.J. Burgers (Gschwind).

of the Court of Justice of the EU, specifically the matters *Commission v. Estonia*, *Wallentin*, and the conclusion in the still pending procedure X (Spanish football broker).

Additionally, according to the Advocate-General (AG) it would be paradoxical if a tax subject with only one work state could make a claim under the Schumacker doctrine, while a tax subject who made use of the freedom of movement and worked in two countries could not. If the ECJ were to follow the AG's reasoning, this would mean that the Dutch scheme for qualifying foreign tax liability would have to be adjusted, because in that case foreign tax subjects who earned less than 90% of their world income in the Netherlands would likewise have to be eligible for personal deductions in the appropriate proportion to their income.

The conclusion must therefore be that at present the legislator has a clearly different interpretation of the Schumacker and Gschwind decisions than it did upon the introduction of the Income Tax Act 2001, but the parliamentary history of section 7.8 of that act gives no indication of why, and on what grounds, the legislator revised its position. Likewise, how to deal with a situation in which a foreign tax subject has two work states, but meets the 90% criterion in neither of them, remains an open question.

3.6 Proposal for a directive amending Directive 96/71/EC (COM(2016) 128 def)

Cross-border posting of workers is a phenomenon that appears to be happening more and more often. Cross-border posting of workers is governed by the following regulations in terms of labour law and its enforcement: Directive 96/71/EC ('Posting of workers directive')³⁴, Directive 2014/67/EU ('Enforcement Directive')³⁵, and Regulation (EC) 593/2008 ('Rome I')³⁶.

The research discusses the proposed revision of the Posting of workers directive and its potential legal consequences on Dutch labour law. This legal examination does not allow any conclusions about the possible (ex ante) impact on a border region. Moreover, the extent to which there may be specific consequences for a border region is also difficult to determine, in part because of the lack of empirical data. According to European Commission figures, in 2014 there were 87,817 posted workers in the Netherlands. However, this figure does not provide an accurate picture, because it is based on A1 declarations. This is problematic for three reasons: (1) not all Member States are in a position to provide the requested information, (2) there are differences between posting within the definition of the Posting of workers directive and Regulation (EU) No. 883/2004, and (3) the country of work does not always give notice of all changes.³⁷ Additionally, the Netherlands still has no notification obligation for cross-border service providers. The Dutch government does plan to introduce one, but only with effect from 1 January 2018.³⁸

Looking at the potential consequences of the directive on Dutch labour law is speculative, because it is not as yet certain whether, and if so, when or in what form the proposed revision will ultimately be adopted by the EU legislator.

34 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L 18/1.

35 Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') [2014] OJ L 159/11.

36 Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L 177/6.

37 Jozef Pacolet & Frederic De Wispelaere, 'Posting of workers: Report on A1 portable documents issued in 2014' (report for the European Commission, December 2015), p. 9.

38 See WAGWEU and the planned introduction of the notification obligation as from 2018. Parliamentary Documents II, 2015/16, 34 408, no. 6, p. 4.

The proposal for revision of the Posting of workers directive³⁹

On 8 March 2016, the Commission announced the intention to adjust the Posting of workers directive 96/71/EC on three specific but important details.

(a) Duration of posting 24 months

If the expected or actual duration of the posting exceeds 24 months, then the Member State in which the employee is posted is considered to be the country in which the employee normally performs the work (article 2bis). A further stipulation is that if the posted employee is replaced at the same place and for the same work, the total duration of the posting of the multiple employees must be taken into account, this conditional on these employees being posted for a minimum of six months.⁴⁰

For the Netherlands, this clause will be new. In some cases, it will not be immediately clear how long the performance of services will last, or along the way it may become clear that performance will take longer than expected. In such cases, the period of posting of 24 months could be exceeded and as a result the employee's normal country of work would change. This means an employee who had normally been working in Germany could, at a certain point, suddenly be classified as working in the Netherlands. In that event, the employee's 'protective regime' changes: first, the employee fell under German labour law, and after the change under Dutch labour law. Naturally, this would entail a number of consequences. In some cases, these may be to the employee's benefit, but in others not. Normally, during the placement the 'hard core' of article 3(1)(a)-(g) of the Posting of workers directive, the provisions of the temporary country of placement would of course apply (this, however, conditional on the rules of the country of placement being more advantageous to the posted employee - if they are not, the law of the employee's ordinary country of work applies).

For enterprises and posted employees, this change can offer more legal certainty on when which law applies to their employment relationship. In order to assess the compliance of enterprises with posted employees, the I-SZW (Inspection Service of the Ministry of Social Affairs and Employment) must conduct reviews and, where violations are encountered, impose administrative penalties. A great deal will depend on the enforcement of this clause. For the applicability of this proposed 24-month scheme, the threshold of six months may attract workaround constructions (i.e. by which companies may find ways to limit the postings, and potentially the duration of the services, to six months). It must be noted that the duration of the services need not be linked to the duration of the posting.⁴¹

³⁹ From M. Kullmann, 'Detachering van werknemers: naar meer transparantie en een betere handhaving?', *TRA* 2016, afl. 6/7.

⁴⁰ On the duration of the posting and the relationship between the Posting of workers directive and Rome I, see: M. Kullmann, 'Tijdelijke grensoverschrijdende detachering en gewoonlijk werkland: over de verhouding tussen de Rome I-Verordening en de Detacheringsrichtlijn en de rol van de Handhavingsrichtlijn', *NIPR* 2015, afl. 2, p. 205-216.

⁴¹ Kullmann 2015, p. 211.

(b) Term 'remuneration' replaces 'minimum wages'

The proposal tackles one of the most disputed terms: 'minimum wages' is replaced by the term 'remuneration'. This expands the definition of wages: the provisions on remuneration that apply to local employees and those that are derived from the law or collective labour agreements declared generally binding are applied to posted employees. A requirement for Member States is to list all remuneration components on a single website. This notification obligation was already dictated under article 5 of the Enforcements Directive, which the Netherlands should have already implemented by 18 June 2016, but this has not yet happened.

Along the same lines, with regard to subcontracting Member States may oblige companies to only work with subcontractors that extend certain remuneration conditions to employees that they also extend to the contracting party. It is interesting to note that these conditions, at least according to the explanatory memorandum, can also be incorporated into collective labour agreements that are not declared generally binding.

For the Netherlands, this change will primarily be significant for the collective labour agreements that are declared generally binding. Experience has shown that posted employees are in most cases scaled lower than their counterparts with a regular position in Netherlands. In a situation in which posted employees were to actually benefit in terms of remuneration, this could have the consequence of making them less attractive for the recipient of the services in the Netherlands, because these employees would then become more expensive. One could argue that this takes away something that could be considered a comparative advantage on which the free movement of services (and thereby the cross-border posting) is based.

(c) Equal conditions for posted employee and ordinary staffing employee

Another stipulation is that in line with article 5, Directive 2008/104/EC, posted employees must be subjected to the same conditions that apply to domestic staffing services companies. This makes article 3(9) of the Posting of workers directive a legal requirement. This provision is already applicable in the Netherlands, so the change will have no effect except perhaps in increasing the awareness of the obligation on the part of cross-border service providers and their employees.

3.7 Flexibilization of the Old-Age Pension Commencement Date Act

In mid-February 2016, member of the Lower House of Parliament Norbert Klein submitted a legislative proposal to amend the General Old Age Pensions Act and Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old Age Pensions Act earlier or later than the statutory retirement date.⁴² This legislative proposal, also known as the ‘Flexibilization of the Old-Age Pension Commencement Date Act,’ opens the option to allow the statutory pension to begin up to five years earlier or later than the date on which the pension-entitled person reaches the statutory retirement age.

For ITEM, the legislative proposal was a reason to call attention, by means of a letter to the Standing Committee for Social Affairs and Employment, to the position of employees who have accrued both a Dutch general old-age pension and a foreign statutory pension.⁴³ For this group of employees (for example, migrant workers, labour migrants, and frontier workers), the flexible pension start date could have a positive outcome. Frontier workers are confronted with the fact that the statutory retirement ages in the Netherlands, Belgium, and Germany are all different. The Dutch general old-age pension starts later than in Belgium or in Germany, as the following table shows.

Country	Current statutory retirement age
Netherlands	65 years + 6 months
Belgium	65 years
Germany	65 year + 5 months

A frontier worker who has accrued statutory pension both in the Netherlands and in one of these two neighbouring countries will, at the moment of receipt of this foreign statutory pension, still have to ‘wait a while’ for the Dutch retirement benefit. This can have an impact on a frontier worker’s income position.

The legislative proposal for flexibilization of the old-age pension commencement date offers the frontier worker the option to coordinate the start of his or her Dutch pension with the start date of the foreign statutory pension. Unlike in the current situation, the frontier worker will be able to claim payment of benefits from his or her accrued statutory pensions to commence from the same start date. An example calculation is provided in the full report.

Despite this positive impact on frontier workers, ITEM observes that, now that the legislative proposal has been put on the agenda for panel discussion in the Lower House of Parliament

⁴² Parliamentary Documents II 2015/16, 34414, no. 2 (Legislative proposal by Member of Parliament N.P.M. Klein to amend the General Old Age Pensions Act and Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old Age Pensions Act earlier or later than the statutory retirement date (Flexibilization of the Old-Age Pension Commencement Date Act).

⁴³ The relevant passages/findings of this letter to the Standing Community for Social Affairs and Employment are given in the full report.

(scheduled for the end of October 2016), nowhere does the legislative proposal, explanatory memorandum, or any of the extensive commentary in the Standing Committee for Social Affairs and Employment devote any attention to the potential impact of the legislative proposal on frontier workers, even though two motions, in 2009 and 2012, referred to the importance of ‘continuing attention to the issues of frontier workers.’⁴⁴ In 2015, the importance of conducting a cross-border impact assessment, identifying effects on frontier regions during the legislative process, once again came into the spotlight as a number of political parties expressed an interest in this discussion.⁴⁵ If the legislator had introduced such a ‘review’ in the Flexibilization of the Old-Age Pension Commencement Date Act dossier, then it would have been clear that the legislative proposal for the Flexibilization of the Old-Age Pension Commencement Date Act could have a positive effect on the frontier workers who have accrued both a Dutch general old-age pension and a foreign statutory pension.

⁴⁴ Parliamentary Documents II, 2011/12, 33000 IXB, no. 21 (Bashir motion). This motion refers in part to a motion submitted by Weekers (and adopted) in 2009 (*Parliamentary Documents II* 2009/10, 26 834, no. 26) and referring to the importance of devoting attention to the frontier worker issue.

⁴⁵ *Parliamentary Documents II*, 2014/15, TK50, 4 February 2015 (Cross-border impact review).

3.8 Cross-border employment services: Effects of mandate and capacities of the Dutch UWV (employee insurance agency)

Cross-border employment mediation for job-seekers and cross-border services for employers are not discretionary options for national public employment services, but a required function. The new EURES⁴⁶ Regulation (EU) 2016/589 explicitly stipulates that employment services in border regions must work together more closely.⁴⁷

The compulsory function was created to ensure that all employees are able to enjoy the free movement of labour, on a fair basis and in accordance with Union law, national law, and all national practices, in the form of voluntary labour mobility. This is an engrained fundamental freedom, based on article 45 of the Treaty on the Functioning of the European Union (TFEU), from which common mechanisms have been established for the processing of job openings, applications, and CVs, and the exchange of information on the mobility of labour within the Union.⁴⁸

The research into the 'Effects of mandate and capacities of the Dutch UWV' within ITEM's cross-border impact assessment 2016 revolves around the question of what effects the current mandate and capacities of the Dutch public service, the UWV⁴⁹, have on the performance of cross-border labour mediation along the border with Belgium and Germany.

The specific frontier region area used in this research is the border of the Netherlands province of Limburg with the German state of North Rhine-Westphalia, and the relevant labour market regions.⁵⁰ In this region, the UWV has collaborated with the German *Bundesagentur für Arbeit* in launching two projects designed to improve the cooperation considerably, in the spirit of the new EURES regulation.

The cross-border impact assessment within this research is, based on the determination of the geographic area, oriented primarily towards the theme of Euregional cohesion. Using a number of indicators, for this specific project a description is provided of the impediments that arise from the function and capacities of the UWV. The research is based on qualitative interviews with employees of employment agencies and EURES consultants, as well as intensive participatory observation during the development of the two cross-border partnerships. The availability of overall figures, for example, on the number of cross-border placements by UWV or EURES, is limited, but is also less relevant to the research. Moreover, any such figures would have to be comparable in frontier regions, something that is impossible with figures from *Arbeitsagentur* and

⁴⁶ European Employment Services.

⁴⁷ See preamble, consideration 5, Regulation (EU) 2016/589 of the European Parliament and the Council of 13 April 2016 on a European network of employment services (EURES).

⁴⁸ Regulation (EU) no. 492/2011 of the European Parliament and the Council.

⁴⁹ UWV is the *Uitvoeringsinstituut Werknemersverzekeringen*, the employee insurance schemes implementing body. According to its own description, it facilitates expert and efficient implementation of employee insurances, and offers labour market and data services.

⁵⁰ These are the Dutch labour market regions North & Central Limburg and South Limburg, and, on the German side, the *Arbeitsagenturbezirk* for Aachen-Düren, Mönchengladbach, and Krefeld.

VDAB, at least at present.⁵¹ Even in a EURES context, the differences in the definitions and statistical methods are simply too great.

An initial and very important indicator within the research was the question of whether the UWV had the personnel capacity for personal support of job-seekers over the border. Under its current framework, the UWV offers its job-seeker support primarily through online channels. Potential frontier workers are not seen as job-seekers requiring extra attention, despite the fact that staffers of the UWV as well as of the *Arbeitsagentur* both acknowledge that cross-border mediation demands more time for personal assistance.

It would be easy to conclude from the statements of staffers that cross-border services are difficult to integrate into the regular services.⁵² Employees or supervisors of the UWV need to achieve targets, and these can be put at risk by devoting too much attention to cross-border mediation. Nonetheless, under the UWV's current approach this task does need to be integrated into the standard service package.

Fortunately, regional efforts have paid off in bringing extra personnel to bear on the partnership projects and strengthening the UWV-*Arbeitsagentur* cooperation, particularly in North Limburg. It must be kept in mind, however, that this extra capacity is only temporary and not guaranteed for the long term. A focus on the part of local staff on 'cross-border mediation' has not yet been institutionalized. These are, strictly speaking, exceptions, because the example in South Limburg shows that it is extremely difficult to come up with extra manpower for the new cross-border service from within the UWV. The current capacity of the UWV seems to be a limiting factor in the conduct of cross-border labour mediation.

A second significant indicator within this study was the question of whether the UWV (in consideration of the limitations under the framework of the standard services) is utilizing the opportunities that EURES offers for cross-border labour mediation.⁵³ For the staffing of the new cross-border service in Kerkrade, which was founded in collaboration with the partners in South Limburg, the *Arbeitsagentur* was able to deploy its own EURES advisors because these people were already carrying out cross-border activities like the actual placement of Dutch job-seekers with German employers. This was something impossible for the UWV to do in the same way. One cause of this was the fact that EURES advisors in the Netherlands are much more strongly focused on information and communication, and not specifically on the placement of job-seekers. A second cause that can be identified is that the staffing capacities of EURES in the Netherlands are considerably more limited than the capacities of the *Arbeitsagentur*.

⁵¹ *Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding* (Flemish Service for Labour Mediation and Professional Education).

⁵² Personal assistance plays a crucial role in the standard services of the *Bundesagentur für Arbeit*, and this is something that the *Bundesagentur* also offers to Dutch job-seekers.

⁵³ EURES is an element of the European EaSI programme for employment and social innovation. It is an EU financing tool intended to promote a number of goals, including quality, sustainable employment.

Additionally, advisers in the Netherlands have, up until now been performing not only cross-border activities, but particularly transnational activities.⁵⁴ This means that the way in which the UWV is using EURES, is in itself an impediment to a closer, more systemic partnership with the employment services along the border.

A third indicator researched was the question of how the UWV can process the data of foreign job-seekers and employers. Until the summer of 2016, there was no simple way for German and Belgian job-seekers to be registered in the UWV's system; without a 'DigiD' (Dutch identity management platform registration) and Dutch postcode, registration proved problematic. Employers also had technical problems (relating to tax ID numbers and postcodes) up until the summer of 2016. By comparison, the systems of the *Arbeitsagentur* and VDAB seem to be more open for the purposes of cross-border data traffic. This would imply that the system does not facilitate systematic cross-border cooperation.

ITEM's research also revealed that at present the UWV does not have the financial means to devote to extra training of job-seekers to prepare them for a job on the other side of the border (language courses, etc.). The ad hoc funding through extra provincial resources or with the help of a sector plan has so far not produced satisfactory results.

From the intensive support and analysis of the Limburg cross-border projects, ITEM was able to establish that the current standard approach in the capacities of the UWV are not promoting the objective of closer cross-border mediation of labour. More to the point, the regional services in Limburg have so far attempted to work around these institutional limitations with individual, ad hoc solutions.

⁵⁴ After the summer of 2016, this changed; now, of the sixteen Dutch EURES advisors, six are fully focused on cross-border activities.

3.9 Cross-border train travel – Fourth Rail Package

It can be characterized as extremely contradictory that just at the moment that European integration was getting off the ground, and which made its flagship the elimination of the borders, it became increasingly difficult for the travellers to cross the same borders by public transport.⁵⁵

The fragmentation and underutilization of the European rail network was noted by the European Commission as far back as the 1980s. The realization of the single market for transport by rail was intended to turn this trend around. With the Railway Packages, the European legislators have been trying to establish this single market, but the last three railway packages have proven inadequate: ambition in the legislation framed for the purpose has been lacking, and implementation of that legislation by the Member States has been lacklustre.

The fourth railway package was intended to rectify this failing and was therefore also announced as the crowning achievement of a long-term restructuring process. The package comprises six acts of legislation, which can be encapsulated in three fundamental principles.

The first is the least politically sensitive, intended to promote interoperability and the harmonization of safety standards.⁵⁶ Despite all previous directives and regulations, in many cases the Member States are still using various different technical and security standards. This implies that a train carriage used for cross-border transport must comply with multiple national rules and that all necessary certificates for it must be producible on demand. After further harmonization of the rules, this fundamental principle means that the European Railway Agency will become competent to issue permits that are valid throughout the entire European Union.

The second fundamental principle is politically more sensitive, and pertains to the market effect of passenger and other transport by rail in the Member States.⁵⁷ Specifically, this refers to the further liberalization of the national markets. At present, in many Member States the services are still dominated by a national monopoly that is assured of obtaining a portion of the market through private contracts. The legislation proposed by the Committee should make public services contracts the rule and private contracts the exception.

The third and final principle is about the administrative structures that regulate the relationship between the net manager, the competent authorities, and the service provider(s).⁵⁸ The essential point of discussion here concerns the independence of the net manager in regard to the service providers. The principle also provides for the setup of a European network of infrastructure managers with the task of following up and continuing the coordination between various networks.

⁵⁵ Peeters & Smilde (2010) Naar grenzenloos interlokaal personenvervoer. Study for the General Dutch Alliance & TreinTramBus. 10 November 2010. (page 10) Available at <http://www.mobielvlaanderen.be/studies/grip/eindrapport.pdf>

⁵⁶ Regulation 2016/796; Directive 2016/797; Directive 2016/798.

⁵⁷ 2013/0028 (COD)

⁵⁸ 2013/0029 (COD) & 2013/0013 (COD)

The legislation on the technical principle was ratified in April 2016 and published on 25 May of that year. On the other two principles, only an informal accord was reached (under Dutch chairmanship) at the end of April 2016. The consolidated text has not yet been published, even though the most significant changes to the original Commission proposal are already clear. In this cross-border impact assessment, we therefore make an ex ante assessment of the frontier effects of the fourth Railway Package. Geographically, the result of the analysis is to some degree an abstraction of the specific regions for which the findings apply. The focus is on cross-border interlocal transport rather than international transport. This means at least two successive stops in two different country locations that belong to the same border region. For the analysis, we draw on a document analysis of primary texts. The sources here are the original legislative proposals as drafted by the European Commission, the opinions of the Committee of the Regions and the European Economic and Social Committee, the positions of the European Parliament and the Council of the European Union, the three impact studies ordered by the European Commission and (if available) the ultimately approved wording of the acts.

Two effects are studied in this dossier: firstly, the implications of the railway package on the supply of cross-border transportation, both public and commercial (European integration), and secondly, the enhancement of cross-border governance structures (Regional cohesion).

Looking at the supply of cross-border transportation by rail, the analysis is quite positive. The realization of the technical component will lead to saving both time and costs in the permitting of the rolling stock. Whether this will actually translate into better service will depend largely on the permitting procedures applicable on the individual lines. Insofar as commercial exploitation on these lines is permitted, this is clearly a positive development. For cross-border public transportation, however, the findings are rather more conditional, as the legislator has neglected to develop a clear framework for the awarding of concessions on these lines. The suggestions of the Committee of the Regions are generally not followed, which implies that the competent authorities must be awarding these concessions under ad hoc schemes. Even if the cross-border trajectory then becomes more profitable, the service level is largely determined by the public service obligations set out in the contract. This brings us to the second component of the cross-border impact assessment.

Looking at the governance structures, the railway package will generally increase the need for cross-border coordination. With stricter division among infrastructure managers, railway operators, and competent authorities, there is a greater chance that the interests of the relevant actors will diverge. This will generally make consultations more difficult. On the other hand, if correctly implemented the diversity of market structures in the Member States will be reduced. In other words, there will be more actors at the table, each with their own interests, but the national structures within which these operate will be more uniform. Additionally, the governance aspect of the railway package provides for the setup of a number of consultation structures that can promote coordination. The creation of a network of infrastructure managers and the setup of a coordination committee by the competent institution facilitate discussion on problem issues

surrounding cross-border trajectories. Here again, however, it is anybody's guess whether these committees, once established, will be effective in generating closer collaboration.

It is clear that the fourth railway package will not be an endpoint in the establishment of the unified railway market. If the deficiencies in the implementation of the previous packages are any indication, the market will be a volatile one over the coming fifteen years. Member States will be awarding concessions less privately, which implies that the challenges with public service contracts in frontier regions will become a recurring phenomenon. Only then will it become clear whether the administrative tangles can be unravelled without a further helping hand from the EU. In the meantime, a useful step forward would be to catalogue the existing award procedures for all cross-border lines, along with the consultation structures used on them, the efficiency in terms of the award process, and the services ultimately provided under them.

3.10 The Belgian toll system for lorries

The Flemish Region, the Walloon Region, and the Brussels-Capital Region have committed themselves to introducing a distance-based toll system for heavy goods vehicles in Belgium in April 2016. This means that it is no longer possible to use the Eurovignette on Belgian roads.

According to a study conducted by the VID (Traffic Information Service / *Verkeers Informatie Dienst*), the introduction of the new Belgian toll for lorries will lead to more freight traffic on Dutch roads: *'It appears that transport companies are trying to reduce the number of kilometres in Belgium, in order to save on toll. This means that it has become noticeably busier on the Dutch East-West routes.'* (VID 2016)

A different source states that the introduction of the new, costlier, toll system for lorries in Belgium leads to an increase in the prices of the affected industries (in their example: the food industry). (Transport & Mobility Leuven 2015)

Until now, there has been no study to examine the specific impact of this new toll system on the logistics and forwarding companies in the area of the German-Dutch region close to the Belgian border. This has therefore been the focus of this research project as part of the ITEM cross-border impact assessment 2016.

The aim of the research project was to find out more about the practical impact of the introduction of the Belgian toll system on 1 April 2016 on logistics and forwarding companies in the German/Dutch border area of Northern Limburg. In order to achieve this, the existing or alternative routes of the logistic companies needed to be made clear. The level of new costs related to the Belgian toll system and whether or not these costs would be passed on to their clients were also studied. The project also explored what changed for companies that still had to buy the Eurovignette for journeys through the remaining Member States. Furthermore, the logistics and forwarding companies' opinions on the short-term and long-term effects of the Belgian toll system were included in this study.

The researchers investigated whether the companies had any problems with the installation of the OBU Boxes and/or if they required more time to meet the requirements of the Belgian toll documents etc. Lastly, the companies were asked if they would like to change anything about the Belgian toll system and if so, what they would want to change.

The research was conducted as follows. Firstly, secondary research was used to gain information on toll systems in general. This was done to create an overview of how companies are affected by tolls when taking alternative routes through different countries other than Belgium. Secondly, the new Belgian toll system was examined. Lastly, interviews were held with logistics and forwarding companies from the designated area. This was done to gain first-hand information and opinions from professionals who are directly affected by the new toll system.

The outcome of this investigation provides information on the change of routes and costs as well as opinions of logistics and forwarding companies with lorries driving through Belgium.

Germany, the Netherlands, Luxembourg, and Belgium charge tolls for lorries on specific roads. Germany has its own, distance-based toll system for domestic and foreign HGVs⁵⁹. The Netherlands and Luxembourg are Eurovignette countries, as was Belgium before the introduction of its own toll system on 1 April, 2016. Belgium has abandoned this time-based Eurovignette to move on to a distance-based toll system like Germany's.

Results from the interviews show that the introduction of the new Belgian toll system has barely had any impact on the routes taken by lorries from Dutch and German companies located in the border region with Belgium. Other than trying to avoid Brussels due to the high toll in this area, lorries from the interviewed companies still take the same routes through Belgium. In contrast, articles report that there have been changes in routes since more freight traffic has been noticed on roads in the Dutch border region close to Belgium. Nevertheless, this could not be confirmed by the companies that were interviewed for this project. Moreover, the costs that the companies are facing due to the new toll system have increased immensely. A one-way route through Belgium costs on average 290% more than it used to cost under the previous toll system (toll only). In addition, when companies buy the Eurovignette for the remaining Member States, they have to pay the same price as before when Belgium was still included. Before, the Eurovignette costing €8 per day was sufficient for a journey through Netherlands and Belgium. Now, however, the €8 for the Eurovignette has to be paid in addition to the Belgian toll.

Lastly, the interviewees do not like the new Belgian toll system very much; they see it only as a change that they have to accept. Seeing as costs have only increased for companies, the interviewed companies hope to see road improvements and better maintenance on Belgian roads. If they could, they would opt for a toll system that included the whole of Europe.

⁵⁹ Heavy Goods Vehicle

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Prof. Saskia Klosse (dossier 4)

Professor

Social security

Prof. Hildegard Schneider (dossier 2)

Dean/Manager ITEM

Free movement of natural and legal persons and migration issues, the recognition of qualifications and EU policies in the field of education and culture, international trade law, and comparative law

Martin Unfried (dossier 8)

Ontgrenzer

EU environmental policy and EU regional and cross-border policies

Dr Marjon Weerepas (dossier 1 and dossier 7)

Associate professor/University lecturer

National/International wage tax and social insurance contributions, income tax (not profit)

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