



Cross-Border Impact Assessment 2019

Summary



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

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



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1. Introduction

The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM makes a scientific contribution to cross-border mobility and cooperation. One of its core activities is to analyse border effects in its annual Cross-Border Impact Assessments. Since its foundation in 2015, ITEM has conducted four such regulatory impact assessments. The present report is the latest edition of the Cross-Border Impact Assessment.¹

Through its Cross-Border Impact Assessment, ITEM offers additional insight into European and national legislative and policy initiatives. ITEM's impact assessment intends to provide a valuable resource for policy makers at the regional, national and European level when they make decisions concerning (cross-)border regions. In particular, these annual impact assessments support the identification of existing or future border effects and thereby contribute to the political debate. Moreover, the results of the individual dossier research also allow timely adjustments to be made to legislative proposals during their adoption phase.

The ITEM regulatory Cross-Border Impact Assessment serves a dual purpose, namely to recognise potential negative or positive effects of planned legislative or policy initiatives *ex ante* and to identify negative or positive cross-border effects of existing policy or legislation in an *ex post* manner (see below). By fulfilling this purpose, the report can contribute to a better *ex ante* and *ex post* evaluation of legislation and policy for the Member States and regional legislators. Furthermore, the method employed in these impact assessments may be of added value to the European Commission's *ex ante* impact assessment and the evaluation of existing legislation. In this context, the European Commission's Directorate-General for Regional and Urban Policy (DG Regio) considered the Cross-Border Impact Assessments carried out by ITEM a good practice in its Communication 'Boosting growth and cohesion in EU border regions'.² In that same Communication, the Commission stressed the importance of the identification of cross-border impacts in legislative and policy processes and made it an explicit action point.³ Awareness of the relevance of Cross-Border Impact Assessments is also growing at the national level. For example, the Dutch Secretary of State Knops recently recognised the importance of assessments related to potential cross-border effects during a debate of the House of Representatives.⁴

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

Conducting in-depth and border-specific impact assessments may be difficult at the European and even at the national level due to the great differences that exist among European cross-border regions. A 2016 study commissioned by the European Commission highlights the needs of border regions according to their particular features and shows the extent to which (cross-)border regions differ from one another.⁵

Therefore, the existing differences in border regions complicate the exercise of European level Cross-Border Impact Assessments. At the same time, suggesting that in-depth and border specific impact assessments be carried out at the national level by line ministries may also be a difficult proposition, as the diversity of (cross-)border regions may also be large at the national level. Germany, for example, has nine neighbouring countries comprising numerous cross-border territories.

1 All ITEM Cross-Border Impact Assessments may be consulted via the following link: <https://www.maastrichtuniversity.nl/research/institutes/item/research/item-cross-border-impact-assessment>.

2 Communication from the Commission to the Council and the European Parliament - Boosting growth and cohesion in EU border regions, COM(2017) 534 final, p. 8.

3 Ibid.

4 *Kamerstukken II* 2017/18, 32851, 47, p. 18-21; see also Kamerbrief over grensoverschrijdende samenwerking van de Staatssecretaris Binnenlandse Zaken en Koninklijke Relaties van 20 april 2018, 2018-0000244202.

5 SWECO et al., Collecting solid evidence to assess the needs to be addressed by Interreg cross-border programmes (2015CE16oATo44) Final Report 2016, European Commission.

Despite these challenges, plenty of action is undertaken at the European and the national levels to tackle them. For example, ITEM experts have been recently involved in DG Regio and ESPON projects, which aim at improving the methodologies for EU level Territorial Impact Assessments focused on cross-border territories. When looking at the national level in the Netherlands, ITEM is currently assisting the Dutch government in reviewing how to improve its own policy assessments with regard to border effects with ITEM. Together with partners of the TEIN network of cross-border institutes, ITEM is discussing possibilities to establish a network of partners who will also conduct assessments in their own cross-border territories.⁶

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

Very often the line between *ex ante* and *ex post* is not that evident, since the effects of legislation that entered into force years ago are often in practice delayed by transitional periods or administrative delays. In the fields of social security or tax law, the assessment of the effects of new legislation goes hand in hand with the evaluation of the effects of existing policies and regulations. In addition, a full-fledged policy evaluation of certain policy measures and legislation is often difficult for the lack of cross-border data. This lack of data means that *ex post* research actually often takes the form of an assessment rather than a profound evaluation.

In this sense, ITEM's approach observes the general distinction between impact assessment and policy evaluation described by the OECD.⁷ This implies that an impact assessment focuses on the prospective effects of the intervention, i.e. what the effects might be, whereas an evaluation is rather likely "to cover a wider range of issues such as the appropriateness of the intervention design, the cost and efficiency of the intervention, its unintended effects and how to use the experience from this intervention to improve the design of future interventions" (*ibid*). Hence, if, in the course of the ITEM Cross-Border Impact Assessment, legislation is assessed *ex post*, the assessment is often confined to the question of both the legislation's intended and unintended effects.

ITEM's annual Cross-Border Impact Assessment therefore seeks to cater to the existing need for in-depth and border specific impact assessments by evaluating cross-border effects for a wide variety of topics. The present document contains a summary of the results of the 2019 ITEM Cross-Border Impact Assessment. This year's impact assessment consists of six dossiers covering very different topics and researching both existing as well as prospective legislation and policy. Topics ranged from the *ex ante* assessment of the Dutch Act on the normalisation of the legal position of civil servants (Wnra) and the new "Governance"-criterion included in the upcoming INTERREG programme period 2021-2027 over the *ex post* assessment of the EU Nitrates Directive in relation to manure fraud to one preparatory analysis on cross-border data collection.

6 The Transfrontier Euro-Institut Network (TEIN), formed in 2010, brings together 15 partners from 9 border regions in Europe. Its unique feature is that it consists of universities, research institutes and training centres which are dedicated to the practical business of cross-border cooperation in Europe. See: <http://www.transfrontier.eu/>. A TEIN workshop on 10 October 2019 was dedicated to cross-border impact assessment.

7 OECD (2014) *What is impact assessment?* Working Document based on "OECD Directorate for Science, Technology and Innovation (2014), "Assessing the Impact of State Interventions in Research - Techniques, Issues and Solutions", unpublished manuscript, at 1. Retrieved from: <https://www.oecd.org/sti/inno/What-is-impact-assessment-OECDImpact.pdf> (last accessed 4 August 2019). See also: <https://www.oecd.org/governance/regulatory-policy/>.

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

Following this cross-border dossier-based definition of the (cross-)border region, we may see that this year's Cross-Border Impact Assessment indeed focuses on a number of different borders within the Netherlands, Belgium and Germany border region. For example, the student team researching the implementation of the EU Nitrates Directive looked at the Euregion Rhine-Meuse-North as well as the Eastern part of the Dutch province of North-Brabant. The dossier on the qualifying foreign taxpayer obligation (90% rule), following up on the Cross-Border Impact Assessment of 2018, again defined the border region as the Dutch NUTS3/COROP areas located directly along the Dutch-Belgian and Dutch-German borders. The dossier on the Dutch Act on the normalisation of the legal position of civil servants (Wnra) instead interprets the term 'border region' broadly. The dossier is therefore aimed at any part of the Netherlands with which cross-border employment activities are possible. In the dossier on the INTERREG "Governance"-criterion, in turn, the focus was placed on all of the INTERREG programme areas that lie within the cross-border regions along the Dutch, Belgian and German borders.

Apart from this territorial demarcation of the cross-border region, researchers also apply any other demarcation relevant to their research.

Identifying the Central Research themes, principles, benchmarks, and indicators

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

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

The first theme concerns the potential impact of legislation on individuals living and working in cross-border regions. Dossiers focused on European integration consider questions such as the extent to which certain legislative or policy measures violate the principles of non-discrimination and free movement. The dossier on the Dutch Act on the normalisation of the legal position of civil servants (Wnra) is an example of a dossier focusing on European integration and free movement of workers. Another example is the qualifying foreign taxpayer obligation ("90% rule") and the consequences for cross-border workers.

Researchers focusing on the socioeconomic/sustainable development of certain measures adopt a different angle. Their research focuses on questions related to the functioning of the cross-border and Euregional economy. This year's assessment of the implementation of the EU Nitrates Directive and the potential for illegal manure exports from Dutch to German border regions is a case in point. Striking questions relate to the environmental impact and the potential costs to human and animal health. Another example in the current impact assessment is the *ex ante* assessment of the proposed European Cross-Border Mechanism (ECBM) and its promise of potential remedies for border obstacles that inhibit the (swift) progress of cross-border infrastructure projects. In terms of socioeconomic development, resulting improvements of cross-border mobility could not only bring about real (cost) advantages for consumers and companies, but especially also for investments and employment. The dossier on the challenges to the production of cross-border statistics is another example. In this dossier, the exploratory analysis highlights the continuous rise in user needs for accurate cross-border data as a basis for policy formulation and evaluation.

Finally, researchers may also ask what cross-border effects a certain measure has for euregional cohesion, meaning cooperation between institutions, business as well as for contacts and the mindset of cross-border activities amongst citizens. Such aspects play an important role in the assessment of the relationships between the creation and governance of Euregions and the Euregional mindset of citizens. For example, the researchers assessing the new criterion of ‘Governance’ under the new INTERREG Regulation 2021-2027 estimate to what extent this specially targeted allocation of EU funds will strengthen cooperation within the border region and help foster the cross-border networks in a sustainable manner beyond the duration of individual projects or programme periods.

Dossiers may focus on one of these themes, or all of them, depending on the relevance of the theme for their topic, the scope of their research and the availability of necessary data. The research for the 2019 Cross-Border Impact Assessment not only focused on sources stemming from legislation and policy, but also on empirical data gathered by specialised institutions and the researchers themselves. For example, the dossier on the qualifying foreign taxpayer obligation (“90% rule”) based their research on data from Statistics Netherlands (CBS).

Table 1: Examples of principles, benchmarks, and indicators

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

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

2.3 The Dossiers of the 2019 ITEM Cross-Border Impact Assessment

The survey for this year’s impact assessment was conducted between November 2018 and January 2019 and was set out among ITEM stakeholders and other interested parties. ITEM received written responses to this questionnaire from various partners. Additionally, a number of topics were proposed and/or specifically requested (e.g. the ECBM-dossier) in the context of ITEM’s day-to-day activities. Another route for topical identification is the conduct of a quick scan of policy initiatives or programmes (such as the Dutch coalition agreement 2017) conducted by ITEM. After the dossiers and subjects submitted were screened, six dossiers were ultimately selected by the Cross-Border Impact Assessment Working Group. The final dossiers are the result of a fruitful cooperation of ITEM, its researchers and its partners. As was the case for the 2016, 2017 and 2018 impact assessments, the research in some dossiers was rendered possible by the efforts of several students. Table 2 below provides an

overview of the topics and research of the ITEM Cross-Border Impact Assessment 2019 dossiers. As indicated earlier, two of these dossiers represent exploratory analyses aiming to enhance methodological aspects to conduct more purpose-oriented impact assessments in the future.

Table 2: Themes of the ITEM Cross-Border Impact Assessment 2019

No.	Subject	Specification
Dossiers		
1.	The qualifying foreign taxpayer obligation (“90% rule”): A preliminary <i>ex-post</i> impact assessment	Complementary to the previous Impact Assessments, researchers examine trends based on additional data. Over the 2012-2017 period, they see if notable changes occurred in the number and composition of non-resident employees in the Netherlands after the 90%-rule came into force.
2.	Cross-border effects of the Dutch Act on the Legal Status of Civil Servants (Wnra)	On 1 January 2020, the new Act on the Legal Status of Civil Servants will enter into force. This Dutch law will have consequences for the tax and social security situation of civil servants who are frontier workers. This dossier maps out, in an <i>ex ante</i> manner, the effects of the new regulation.
3.	Evaluation of the proposed European Cross-Border Mechanism (ECBM)	An <i>ex ante</i> assessment of the proposed European Cross-Border Mechanism to facilitate cross-border cooperation for projects and services by resolving conflicts between national legal provisions in cross-border regions. The dossier assesses the potential benefits of the legislative proposal at the German-Dutch and Dutch-Flemish border regions.
4.	‘Governance’ under the new INTERREG Regulation 2021-2027	The new Interreg regulation for 2021-2027 will require each Interreg programme area to allocate at least 15% of the budget to ‘Governance’. This dossier provides an <i>ex ante</i> assessment of what ‘Governance’ means to different stakeholders in programme areas in the Benelux. It focuses on the expectations how it may affect programme implementation and change the latter’s scope.
5.	Cross-border monitoring: a real challenge	Data collection has been a much-debated topic in recent years. This dossier problematises how data collection is focused on the national level and it often ends at the border. This preliminary study investigates the possibilities of and pleas for making cross-border data available.
6.	Cross-border effects of the EU Nitrates Directive and manure quotas between NL/DE	This dossier provides an <i>ex post</i> assessment of the European Nitrates Directive from 1991, which sets quotas for the use of nitrates and manure. The analysis focuses on the effects of that directive and manure quotas. Notably, it examines current practice regarding the cross-border trade of manure and possible fraud at the Dutch-German border.

3. The Dossiers of 2019

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

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

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

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

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

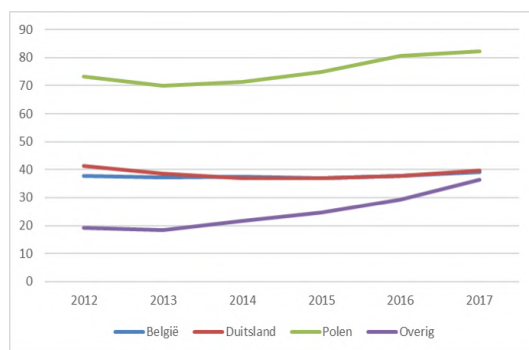
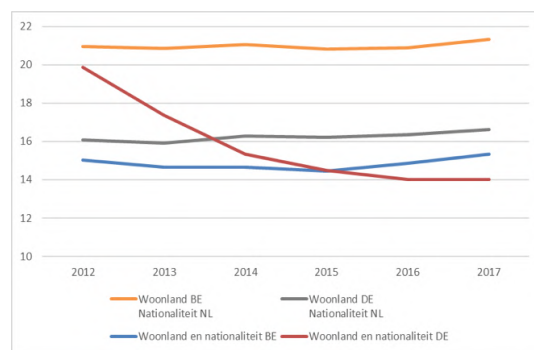


Figure 2: Number of non-resident employees by country of residence and nationality, 2012-2017 (x1,000)



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

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

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

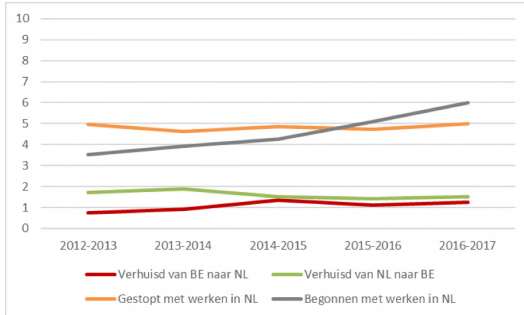
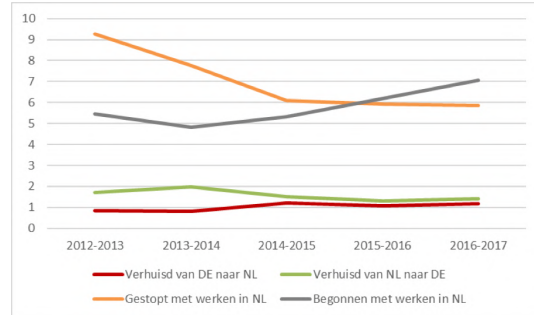


Figure 4: Labour mobility and housing mobility of number of non-resident employees with Germany as the country of residence, 2012-2017 (x1,000)



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

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

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

3.2 The Social Security and Pension Situations of Cross-Border Public Servants after the Introduction of the Public Servants (Standardization of Legal Status) Act (WNRA)⁸

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Charlotte Conjaerts*

Introduction

As of 1 January 2020, the Public Servants (Standardization of Legal Status) Act (Wet normaliserende rechtspositie ambtenaren, Wnra) is likely to enter into force.⁹ As a result of this law, several groups of employees will no longer be classified as public servants. At the same time, new public servants will be added to this list, such as employees of the Dutch Employee Insurance Agency (UWV) and the Social Insurance Bank (SVB). The new Central and Local Government Personnel Act 2017 (Ambtenarenwet, AW) will also be implemented. For employees working in the education sector, another law will enter into force in addition to the Wnra, namely the amending legislation to the Wnra for public servants in education (Wet tot wijziging van enige wetten in verband met de normalisering van de rechtspositie van ambtenaren in het onderwijs), as it is no longer considered desirable to distinguish between private education and public education.¹⁰

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

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

Lack of correct figures

Regrettably, it is unclear how many people will be affected by the Wnra, as no exact figures are available. According to the website of the Dutch Ministry of the Interior and Kingdom Relations, more than half a million public servants will move from a public-law appointment to a private-law employment contract as a result of the Wnra.¹¹ The question is how many public servants who live abroad and work in the Netherlands are affected by the amendment of the law. Maastricht University Medical Center+ (MUMC+) alone employs approximately 800 cross-border workers: 740 from Belgium and 60 from Germany. One of the questions that follows is how many of these employees work outside the Netherlands in addition to their jobs in the Netherlands. In mid August, a questionnaire was sent to employees at Maastricht University to gain more insight into their living and working situation.¹² Statistics Netherlands only has figures on the total number of frontier workers who live in the Netherlands or abroad and who carry out cross-border work abroad or in the Netherlands. These data, however, make no distinction between public servants and employees.

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

8 The subject is very much on the move at the moment. This summary shows the state of play as at 31 August 2019.

9 Stb. 2017, 123.

10 Kamerstukken II 2018/19, 35 089, nr. 3. The law was passed in June 2019 by the Dutch House of Representatives (Tweede Kamer). See Kamerstukken II 2018/19, Stemmingen Normalisering rechtspositie ambtenaren in het onderwijs, p. 94-21-1.

11 'Hoeveel ambtenaren gaan onder de WRNA vallen?', Website Ministerie van Binnenlandse Zaken en Koninkrijksrelaties.

12 This happens at other universities too.

Consequences of the Wnra

Obligation to insure

The social security obligation may change as a result of the Wnra if the employee also performs work abroad. This is due to the European coordination rules of Regulation (EC) No 883/2004 concerning the pursuit of working activities in two or more Member States. One of the rules is that if a cross-border worker works in Member State A as a public servant and in Member State B as an employee, the cross-border worker is insured in the Member State where they work as a public servant. If, in this case, the status of the public servant changes to an employee status, the main rule for determining the applicable legislation applies instead of the exception. This means, it must first be determined whether the employee performs or acquires 25% or more of their working time and/or remuneration in their State of residence. If this is the case, the insurance obligation is assigned to the State of residence. If the 25% criterion is not met, the insurance obligation is assigned to the State of residence or to another Member State, depending on the facts and circumstances.¹³

The report offers several sample calculations to provide more insight into the consequences of a cross-border shift in the insurance obligation, i.e. duty to pay social security contributions. These examples are based on the year 2018, as this is a full year for which holiday allowances and end-of-year bonuses can also be taken into account. For the sake of illustration, an example of frontier work situation with Belgium has been chosen (Table 3). This example presents a person who lives in Belgium and who works in the Netherlands for 0.9 FTE and for 0.1 FTE in Belgium.

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

Pension

In the case of a private pension, the power to tax is, in principle, assigned to the State of residence. The question is whether, after the entry into force of the Wnra, the pension should be divided into a public and a private pension. After all, an employee builds up a state pension (*overheidspensioen*) until 1 January 2020 and after that date will be working as an employee. However, this matter has led to problems in the past.¹⁴ In the case of state pensions, the Netherlands has the right to levy taxes on wage or pension payments for services rendered to the Dutch State, a political subdivision thereof, or a local authority governed by public law. This is the application of the cash-base system ('*kasstaatstelsel*').

In practice, a public service appointment is generally a prerequisite for this Dutch prerogative on taxing rights. According to the Minister of Social Affairs and Employment, this criterion will no longer work effectively after the entry into force of the Wnra. The treaty criterion of employment with a Dutch public-law body will be applied more directly to the interpretation of the concept of 'public administration post', irrespective of whether it concerns an appointment as public official or an employment contract. In principle, according to the Minister, the distribution of the right to levy tax does not change and the Netherlands will continue to be allowed to levy taxes on pensions. It is clear, however, that a dialogue needs to be started with Belgium and Germany in order to avoid ambiguities about the taxing rights of state pensions.¹⁵ The question arises as to whether Belgium, Germany, and the other foreign authorities will accept this opinion.

Conclusion

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

13 See art. 13 Verordening nr. 883/2004 en art. 14 lid 8 Verordening nr. 987/2009.

14 See for instance HR 5 December 2008, nr. 43 722, BNB 2009/199.

15 Letter 8 Juli 2019 Nadere vragen over de herziening EU-verordening coördinatie sociale zekerheidsstelsels, nr. 2019-0000099383, p. 4 en 5.

Table 3: Exemplary calculation of the possible consequences (difference in compulsory contributions) following the entry into force of the Wvra on 1 January 2020 regarding the change in insurance obligation when working in two countries.

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

3.3 ‘European Cross-Border Mechanism’ (ECBM) – An ex-ante evaluation of cross-border impact for resolving border obstacles in Belgian, Dutch, and German border region

Dr. Hannelore Niesten¹⁶

(With support of

Dr. Nina Büttgen

Martin Unfried)

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

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

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

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

The members of the Benelux Union already have a whole range of tailor-made and effective border instruments in place. The added value of the EU cross-border mechanism for the Benelux countries and border regions therefore lies mainly in an incentive to improve the current Benelux governance system. At the Benelux level, there is no horizontal legal instrument for legal adaptations outside the sectoral agreements in a cross-border context. The current Benelux governance system can therefore be supplemented by a tailor-made, horizontal Benelux mechanism. For border regions where the current set of instruments is less equipped to remove obstacles to cross-border cooperation (mainly Eastern and South European countries and border regions) due to the absence of multilateral or multilevel cooperation, the border mechanism could have a very beneficial effect. As such, it would be useful for local actors who are currently thinking up ad hoc solutions on a case-by-case basis for border regions without bilateral agreements or an effective infrastructure.

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

16 Post-doc researcher, Faculty of Law, University of Hasselt. Both the position and this report have been made possible with the financial support Province of Limburg (B).

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

Implementation - National implementing legislation is necessary to ensure effective use of the European cross-border mechanism. The EU regulation imposes a concrete status on promoters with clearly defined powers and obligations for the competent national authorities. Provinces situated along a national border should support this basic idea of the EU regulation. It is recommended that each Member State establishes a legal model with a tailor-made governance system to achieve the objective of removing obstacles to cooperation in cross-border projects. The mechanism established under the regulation requires Member States to set up a (two-tier structured) mechanism for each border with a neighbouring Member State in order to remove legal obstacles to cooperation in a common cross-border region. The envisaged national and regional coordination points in all border regions could play a crucial role in dealing with the request of project initiators for the removal of obstacles to cooperation in cross-border projects. Stakeholders in cross-border projects facing such an obstacle should have the right to submit the application to the national coordination points, which should then assess the admissibility and merits of the application on a case-by-case basis - even if the Member State subsequently withdraws from the procedure to deal with the case by means other than the EU regulation.

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

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

3.4 ‘Governance’ under the new INTERREG Regulation 2021-2027

Vera Hark
Martin Unfried
Dr. Mariska van der Giessen

In sight of the upcoming INTERREG VI-A period 2021-2027, programme areas across Europe are developing new cooperation programmes (CP), defining their respective strategies, goals and objectives. For this new programme period, the European Commission (EC) has developed and proposed a new regulation to the European Parliament and European Council, which introduces ‘Governance’ as a novel objective.¹⁷ The term ‘Governance’ can be understood and defined in multiple ways. It appears for the first time in an INTERREG regulation as a binding objective with mandatory budget share. How do different INTERREG programme areas understand this concept and how do they plan to realise it in their CP? This dossier investigates the different approaches to the ‘Governance’ objective of three INTERREG programme areas, namely the Germany-Netherlands programme, the Euregio Meuse-Rhine programme and the Greater Region programme. For this purpose, we conducted interviews with key stakeholders of these programme areas as well as a representative of the EC’s DG REGIO.

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

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

While it is reasonable for the EC to avoid strict requirements for the objective, several programme area representatives wished for more concrete guidance on implementation in our interviews. Additionally, some expressed their scepticism towards the new objective, believing that it is rather oriented at ‘less experienced’ border regions and not seeing the relevance for the border region they are responsible for. From a third party’s perspective, this situation motivates additional communication efforts to emphasise the opportunities the new objective entails for programme areas and to discuss suitable implementation approaches. More topical exchange between representatives of the EC and the programme areas can avoid that the objective and the underlying concepts are misunderstood and increase the likelihood for DG REGIO’s expectations to be fulfilled. In this respect, amongst others, the EC’s “Cross-Border Review”¹⁸ (2017) that displays various examples of CB challenges still present in many border regions, including the ones which are at the centre of this dossier, could be pointed at. Thanks to Interact¹⁹, this type of exchange will be stimulated. Additionally, it is to be noted that the CPs will be formally negotiated with the EC before adoption. It is therefore to be seen, if programme area representatives will have clearer insights after such clarifications.

17 European Commission: “Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments”, COM(2018)374, Strasbourg, 29.05.2018, https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-specific-provisions_en.pdf, p.30, last visited on 01 July 2019.

18 Cf. European Commission “Cross-Border Review”, 2017, https://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/review/#1, last visited 15 July 2019.

19 Cf. European Commission: “Interact, Interreg.”, https://ec.europa.eu/regional_policy/EN/atlas/programmes/2014-2020/europe/2014tc16rfiro02, last visited on 15 July 2019.

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

Finally, the EC representative we interviewed points out a general lack of data on the quality of CBC for 'Governance' structures and a need to find methods for the measurement of positive effects of 'Governance' cooperation. As only a small portion of the European Union's cohesion budget is allocated to INTERREG, no resources are dedicated to this type of data collection and evaluation. Additionally, the assessment of CBC activities funded by INTERREG currently concentrates on quantitative indicators, which are not very meaningful for the 'Governance' objective. If the newly introduced objective was therefore connected to a list of qualitative indicators, clarifying goals and targets, its implementation would be facilitated for programme representatives. Also, programmes could be encouraged to spend a fraction of their budget on studies investigating the effects of 'Governance' activities. In the long run, a type of scoreboard for CBC could be developed, similarly to the "European Quality of Government Index 2017"²⁰. Notably, this Index is "the only measure of institutional quality available at the regional level in the European Union"²¹ but does not include any CBC aspects.

20 European Commission: "European Quality of Government Index 2017", 2017, https://ec.europa.eu/regional_policy/en/information/maps/quality_of_governance, last visited on 01 July 2019.

21 Cf. ib.

3.5 Cross-border data monitoring: a real challenge

Johan van der Valk

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

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

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

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

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

3.6 Cross-border effects of the EU Nitrates Directive and manure quotas between NL/DE (student dossier)

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

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

Table 4: Themes, principles, benchmarks and indicators of the Dossier on the EU Nitrates Directive

Firstly, the dossier provides a thorough analysis of the legal background of the situation was given, beginning with the EU Treaties (Treaty on the European Union (TEU), the Treaty on the Functioning of the EU (TFEU)) and the legislative framework in which the directive is functioning. Being a shared competence (see Article 4(2)(e) TFEU), Member States may regulate the field of environment, yet the EU may 'take over' if it deems this necessary to ensure Treaty compliance. The Nitrates Directive was thus adopted in the early 1990s because there were high levels of nitrogen pollution in the Member States' waters and these waters are not restricted within national boundaries. These high nitrogen levels can have a negative impact on the biological life of water, as well as the health of animals and people using it for drinking purposes. Therefore, this EU Directive has the objective of [1] reducing water pollution caused or induced by nitrates from agricultural sources and [2] preventing further such pollution' (Article 1).

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

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

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

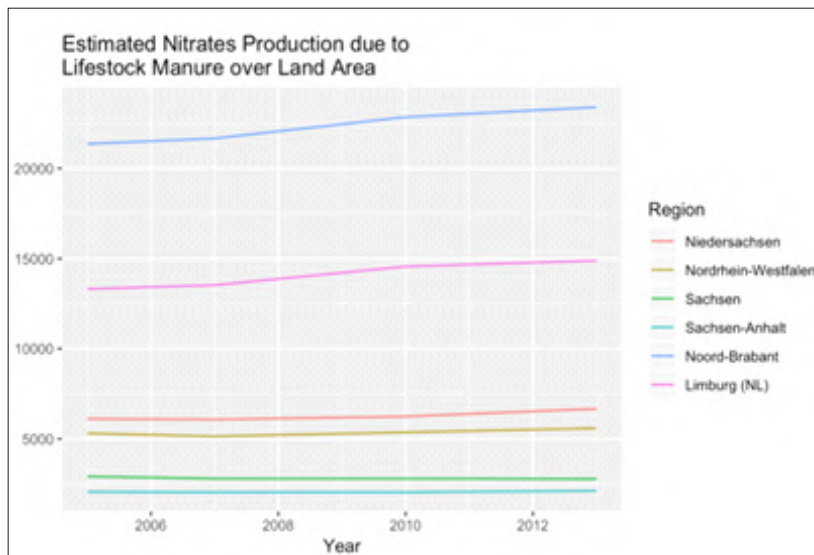


Figure 6: Manure Production over Land Area (km²). Bron: Data from EUROSTAT 2017.

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

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

Accordingly, the economic impact is analysed by using export and impact reports (RVO, 2019b), as well as data from EUROSTAT. In the latter case, the data show that there exists a large “surplus” of manure on the Dutch side of the Euroregion. This is also depicted in the enclosed figure (see figure above) where all the Dutch regions have a much higher per-land-area manure production than the German regions. This also explains the high amount of legal manure exports from the Netherlands to Germany. Germany receives about 50% of all legal manure exported from the Netherlands. At the same time, the team found many indications that a lot of fraud is committed in this context in the Euregion. Since legal disposal is costly for farmers and disposal regions are scarce, there likely exists an upward price pressure for manure exports. The actually increasing levels of nitrogen pollution in German problem zones that lie close to the border suggest as much, i.e. that the level of Dutch manure export in reality is not only high but illegally excessive. Increasing prices might make it less and less affordable for farmers to legally expose of manure and thus might make fraud more likely.

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

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Annex - The ITEM Cross-Border Impact Assessment as a basis for action: Looking back at the follow-up activities of the 2016, 2017 and 2018 ITEM Cross-Border Impact Assessments

One of ITEM's core tasks is to carry out yearly cross-border impact assessments. With these assessments, ITEM strives to give insight into the effects of new legislation and policy on border regions and how existing law and policy affect border regions. Since its inception in 2015 ITEM has successfully concluded four such impact assessments, the latest of which you are now reading. The successful completion of these Cross-Border Impact Assessments is for the most part due to the efforts of the Maastricht University researchers involved resulting in valuable research on the effects of legislation and policy on border regions.

However, the impact and success of the ITEM Cross-border Impact Assessments is not exclusively limited to providing a useful contribution to the scientific debate surrounding border regions. ITEM's impact assessment targets policy makers at the regional, national and European level who make decisions concerning border regions. The Cross-Border Impact Assessment contributes to the political debate by supporting the identification of existing or future border effects. In this context, also the 2017 and 2018 reports have proven to be able to provide a solid basis for further action and research aimed at improving cross-border mobility.

The Dossier on Social Security of the 2017 assesment led to follow-up actions. ITEM provided input to the European Parliament rapporteur on the Posted Worker's Directive.

The Dossier on the German car toll of 2017 is a case in point for the importance of proper impact assessment. As concluded then, the German Government at the time did not assess the impacts on cross-border territories in terms of traffic and environmental problems for certain municipalities at the border. Nor did it correctly assess the uncertainties with respect to the question whether the German legislation would be in line with European law. The legal analysis included in the ITEM Cross-border Impact Assessment Dossier on the German car toll partly contributed to the decision of the Netherlands to join Austria in a claim against Germany before the Court of Justice of the European Union. ITEM had concluded that there was a high risk that the planned toll would be challenged by the Court of Justice. In accordance, in June 2019, the Court found that the infrastructure use charge, in combination with the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany, constitutes indirect discrimination on grounds of nationality and was in breach of the principles of the free movement of goods and of the freedom to provide services (Case C-591/17 Austria v German).

In 2018, ITEM concluded in an assessment of the German "*Baukindergeld*" (Housing grants for buyers) that it was likely that cross-border workers working in Germany but living abroad would have to be eligible for the German grant. In July 2019, Pascal Arimont, a Belgian Member of the European Parliament, formulated a related question to the Commission (E-002147-19) based on the same assumption. The background was, that on 7 March 2019, the Commission decided to send a reasoned opinion to Germany in response to its refusal to grant another benefit, the *Wohnungsbauprämie* (housing premium) to cross-border workers. The Commission has been assessing whether these grants may be extended to cross-border workers even if the property is outside Germany. As in the case of the autobahn toll, ITEM has repeatedly concluded that the German Government did not assess or discuss these types of cross-border implications beforehand. The European Commission has now demanded a clarification from the German government with regard to the *Baukindergeld* regulation. In a reply to the recent parliamentary question, the Commission states that they do indeed see a form of indirect discrimination in some of the conditions of the *Baukindergeld* subsidy, such as the obligation to live in Germany.

Also, in the case of the dossier on different retirement ages, recently political activities started. Belgian cross-border workers who worked in the Netherlands, faced a financial gap at the age of 65 in the case of unemployment due to the later retirement age in the Netherlands. The Belgian legislator corrected that in December 2018 and made it possible that affected employees could receive unemployment benefits also after they reached the age of 65 (Koninklijk Besluit d.d. 12 december 2018).

ITEM has also developed follow-up activities with respect to the social security of non-standard work in cross-

border situations. The Permanent Committee for Social Affairs and Employment (SZW) of the Dutch Parliament's Senate recently sent a letter the Dutch Minister for Social Affairs pleading towards the Government for dealing with concrete cross-border problems that specifically frontier workers are facing in daily life. The Committee warns, for instance, about the lack of cross-border coordination between social security- and tax regimes. The ITEM Cross-Border Impact Assessment has provided the backbone to this plea.

The topic is part of an Interreg project (youRegion) in the Euregio Maas-Rhine where ITEM is developing information tools for free lancers who would work or intend to work across the border. Non-standard contracts in cross-border situations were also part of a project on "Fair Mobility" that ITEM conducted in 2018 on behalf of the cross-border trade union network. On 11 June 2019, the joint trade unions from DE, NL and BE organised a Fair Mobility conference in Duisburg. During the conference the first phase of the research report on the development of a "Fair Mobility Tool" was presented to a broad specialised audience of trade unionists, members and actors in cross-border employment and labour market policy.

Nevertheless, not only the dossiers of the ITEM Cross-border Impact Assessments have been cause for follow-up actions, the methodology employed in the impact assessment also gained publicity. For example, the methodology employed by ITEM and its researchers was labelled as a best practice by the European Commission's Directorate-General for Regional and Urban Policy (DG Regio) in its communication *Boosting growth and cohesion in EU border regions (september 2017)*. The recognition gained by ITEM led to further cooperation between the Expertise Centre and the European Commission. In particular, ITEM is cooperating both at European level with DG Regio and at national level with the Dutch Government on the development of a cross-border impact assessment methodology.²²

Furthermore, the methodology employed in the ITEM Cross-border Impact Assessment as well as the findings emanating from its individual dossiers were presented at several events throughout 2019. Presentations were provided, among others, at the CESCO-International conference on the 10th anniversary of CESCO in Budapest, at meetings with representatives of the Dutch government and Flemish administration, during the European Commission's DG Regio Open Days, at a conference organised by the Euroinstitut in Kehl, at a meeting for representatives of the European Parliament, at a workshop organised by ESPON on Interreg impact assesment in Porto, and at meetings with members of the NRW Landtag and the Benelux Parliament.

Apart from presentations on the ITEM Cross-Border Impact Assessment methodology and content, ITEM also promotes the exercise of impact assessments in general. Being an avid supporter of regular, border-specific, bottom-up impact assessments, ITEM has voiced its support and expressed the need for more cross-border impact assessments to be carried out in the Netherlands at several Dutch Ministries.²³

Finally, ITEM is increasingly devoting attention to the ex-ante identification of border effects of proposed legislation and policy. In order to determine whether a rule or measure has a certain effect on border regions, ITEM has introduced a quick scan. This initiative employs its own methodology and may be applied to estimate to what extent a certain topic will require further assessment as far as border effects are concerned. In 2017, two quick scans were conducted by ITEM. Whereas one of these quick scans focused on examining the Dutch Coalition Agreement, the other explored the border effects of the increase of the low VAT tariff in the Netherlands. As last year's Cross-border Impact Assessment shows, two themes from these quick scans (i.e. the increase in the low VAT tariff and the experiment concerning legal cannabis cultivation) were indeed taken up in dossiers.

Looking to the future, ITEM is dedicated to continue to map the effects of international, European, national and regional legislation and policy in its Cross-Border Impact Assessments. The Expertise Centre furthermore intends to develop its impact assessment and quick scan methodologies further and is looking forward to doing so in cooperation with its partners, stakeholders and researchers.

22 Presentation of M. Unfried 'Effects on Cross-border territories: The blind spot of regulatory impact assessment' at the TEIN Annual Conference 'Assessing impact across borders' (incorporating the Centre for Cross Border Studies' Annual Brussels Policy Seminar), Brussels, 10 October 2019.

23 M. Unfried and L. Kortese, 'Cross-border impact assessment as a bottom-up tool for better regulation' in: J. Beck (ed.), *Transdisciplinary discourses on cross-border cooperation in Europe*, EUROCLIO vol. 107, Peter Lang, Brussels, 2019, pp. 463-481.

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