



Cross-Border Impact Assessment 2022

Summary



Cross-Border Impact Assessment 2022

Summary

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.



Table of contents

1. Introduction	1
1.1 European Integration through Better Regulation	1
1.2 Need for Cross-Border Impact Assessments	1
1.3 The “ITEM Method”	2
2. Composing the ITEM Cross-Border Impact Assessment: Process and Method	3
2.1 The Impact Assessment Process	3
2.2 Applying the Method	4
2.3 The Dossiers of the 2022 ITEM Cross-Border Impact Assessment	7
3. The Dossiers - in summary	9
3.1 Dossier 1: European Health Data Space - Ex-ante analysis of the cross-border effects for the Euregio Meuse-Rhine	9
3.2 Dossier 2: Cross-border effects of the EU proposal for a Directive on platform workers (ex-ante)	15
3.3 Dossier 3: Energy transition and Energy Security	17
3.4 Dossier 4: Cross-border exchange of information in the fight against organised crime (ex-ante)	22
3.5 Dossier 5: Border effects of the Dutch fireworks prohibition (ex-ante)	24
3.6 Dossier 6: Border residents’ perceptions of the ‘border’ and ‘identity’ after the COVID-19 crisis: how do we establish it? (opinion piece)	27
3.7 Dossier 7: The cross-border effects of the Dutch Nitrogen policy (student dossier)	28
4. List of researchers	31
Annex - The ITEM Cross-Border Impact Assessment as a basis for action: Looking back at the follow-up activities of the 2016 till 2021 ITEM Cross-Border Impact Assessments	32

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 (cross-)border effects in its annual Cross-Border Impact Assessments. Since its creation in 2015, ITEM has conducted seven such regulatory impact assessments. The present report is the latest edition of the Cross-Border Impact Assessment.¹

1.1 European Integration through Better Regulation

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 border regions. In particular, these annual impact assessments support the identification of existing or future (cross-)border effects and thereby contribute to the political debate. Moreover, the results of the individual dossier research also allow timely adjustments to be made to legislative proposals during their adoption phase.

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 the recent publication of the peer-reviewed European Journal of Law Reform, ITEM researchers further explored the applicability within the European policy.² 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*'.³ In that same Communication, the Commission stressed the importance of identifying cross-border impacts in legislative and policy processes and made their assessment an explicit action point.⁴ The later publication '*EU border regions: living laboratories of European integration*' emphasises this again, even within the frameworks of the *Better Regulation* proposals.⁵ Awareness of the relevance of Cross-Border Impact Assessments is also growing at the national level. The Dutch Coalition Agreement 2021-2025 recognises and names the border-specific effects of policies.⁶ The German Koalitionsvertrag 2021 also talks about legal instruments for the benefit of the border region.⁷

1.2 Need for Cross-Border Impact Assessments

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

1 All ITEM Cross-Border Impact Assessments may be consulted via the ITEM Cross-Border Portal:

<https://itemcrossborderportal.maastrichtuniversity.nl/link/id/U8rHnsyQU5BsF9bj>.

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

3 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.

4 Ibid.

5 Report from the commission to the european parliament, the council, the european economic and social committee and the committee of the regions EU Border Regions: Living labs of European integration, COM(2021) 393 final.

6 Regeerakkoord 2021-2025 'Omzien naar elkaar, vooruitkijken naar de toekomst'. See also ITEM Reflection on the Regeerakkoord: *Weinig concrete voornemens voor de Grensoverschrijdende Samenwerking maar wel belangrijke randvoorwaarde*, https://www.maastrichtuniversity.nl/sites/default/files/nl_item_reflectie_regeerakkoord_en_koalitionsvertrag_2021.pdf

7 Koalitionsvertrag 2021 'Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit'

small-scale and bottom-up Cross-Border Impact Assessments conducted by competent actors in specific border regions. These in-depth border specific impact assessments could, in turn, contribute to national and European evaluations identifying the cross-border impact of legislation and policy.

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

Conducting in-depth and border-specific impact assessments may be difficult at the European and even at the national level due to the great differences that exist among European border regions. A 2016 study commissioned by the European Commission highlights the needs of border regions according to their particular features and shows the extent to which border regions differ from one another.⁸ Therefore, the existing differences in border regions complicate the exercise of European level Cross-Border Impact Assessments. At the same time, suggesting that in-depth and border specific impact assessments be carried out at the national level by line ministries may also be a difficult proposition, as the diversity of border regions may also be large at the national level. Germany, for example, has nine neighbouring countries comprising numerous cross-border territories.

Despite these challenges, plenty of action is undertaken at the European and the national levels to tackle them. For example, ITEM experts have been involved in DG Regio and ESPON projects, which aim at improving the methodologies for EU level Territorial Impact Assessments focused on cross-border territories. When looking at the national level in the Netherlands, ITEM is further assisting the Dutch government in reviewing how to improve its own policy assessments with regard to border effects. Since 2021, the assessment of border effects is an obligatory part of the general Dutch regulatory assessment scheme.⁹ Commissioned by the Ministry of Interior, ITEM has developed a guidance document and ITEM is active with organising workshops with governmental officials to discuss the methodology and practical aspects of a cross-border impact assessment.

Together with partners of the TEIN network of cross-border institutes, ITEM has been discussing possibilities to establish a network of partners who will also conduct assessments in their own cross-border territories.¹⁰ To advance this idea, the 2020 Cross-Border Impact Assessment included an ITEM-TEIN joined study on border effects in several cross-border regions in Europe for the first time. The 2021 edition also saw productive collaboration. Together with the Euro-Institut and Mission Opérationnelle Transfrontalière (MOT), ITEM is involved in a research project for the German Auswärtiges Amt since autumn 2022. The project seeks an appropriate border impact assessment in the context of Franco-German cooperation, more specifically Article 14 of the Aachen Treaty.

1.3 The “ITEM Method”

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, moreover, 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.

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

9 The guidance document can be found on the official site of the Dutch government, i.e. the Integrated Impact Assessment Framework (IAK) for policy and legislation (see Annex): www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving.

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

In this sense, ITEM's approach observes the general distinction between impact assessment and policy evaluation described by the OECD.¹¹ 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".¹² If, therefore, 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 thus 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 2022 ITEM Cross-Border Impact Assessment. The assessment consists of seven dossiers covering a wide range of topics and researching both existing as well as prospective legislation and policy. This year there is an emphasis on ex-ante analyses with four dossiers studying the effects of proposed laws and policies (the European Health Data Space, Directive on platform workers, fight against organised crime, and the fireworks prohibition). One dossier (energy transition) has a thematic approach, analysing current discussions and the cross-border dimension. The final dossier constitutes an opinion piece, which explores border residents' perceptions of the 'border'. The file constitutes an initial exploration, as a basis for the development of a unique localized barometer on identity, which will be expanded upon in future research.

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

2.1 The Impact Assessment Process

Despite the different topics, researchers of the Cross-Border Impact Assessment each¹³ apply the methodology developed by ITEM. The research for the impact assessment comprises three stages (see figure 1 below). In the first stage, the topics to be included in that year's impact assessment are identified by means of a survey which allows stakeholders and other interested parties to inform ITEM about legislation and policy having potential cross-border effects. Apart from this survey, topics are also identified following ITEM's core activities in the annual cycle, among others, when conducting scientific research, undertaking counselling activities, knowledge exchange and trainings. During the second stage, the Cross-Border Impact Working Group assesses the suggested topics. During this assessment phase, the working group (consisting of representatives of partner organisations) focuses on the topicality of the issue, the relationship to ITEM's research focus, the number of requests submitted and the frequency of the issue. Once the topics have been identified, the third step will commence with the selected researchers embarking on their respective impact assessment studies. This research is documented in separate dossiers, which together form the ITEM Cross-Border Impact Assessment of that year.

11 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. Retrieved from: <https://www.oecd.org/sti/inno/What-is-impact-assessment-OECDImpact.pdf>. See also: <https://www.oecd.org/governance/regulatory-policy/>.

12 *Ibid*

13 With the exception of dossier 6, that constitutes an opinion piece.

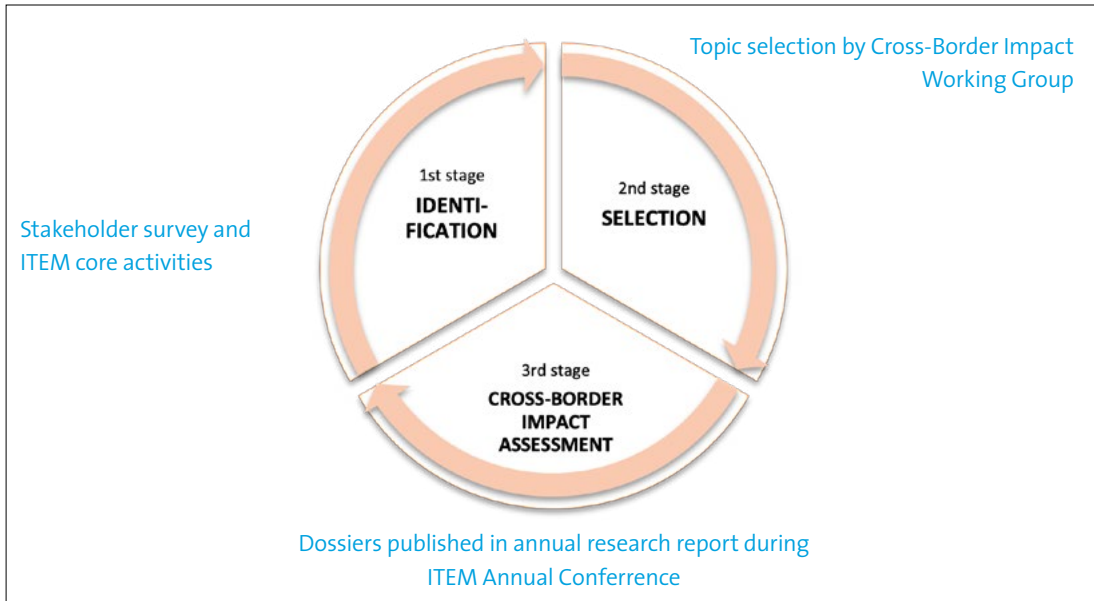


Figure 1: The ITEM Cross-Border Impact Assessment Cycle

2.2 Applying the Method

Demarcating the Research - What is a Border Region?

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



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

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

In illustration of the dossier-based definition of the border region, this year's Cross-Border Impact Assessment indeed focuses on a number of 'different border areas', notably within the Netherlands, Belgium and Germany border region. Three of the dossiers have European and thus national (implementation) legislation as their starting point. Therefore, their definition of the border region is necessarily broad. It comprises all border areas shared by these countries and possibly even beyond (since persons do not necessarily stay only within a pre-defined geographical radius along the national border). Instead, the regional research about the perception of the border citizen over 'border' focuses rather on the confined tri-border area covered by the Euregio Meuse-Rhine.

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

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

Another avenue to engage more regions in border assessment is ITEM's cooperation with the Committee of the Regions. The CoR has established a Reghub network. The intention is to gather a group of regions that are ready to evaluate EU legislation and policy and assess the impact on regional policies. In cooperation with the Reghub secretariat, ITEM contributes to the development of a Reghub questionnaire where it formulates specific questions in relation to border effects. During the European Week of Regions and Cities 2021, ITEM and the CoR organised a workshop on the topic.

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

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

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

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

Researchers focusing on the socioeconomic/sustainable development of certain measures adopt a different angle. Their research focuses on questions related to the functioning of the cross-border and Euregional economy. From this perspective, this year's assessment illuminates, on one hand, the (potential) effects of the Directive on platform workers and, on the other, discusses the (in)possibilities of cross-border energy transition.

Finally, researchers may also ask what cross-border effects a certain measure has on Euregional cohesion, meaning cooperation between institutions, business contacts, and the mind-set of cross-border activities amongst citizens. Such aspects play an important role in the assessment of the relationships between the institutions and governance of Euroregions and the Euregional mind-set of citizens. The dossier about the perception cross-border inhabitants of 'border' focuses on this aspect. The dossier on the fireworks prohibition and the fight against organised crime look at the cooperation and coordination between authorities and governments. They focus on how to avoid unwanted, waterbed, effects.

Table 1: Examples of principles, benchmarks, and indicators

Research themes	Principles	Benchmark	Indicators
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.
Socioeconomic / Sustainable development	Regional competitive strength, Sustainable development of border regions	Cross-border initiatives for establishing companies, Euregional labour market strategy, cross-border spatial planning	Euregional: GDP, unemployment, quality of cross-border cluster, environmental impact (emissions), poverty
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

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 2022 Cross-Border Impact Assessment not only focused on sources stemming from legislation and policy, but also on empirical data, in-depth interviews and background talks.

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

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

2.3 The Dossiers of the 2022 ITEM Cross-Border Impact Assessment

The survey for this year's impact assessment was conducted between December 2021 and January 2022 and was set out among ITEM stakeholders and other interested parties. ITEM received numerous written responses to this questionnaire from various partners. Additionally, topics may also arise in the context of ITEM's day-to-day activities within the ITEM annual cycle. Another route for topical identification is the conduct of a quick scan of policy initiatives or programmes (such as the Dutch coalition agreement 2021) conducted by ITEM. After the dossiers and subjects submitted were screened, the final selection of dossiers was made based on the advice of the Cross-Border Impact Working Group.

The final dossiers are the result of a fruitful cooperation of ITEM, its researchers and its partners. Table 2 below provides an overview of the research topics of the ITEM Cross-Border Impact Assessment 2022 dossiers.

Table 2: Abstracts of the ITEM Cross-Border Impact Assessment 2022

No.	Subject	Specification
Dossiers		
1.	European Health Data Space - Ex-ante analysis of the cross-border effects for the Euregio Meuse-Rhine	On 3 May 2022, the European Commission published a proposal for a Regulation creating a “European Health Data Space” (EHDS). The EHDS would create a digital infrastructure for health data, under which health data could be exchanged more easily throughout the EU. This dossier analyses the potential effects of the EHDS on the Euregio Meuse-Rhine.
2.	Cross-border effects of the EU proposal for a directive on platform workers (ex-ante)	Today, more than 28 million people in the EU work online through digital work platforms. By 2025, the number is expected to rise to 43 million people. In response to this fast-growing labour market and an unclear legal framework, the European Commission has proposed a directive to improve the working conditions and social rights of platform workers, require greater transparency from digital work platforms and promote the sustainable growth of these platforms. This dossier assesses the potential cross-border effects of the proposed legislation.
3.	Energy transition and Energy Security: The effects of the current legal, spatial, and economic framework on renewable cross-border projects (and cross-border cooperation in times of energy crisis)	What impact does the current legal, spatial and economic framework have on cross-border cooperation on renewable energy and related climate challenges. This is related to the assumption formulated by many stakeholders that border regions are at a huge disadvantage when it comes to fulfilling their obligations regarding renewable energy targets and other energy transition goals. The focus is on German-Dutch relations.
4.	Cross-border exchange of information in the fight against organised crime (ex-ante)	Organised crime does not stop where the border begins. To address the problem of cross-border organised crime, the European Commission has launched two legislative proposals under the umbrella of the Security Union strategy. These consist of a draft directive and a draft regulation. This dossier assesses the potential effects both measures would have on the cross-border regions of the Netherlands, Germany and Belgium, if they are implemented.
5.	Border effects of the Dutch fireworks prohibition (ex-ante)	During the 2021-2022 turn of the year the Netherlands banned the sale, transport, outdoor possession and lighting of fireworks. This was described as a temporary measure to diminish hospitalisations during the COVID-19 crisis, to reduce the burden on healthcare workers. These measures were not in place in Belgium and Germany at the time, where fireworks remained (partly) legal. This dossier assesses the border effects the Dutch fireworks prohibition, as there is a draft law proposing to render it permanent.
6.	Border residents’ perceptions of the ‘border’ and ‘identity’ after the COVID-19 crisis: how do we establish it? (opinion piece)	During the COVID-19 crisis, (physical) borders were re-erected between the Member States in the EU. This phenomenon is likely to have affected the perception residents have on the border. Especially in a cross-border region like the Euregio Meuse-Rhine, where a 360°-perspective is being promoted when it comes to cross-border cooperation, living and working, deeper insights into such perceptions are of interest when pondering ideas like Euregional identity. This year a commentary will address these aspects as a follow-up to the two research dossiers on the coronavirus pandemic of 2020 and 2021. Additionally, it serves as the foundation for developing a uniquely localised barometer on identity, which will be expanded upon in future research.
7.	The cross-border effects of the Dutch Nitrogen policy (student dossier)	In 2019, the Dutch nitrogen policy was deemed to be in conflict with European legislation by the Dutch Council of State, after a previous preliminary ruling by the Court of Justice of the EU to the same effect. In response to these assessments, the Dutch government has rolled out a mix of measures to alleviate concerns. These range from reducing the maximum speed on motorways to establishing subsidy schemes for farm modification. Because nitrogen emissions spill over across the border, in turn affecting nature, health, agriculture and industry there, this dossier assesses the border effects of the Dutch Nitrogen policy as it stands. The research has been carried out in the context of a PREMIUM-project by a multidisciplinary student team.

3. The Dossiers - in summary

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

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

Susanne Sivonen (ITEM)

Timo Clemens (CAPHRI)

Introduction

Sharing health data has an extra dimension in border regions such as the Euregio Meuse-Rhine, where individuals, healthcare professionals and healthcare services move across the border more frequently.¹⁴ For instance, hospitals in Aachen, Liège and Maastricht intend to have cooperate more closely in paediatric surgery, where in order to ensure quality and continuity of care, it is crucial that healthcare professionals can access the medical data of their patients.¹⁵ Data is also essential in the provision of digital health services. One example is the cooperation between the university hospitals of Maastricht and Aachen on large vessel surgery, where surgeons operate on a patient at Aachen Hospital while a neurophysiologist in Maastricht monitors the patient's condition real-time from a distance.¹⁶ In addition, health data is valuable for research, innovation and policymaking, particularly to strengthen the resilience of health care systems. Resilience is especially key in border regions with deteriorating socioeconomic conditions, a shorter life expectancy and an aging population.¹⁷ Moreover, as the COVID-19 pandemic has demonstrated, health data plays also a crucial role in providing efficient crisis management in border regions. Indeed, the Euregio-Meuse Rhine was negatively affected by the lack of relevant cross-border data to ground policy decisions. The diverse monitoring systems on infection rates produced incompatible data, with each country applying its own definitions and indicators.¹⁸ Although border closures as *ad hoc* crisis measure had a negative social and economic impact on the region, it was found to have no impact on infection numbers.¹⁹

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

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

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

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

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

19 See for instance, *Onderzoek: Sluiten van grens had geen effect op coronapandemie en was vooral voor de Bühne*, retrieved via <https://www.gelderlander.nl/home/onderzoek-sluiten-van-grens-had-geen-effect-op-coronapandemie-en-was-vooral-voor-de-buhne-a1d73do8/>.

New EU initiatives on data

The fragmented standards and specifications for storing and sharing data, legal and administrative rules, insecurity about the application of data protection provisions and limited interoperability pose obstacles to the exchange of health data. The European Commission addressed this issue at the EU level within the context of the European Strategy for Data in 2020, which was the first to propose the creation of *Common European data spaces*. With the data spaces, the EU intends to establish a single market for data in which data can freely flow within the EU and across sectors for the benefit of businesses, researchers and public administrations.²⁰ In light of the European Commission's priorities in the areas of health and building the European Health Union²¹, the European Commission published a proposal for Regulation on European Health Data Space ('EHDS') on 3 May 2022 as the first of these data spaces. The proposal addresses health-specific obstacles to electronic health data access and sharing and advances the development of a digital health single market. The purpose of the Regulation is to facilitate a more secure and safe exchange of health data without barriers.²²

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

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

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

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

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

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

Proposal for a Regulation on the European Health Data Space

Based on the legal basis of internal market (Art. 114 TFEU) and data protection (Art. 16 TFEU), the Regulation proposes a legal framework and a mandatory cross-border infrastructure for the use of electronic health data.²³ A distinction is made between primary and secondary use of such data. The Regulation refers to **primary use** when the data is used directly for providing healthcare at national and cross-border level.²⁴ **Secondary use**, on the other hand, refers to situations where health data is used for research purposes, for instance, to assess public health policies or to develop new medicines, medical devices or products.²⁵

²³ Articles 1(1)-(2) Proposal for a Regulation on the European Health Data Space.

²⁴ *Ibid*, Chapter II.

²⁵ *Ibid*, Chapter IV.

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

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

Regarding primary use, the Regulation provides a set of rights and obligations for individuals and healthcare professionals in respect to use of personal electronic health data.²⁶ Individuals have the right to access one’s health data, in a readable, consolidated and accessible format.²⁷ Patients’ medical histories, image and laboratory results will be issued in an **European electronic health record exchange format**,²⁸ that is used and updated by the health professionals in the course of treatment of their patients, irrespective of the Member State of affiliation and the Member State of treatment.²⁹ The Regulation also establishes a right for patients to transfer their data within and across national borders to their choice of healthcare professional, immediately and free of charge.³⁰

To enable sharing of health data, the Regulation established common requirements and standards for interoperability, security and privacy. An infrastructure called **MyHealth@EU** will facilitate cross-border exchange of electronic health data for primary use. However, the Regulation does not propose a centralised European database, but rather the exchange of personal health data via **national contact points**, which are to be established in each Member State. Healthcare providers are directly connected to the national points. Pharmacies, for instance, may share and access e-prescriptions via these points.³¹ Furthermore, the proposal requires each Member State to designate a **digital health authority**, which will supervise the national contact points and implement as well as enforce the Regulation at the national level.³²

²⁶ *Ibid*, Article 3.

²⁷ *Ibid*, Article 3(1).

²⁸ *Ibid*, Article 6.

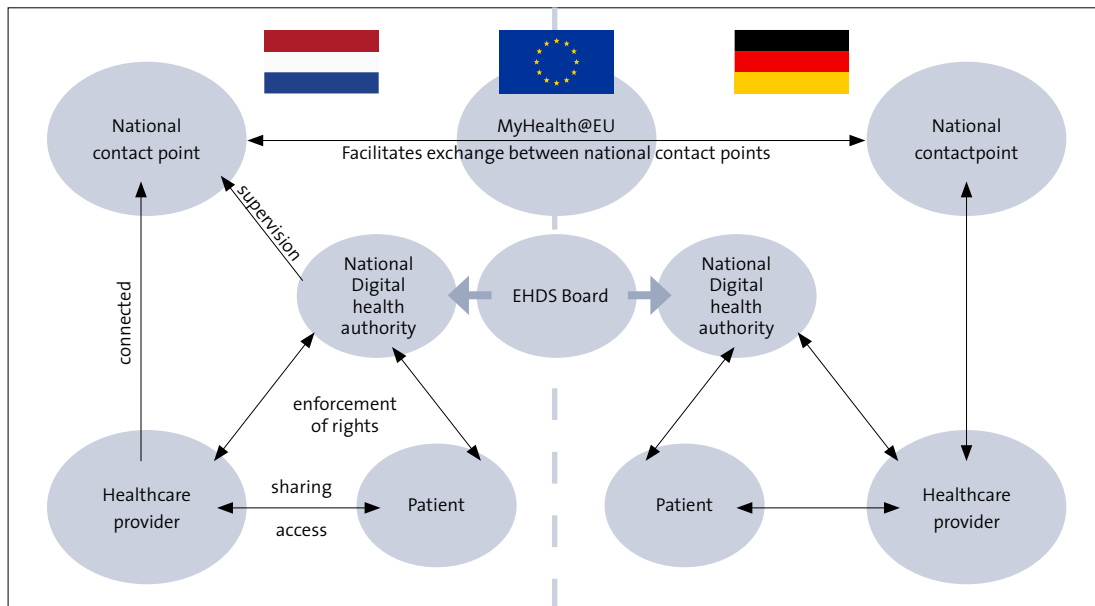
²⁹ *Ibid*, Article 4.

³⁰ *Ibid*, Article 3(8).

³¹ *Ibid*, Article 12.

³² *Ibid*, Articles 10(1)-(2).

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



Health data **for secondary use** will be governed on the national level by **health data access bodies**, which are tasked with authorising and issuing data permits to data users. The data permit will specify for which purposes the data may be used. Furthermore, the data is always to be provided in an unidentifiable form that cannot be traced back to the data subject.³³ The proposal also entails the obligation for holders of health data (for instance, hospitals, authorities and research institutes), to make certain categories of data available for secondary use.³⁴ The health data access bodies are connected to an EU-infrastructure, **HealthData@EU**, which will facilitate the access to cross-border data for secondary purposes.

On the EU-level, cross-border cooperation between the established national authorities will be facilitated by a new **European Health Data Space Board**, that will be composed of representatives of digital health authorities and new health data access bodies from all the Member States, and the Commission.³⁵

Health data exchange in the Euregio Meuse-Rhine

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

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

³³ *Ibid*, Article 44: In anonymised or pseudonymised format.

³⁴ *Ibid*, Article 33.

³⁵ *Ibid*, Article 64.

Conclusions

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

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

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

*Dr. Saskia Montebovi
Prof. Dr. Marjon Weerepas*

Introduction

On the 9th of December 2021, the European Union (EU) presented a proposal for a directive on the improvement of working conditions for digital labour platform work³⁶. The overall aim of this directive is to improve the working conditions and social rights of people who are employed through digital labour platforms, while also supporting the opportunities, flexibility, and innovation of the digital platform economy.

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

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

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

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

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

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

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

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

3.3 Dossier 3: Energy transition and Energy Security

Martin Unfried

Introduction

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

Roel Wever, chairman of the urban region Parkstad Limburg, was half joking when he made this comment at the conference on “Brede Welvaart” in May 2022. The background was his big frustration caused by the difficulties that border cities face when they try to establish renewable energy projects across the border. In this case, the project was between Kerkrade and its German twin city of Herzogenrath, where a photovoltaics field had been installed as the beginning of further ambitious steps. In concrete terms, the concept for a “CO₂-free Herzogenrath” should include the cost-optimised combination of solar power plants, wind turbines, batteries, combined heat and power plants, and gas and steam power plants as well as heat and hydrogen storage.³⁷ The location of the already-installed PV plant is precisely at the border with the city of Kerkrade. There is no surprise that this seems to be the perfect project to get involved with, and join forces and benefit on both sides. In this sense, the project is a test case for the type of cooperation that is possible across the border, given current conditions.

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

Focus on the German-Dutch border regions

The cross-border territory of this assessment was the cross-border regions at the German and Dutch border. This territory was chosen due to the fact that recently detailed studies were already conducted on different cross-border obstacles in the energy field which were used as a valuable input.³⁸ In addition, the Dutch-German situation has been also selected since there are a few practical cases, where municipalities formulated the ambition to cooperate across the border. This is the case in the Smart Energy region of the two municipalities Emmen (NL) and Haren (DE), where an INTERREG project was set up to stimulate the cooperation. It is also the case in the already-mentioned ambition on the Dutch side to join the German project in Herzogenrath with the background of cross-border energy questions in the Euregio Meuse-Rhine. In Northern Netherlands, there are ambitious projects in and around Eemshaven and Delfzijl that are related to electricity connections and hydrogen.

³⁷ See Siemens Press release, “GREEN Solar und Siemens Energy unterzeichnen Kooperation zur Erstellung eines Konzepts für ein CO₂-freies Herzogenrath”, 3 July 2020.

³⁸ This assessment has been benefited from the research reports produced under the INTERREG project SEREH and the work package “Current Legal Framework for Cross-Border Local Energy Markets”. See for instance: Lea Diestelmeier/Martha M. Roggenkamp (2020). Analysis of Current Legal Situation (WP4.I) and Design of Future Legal Framework for Cross-Border Local Energy Systems (WP4.II)

Evaluation of the three topics

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

Theme	Principles	Benchmarks	Indicators
European Integration	<ul style="list-style-type: none"> Objectives in the new Fit for 55 strategy CO2-reduction/renewable energy Objectives in the old and in the proposal for revised Renewable Energy Directive COM(2021) 557 final European rules for Cross-border energy exchange (ACER coordination), rules for network and distribution operator Regulation 2019/943/EU Espoo Convention Environmental Impact Aarhus Treaty Participation/EU Directives 	<p>Effects of EU legislation in non-border regions</p> <p>Implementation of EU rules in other border regions in the EU</p>	<p>Translation of EU and national targets into objectives with a cross-border dimension</p> <p>Possibility to adapt subsidy schemes in the case of cross-border projects.</p> <p>Transposition of the aspect of citizens participants in national legislation related to border situations</p> <p>Innovative projects of cross-border connections in line with EU legislation</p>
Sustainable development, Socio-economic development	<ul style="list-style-type: none"> Vision Euregio Meuse Rhine 2020/2030 EMR Realization of economic benefits related to the energy transition Objectives of national and regional energy strategies in relation to the border region. 	<p>Economic activities in the field of renewable energy in non-border region's</p> <p>Crisis management in non-border regions</p>	<p>Cross-border projects related to renewable energy</p> <p>Increase in renewable energy and business activities in the field</p> <p>Implementation of climate change objectives</p> <p>Economic and social solidarity in times of energy crisis</p>
Euregional Cohesion	<ul style="list-style-type: none"> Euroregional approach to energy transition Possibility of cross-border projects Good coordination of spatial planning Solidarity in times of energy crisis Energy transition as a boost for the cross-border region 	<p>Situation in non-border regions</p> <p>Joint strategies in other border regions</p> <p>Implementation of cross-border projects in other border regions</p>	<p>Alignment of spatial planning</p> <p>Alignment of regional sustainable energy strategies</p> <p>Citizen participation in energy projects</p> <p>Cross-border solidarity in times of energy crisis and cross-border crisis management</p>

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

Effects on EU integration?

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

initial transposition at both national levels. Not surprisingly, that there is no tailor-made instrument to stimulate such citizens cooperatives as joint initiatives across the borders. Another example: for many years, the directive on renewable energies gives the Member States the possibility to coordinate their subsidy schemes to make cross-border projects possible. Neither the Dutch, German, nor Belgian governments have made use of this option. This means that cross-border renewable energy projects are faced with the complex situation of very diverging subsidy schemes. Subsidies from one side cannot be exported across the border.

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

As a second aspect, the research tried to assess the effects on a sustainable development of economic activities in a cross-border situation. The province of Limburg is a case in point. Its border location means that many municipalities have a border with Germany or Belgium. Grid capacity is limited to connections within the country at the distribution level. When looking at the grid capacities, grid operators announced in 2021 that feeding renewable electricity into the grid is hindered in Limburg and North Brabant by capacity problems. The situation is especially difficult in North Limburg, where economic activities are on hold.³⁹ The grid operator TenneT announced in June 2022 that there was a provisional pause for new companies requesting a connection to the electricity grid, both for large-scale off-take and electricity generation. According to Tennenet, this was caused by a large increase in requests from industrial parties to electrify, battery initiators, and renewable energy producers.⁴⁰ In September 2022, Tennenet published a study outlining several options to increase net capacities by congestion management. Cross-border options were not amongst them.⁴¹ So far, there are no consistent plans to use grid capacities across the border in order to make room for a rapid installation of solar parks or very large roof top PV installations. Grid congestion problems make it difficult to reach the installation of renewable energies described in the regional energy strategies.

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

Apart from the field of renewable energy, joint cross-border questions related to hydrogen and an hydrogen economy have already led to joint agreements and associated projects stimulated by the national level in NL with, for instance, NRW.⁴² In the north, the provinces of Drenthe and Groningen and the German state of Lower Saxony are entering into a cross-border cooperation agreement to develop hydrogen projects. Provincial deputies Melissa van Hoorn (Groningen) and Tjisse Stelpstra (Drenthe) came to an agreement with Birgit Honé, minister for Federal and European Affairs and Regional Development of Lower Saxony, on joint efforts in March 2022. This also involves the New Energy Coalition, H₂ Region Emsland, and the German energy company EWE. The recent INTERREG-funded project NorthH₂West prepares a feasibility study for hydrogen-based, CO₂-neutral transport in the DE-NL border region. Its focus is on heavy goods transport along the TEN-T Core and Comprehensive networks. Other than in the renewable energy field, many single projects have been started. Nevertheless, even if there are many intended projects involving hydrogen, it is too early to assess the economic impacts on the border regions since the projects are still in an early phase.

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

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

41 Tennenet (2022): Congestieonderzoek Limburg Analyse naar beschikbare transportcapaciteit voor (duurzame) opwek van elektriciteit onder toepassing van congestiemanagement.

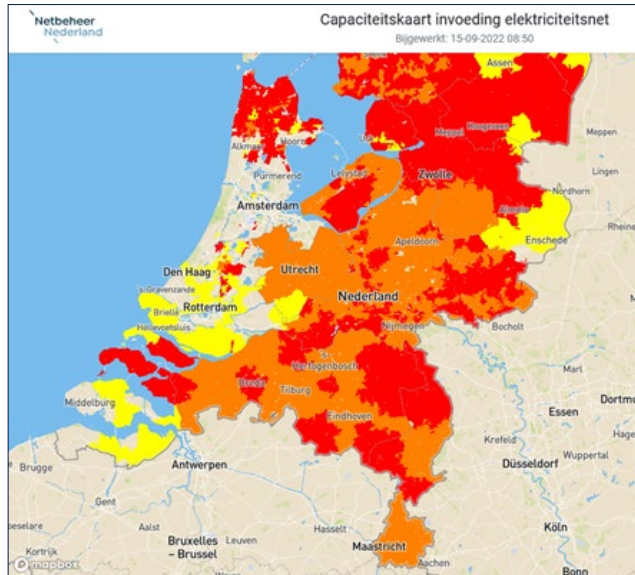
42 The Hy3 project investigated in 2020 potentials for business models with green hydrogen between the Netherlands and North Rhine-Westphalia. The state of North Rhine-Westphalia, together with the province of South Holland and the ports of Rotterdam, Duisburg, Neuss/Düsseldorf and Cologne, agreed in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

Effects on Euregional cohesion

In addition, there is also a brief assessment related to the third aspect of “Euregional cohesion.” As already mentioned, there are so far no big cross-border projects in renewable energy or other climate change-related activities in which regional or local stakeholders in border municipalities at the German-Dutch border are involved. One can speak about a lack of competences at the Euregional level. And the existing competences in the field of spatial planning did not lead to a joint approach. Cross-border renewable energy aspects have not been a prominent topic on the agenda of the regional and local stakeholders, for instance in the south in the Euregio Meuse-Rhine. There was no dedicated INTERREG project for a joint solar field or wind park project along nor in the Euregio Meuse-Rhine (nor along the entire German-Dutch border during the programming period 2013-2020). In the Euregio Meuse-Rhine, there were some projects in the field of innovation but not directly related to fulfilling objectives of regional energy strategies. Other than in the case of the Einstein Telescope (as a major common innovation project), there is no joint cross border project or ambitions other than vaguely formulated objectives. In this respect, the joint cross-border “narrative” is missing. This was different at the border further in the north between the municipalities of Emmen and Haren. As mentioned earlier, the joint project aimed at a cross-border “smart” energy region. However, it did not lead to a cross-border renewable energy project but at least to a direct electricity connection across the border for a specific company. For the Euregio Meuse Rhine, there are also some concerning developments. Incidents recently occurred where citizens living close to the border were not satisfied with energyrelated projects in the neighboring municipality. In the near future, this could even have negative impacts on good relations across the border if citizens of a border municipality believe they were not involved in planning processes.⁴³

43 One recent case has been the planning process of a biogas installation in Lixhe/Visé (BE) close to the Dutch municipality of Eijsden. On the Dutch side, a protest group has been established that especially raised the question of lacking cross-border participation. See: Brief aan de Belgische Minister over bouw van Biomassa Centrale in Lixhe, pers mededeling Groen-Links Fractie Maastricht, 21 Oktober 2020. On the Belgian side, the project is set on halt (in the summer of 2022).

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



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

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

Dr. Math Noortmann

Introduction

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

The first question tends to be answered with a clear yes. National borders still function as a jurisdictional shielding for criminal activities.⁴⁴ In border regions criminals do not have to travel far to be able to (ab)use jurisdictional differences and/or escape 'the long arm of the law'. Evidence-based studies of the Euregion Meuse-Rhine have demonstrated the vulnerability of that specific border region.⁴⁵ It may be assumed that other EU border regions suffer from a similar increase in transnational criminal activities. For several reasons however, the Euregion Meuse-Rhine may be considered "a laboratory for police and judicial cooperation in the European Union"⁴⁶, which brings us to our second question: what potential effects do the proposals of the Commission have on the police cooperation in the Euregion?

That question is informed by the apparent lack of effectiveness of harmonizing regulations, directives and policies, especially in border regions. In a 'message' to the European Union, Spapens and Fijnaut suggested in 2005 that the EU should adopt a differentiated policy towards the members states which would acknowledge the particular criminal problematic and collaborative issues that are specific to a given border region.⁴⁷ Whether the EU has received and understood that message is doubtful.

New EU proposals - effective EU integration?

Most recently, the Commission submitted a proposal for a *Directive on information exchange between law enforcement authorities of Member States* and a proposal for a *Council Recommendation reinforcing operational cross-border police cooperation* (Brussels, 8.12.2021, COM(2021) 782 final). There is little evidence that the particularities of Euregions as transnational territories are taken into account. The Information Exchange directive still revolves around and fosters the concept of Single Points of Contact (SPC) and the reinforcement of Europol as an EU Institution. The *Council Recommendation reinforcing operational cross-border police cooperation* suffers from a similar deficit, notwithstanding the reference to *cross-border* in its title. Operational cross-border police cooperation doesn't necessarily prioritize or focus on such cooperation in border regions. Nothing in the Recommendation warrants the conclusion that border regions were specifically considered, notwithstanding the assumption that such cross-border policing actions would predominantly happen in cross-border regions.

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

The 2004 BeNeLux Treaty Concerning Police Cooperation demonstrates that EU member states are not relying on

44 Spapens, A. C. M. en C. Fijnaut (2005). [Criminaliteit en rechtshandhaving in de Euregio Maas-Rijn. Deel I](#), Intersentia nv.

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

46 Fijnaut, C. en A. C. M. Spapens (2010). De Euregio Maas-Rijn: Een laboratorium voor politie en justitie samenwerking in de Europese Unie. [Internationale politie samenwerking: opkomende kwesties, theorie en praktijk](#). F. Lemieux. Cullompton, Devon; Portland, Or., Willan Pub. : 24 - 41, p. 101.

47 Spapens en Fijnaut 2005, p. 250.

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

On the basis of the above, the question of whether and in the EU and national policies and regulations find their way into daily police practice in the Euroregions is doubtful. Even when it comes to cooperation in crime control and law enforcement between national administrative bodies, it can be observed that there is a tension between the different social realities of structural, strategic thinking about cooperation at national level and operational thinking at enforcement level.⁴⁸

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

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

One must conclude that these EU instruments were not designed for the day-today problematic of Euregional cross-border law enforcement cooperation. Is the EU neglecting Euregional law enforcement or are its civil servants and politicians simple not aware of what is going on in the periphery of the border regions?

48 Schuilenburg, M. en W. van der Wagen (2011). "Samenwerking in de criminaliteitsbestrijding." Tijdschrift voor veiligheid 10: 16.

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

Sander Kramer

Pim Mertens

Introduction

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

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

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

Current framework: EU, Netherlands, Belgium and Germany

At the European level, the European Parliament and Council Directive 2013/29 of June 12, 2013 (hereafter Pyro Directive) applies. The Pyro Directive sets requirements and standards for the use and sale of pyrotechnic articles. In doing so, the Pyro Directive aims to harmonize these standards among the Member States, given the previously divergent provisions, and thus ensure the free movement of pyrotechnic articles in the internal market, as well as provide a high level of health and safety protection. The Pyro Directive also imposes restrictions on the offering of these articles to individuals. If the requirements laid down in the Pyro Directive have been met, Member States may not prohibit, restrict or hinder the free movement of pyrotechnic articles. Nonetheless, Article 16 states that ‘The use of pyrotechnic articles and, in particular, the use of fireworks, is subject to markedly divergent cultural customs and traditions in the respective Member States. It is therefore necessary to allow Member States to take national measures to limit the use or sale of certain categories of pyrotechnic articles to the general public for reasons, inter alia, of public security or health and safety’. To this end, Article 4(2) of the Pyro Directive allows a Member State to take measures to prohibit or restrict the possession, use and/or sale, of “F2” and “F3” fireworks for reasons of public order, environmental protection, or health and safety.

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

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

Germany also had a sales ban (*Überlassungsverbot*) for the years 2020 and 2021 on the circulation of category “F2” pyrotechnic articles to consumers without an explosives license. Thus, this was not a total ban on using fireworks. However, a ban on using fireworks did apply to designated public places, e.g. churches, hospitals, nursing homes. Moreover, in the state of North Rhine-Westphalia (NRW), private use of fireworks was generally permitted except for crowded places (*publikumsträchtigen Plätzen*). According to the protection ordinance (*Schutzverordnung*), it is up to local authorities to determine exactly where these places were located. The COVID-19 protection ordinance (*Coronaschutzverordnung*) was revised by the NRW state government on December 16, 2021. This allowed the competent (local) authorities - on the basis of general regulations (*Allgemeinverfügungen*) - to ban the setting off of any type of fireworks in certain parts of certain towns in North Rhine-Westphalia. For example, in 2021 the 15 largest cities in North Rhine-Westphalia were subject to a complete fireworks ban in certain areas.

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

Evaluation of research topics

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

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

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

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

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

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

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

Sander Kramer
Dr. Math Noortmann

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

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

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

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

Gabor Gyenes
Eleni Kamari
Puck Slaats
Kishan Mohansingh
Valentin Rajon Bernard

Introduction

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

The territory of the research

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

The Dutch approach

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

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

Effects on the neighbouring regions?

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

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

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

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

The special situation on the side of NRW/Germany

The case of North-Rhine Westphalia is again a bit different. One reason is that Germany also has a legal problem vis-à-vis EU legislation. The German Federal Government is currently still working on the transposition of the Nitrates Directive with a big delay. There are policies addressing the problems related to nitrogen deposition, but according to the experts, the capacity of the government is limited. There are measures introduced and under revision, but the country still lacks regulations including all the sectors and polluting components. As a consequence of insufficient capacities and policies that is absorbing all the resources of the government, there is a lack of communication with the neighbours. Since cross border effects are not on the agenda, there is also no available data on the effects of the Dutch nitrogen policy and respective emissions.

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

Important aspects: differences in measurement

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

Making use of existing Euregional initiatives

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

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

4. List of researchers

Valentin Rajon Bernard (Dossier 7)

Masterstudent, FASos

Timo Clemens (Dossier 1)

Lecturer International Health, School CAHPRI, Care & Publ Health Res In, Fac. Health, Medicine and Life Sciences

Gabor Gyenes (Dossier 7)

Masterstudent, FHML

Eleni Kamari (Dossier 3)

Masterstudent, FHML

Sander Kramer (Dossier 5 & dossier 6)

PhD Candidate, ITEM Cross-border aspects of tax and pension Law, information provision

Pim Mertens (Dossier 5)

Scientific Coordinator ITEM, PhD Candidate Cross-border aspects of tax and pension Law, Euregional labour market

Dr. Saskia Montebovi (Dossier 2)

Lecturer, researcher ITEM/UM (International) social security law, protection of atypical workers

Kishan Mohansingh (Dossier 7)

Masterstudent, SBE

Dr. Math Noortmann (Dossier 4 & dossier 6)

Senior researcher, ITEM Emeritus Professor, Coventry University Transnational Law, security and non-governmental actors

Puck Slaats (Dossier 7)

Masterstudent, FHML

Susanne Sivonen (Dossier 1)

Researcher, ITEM International and European Health Law

Martin Unfried (Dossier 3)

Senior researcher and 'Ontgrenzer', ITEM EU environmental policy and European regional and cross-border policies

Prof. Dr. Marjon Weerepas (Dossier 2)

Professor ITEM/UM Fiscal aspects of cross-border employment, (international) payroll tax and social security contributions

With special thanks to the Cross-Border Impact Working Group:

Dr. Nina Büttgen - ITEM

Dr. Inge Hooijen - NEIMED

Pim Mertens - ITEM

Jan Schlievert - Euregio Meuse-Rhine

Susanne Sivonen - ITEM

Martin Unfried - ITEM

Heike Xhonneux - GrenzInfoPunkt Aachen/Eurode

Annex - The ITEM Cross-Border Impact Assessment as a basis for action: Looking back at the follow-up activities of the 2016 till 2021 ITEM Cross-Border Impact Assessments

Border effects affecting living and working in cross-border regions in Europe have in recent years rarely been so hard felt as during the COVID-19 pandemic and the national containment measures that were imposed. The descent into pro-longed crisis mode has underlined the value of mapping and analysing these effects regarding their repercussions for cross-border mobility and cooperation.⁴⁹ The demand for such analysis as a basis for furthering cross-border projects, the transnational cooperation between public authorities and facilitating cross-border work and business is growing. As the European Commission has recently highlighted “Living labs of European integration”-character of the EU Border Regions:

‘Although border regions are often geographically peripheral and rural, they are places with a high potential for economic growth, encouraged by their cultural and linguistic diversity, complementary competitive advantages, unspoilt nature and less trodden tourism destinations. Their distance from the core can often be compensated by cross-border exchanges with neighbours, cooperation and joint action. For this to happen, border regions need to be at the forefront of and fully benefit from European integration.’⁵⁰

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 on how existing law and policy affect border regions. Since its creation in 2015 ITEM has effectively conducted seven 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 owed to the efforts of the Maastricht University researchers (and partner institutes) involved, providing valuable research on the effects of legislation and policy on border regions.

Besides this, 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 (cross-)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 2022 report has been able to provide a basis for further action and research aimed at improving cross-border mobility and cooperation.

A milestone for ITEM’s activities in the field of regulatory impact assessment for border regions⁵¹ has been the fact that the Dutch Government has made the “Guidelines on cross-border effects” (*leidraad grenseffecten*) an obligatory quality requirement integral to the official Integrated Impact Assessment Framework (IAK) for policy and legislation.⁵² The Ministry of Interior and Kingdom Relations had already drawn up this document (with recommendation status) in 2019 following the advice and input by ITEM in collaboration with several Dutch ministries. It is published on the web page of the IAK.⁵³ Meanwhile, the quality requirement has been pointed out several times by both Parliament and the Council of State.

49 See, for example, Online ITEM & HNP Side Event “How to prevent the return of national borders in a future pandemic and crisis situation - Multilevel governance in a practical way”, Brussels, 13 October 2021.

50 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on ‘EU Border Regions: Living labs of European integration’, COM(2021) 393 final, Brussels, 14 July 2021 at 14.

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

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

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

From a European perspective, this seems to be the first official requirement to conduct structural cross-border impact assessments incumbent on an EU Member State government. Already early on, ITEM's methodology had been recognised a best practice by the European Commission's Directorate-General for Regional and Urban Policy (DG Regio) in its 2017 Communication *Boosting growth and cohesion in EU border regions*.⁵⁴ As ITEM keeps advising the Dutch Government and other authorities on the implementation and enhancement of the Cross-Border Impact Assessment methodology, it also continues to cooperate with the European Commission and other EU institutions. For example, the Netherlands and Belgium (Flanders) have set up an administrative working group on border barriers to seek solutions on legislative bottlenecks in the development of cross-border infrastructure, following an ITEM inventory of cross-border bottlenecks regarding the development of the Dutch-Belgian cross-border harbour North Sea Port in 2019.⁵⁵ Recently, the European Commission has recognised this working group as well as the Dutch governmental guidelines as a best practice, too, for improving the legislative process in the context of enhancing policy on border regions.⁵⁶ In the same report, the Commission also promotes adopting a 'single' territory-perspective on cross-border labour markets, a view that ITEM has been advocating for many years.⁵⁷

The experiences in conducting cross-border impact assessments are now being used and deployed by ITEM to study and advise on a border impact assessment and process in the context of Franco-German cooperation, more specifically the Aachen Convention. This project runs through the fall of 2022, together with the Euro-Institut and MOT, and represents an important step in the further rollout of border impact assessments across European border regions.

As to the research results of the Cross-Border Impact Assessment of 2021, ITEM's COVID-19 dossier on crisis management and its effects on the Euregio Meuse-Rhine received a lot of media attention and generated written questions to the Provincial Government as to the development of the crisis response. The dossier derives from ITEM's research efforts together with colleagues from Leiden University and the Ockham IPS Institute as part of the INTERREG Pandemic project. The Pandemic project produced three in-depth studies, on cross-border crisis response, cross-border ambulance transport and cross-border procurement.⁵⁸ In a scientific sense, the dossier and Pandemic research provided a starting point for a larger research project. Under the NWO program 'National Science Agenda: Research on Routes by Consortia' (NWA ORC), the research proposal 'Borders in Times of Crisis: Challenges and Chances' (BITOC) was initiated by ITEM. In this application, ITEM brought together researchers, policymakers, stakeholders, and other societal actors across the Dutch national border with Germany and Belgium for research on border region resilience. The application did not make it to the final stage, but resubmission is planned. The BITOC proposal also focuses on the results of the 2021 Healthcare dossier. The dossier was further cited in the publication "Cross-Border Patient Mobility in Selected EU Regions" by AEER for the European Commission.⁵⁹

One dossier that received particular attention is the 2021 dossier on working from home. Several media reports covered the dossier.⁶⁰ In addition, the dossier study was published and cited in several professional journals and magazines.⁶¹ The dossier also received political and policy follow-up. As a result of the publication, Parliamentary

54 COM(2017) 534 final, Brussels, 20 September 2017.

55 See Vlaanderen en Rijksoverheid, 'Niet aanpassen, maar afwijken', Verslag van de bestuurlijke werkgroep grensbelemmeringen, 20 oktober 2020, <https://www.rijksoverheid.nl/documenten/rapporten/2020/10/20/niet-aanpassen-maar-afwijken>; and <https://www.parlementairemonitor.nl/9353000/1/j9vvijsepmtjeyo/vlo8fgwr8uy8>.

56 COM(2021) 393.

57 Ibid. at 9.

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

59 https://health.ec.europa.eu/publications/cross-border-patient-mobility-selected-eu-regions_en

60 Such as Zoals L1 (27-12-2021), Limburg Centraal: thuiswerkproblemen voor grenswerkers, <https://l1.nl/limburg-centraal-thuiswerkproblemen-voor-grenswerkers-168630/>; FD (19-11-2021), Grenswerkers de klos als zij ook na corona blijven thuiswerken, <https://fd.nl/economie/1420109/grenswerkers-de-klos-als-zij-ook-na-corona-blijven-thuiswerken>

61 Verschuere H. The Application of the Conflict Rules of the European Social Security Coordination to Telework During and After the COVID-19 Pandemic. *European Journal of Social Security*. 2022;24(2):79-94. doi:10.1177/13882627221107042; Mertens, P. (2022). De veelzijdige impact van thuiswerken voor grensarbeiders. *Pensioen Magazine*, 2022(3), 11-15; Weerepas, M. J. G. A. M. (2021). Grenswerkers na de crisis: aanpassing regelgeving vereist? *Vakblad Grensoverschrijdend Werken*, 2021(43), 3-9; Mertens, P. (2022). Grenzen aan grensarbeid. *Thema Hoger Onderwijs*, 2022 (3).

questions were raised, with responses indicating that the report would be used in shaping future policy.⁶² The ITEM study was also cited in the SER Opinion on the Future of Hybrid Work, which also forms the basis of Dutch policy.⁶³ ITEM Expertise Centre itself has also taken several follow-up actions on this issue. Two digital consultations have been organized with the responsible line departments in 2021, as well as with the Municipality of Maastricht for entrepreneurs in the fall of 2021. On 15th June 2022, the Next ITEM - Round Table Discussion on Working from Home and the issues for frontier workers was organized in Nieuwspoor, The Hague. A closed discussion with employers, MPs, ministries and stakeholders exchanged on the social impact and solutions.⁶⁴ On 13 October 2022, a conference was organized in Brussels with the Secretariat General of the Benelux Union during the European Week of Regions and Cities. This conference again focused on these issues, with a comparison of different border regions and the central question of what Europe and the Benelux Union can do.

Next to political and hands-on follow-up that the ITEM Cross-Border Impact Assessment methodology generates, it also provided publicity and further traction for ITEM's border impact assessment methodology.⁶⁵ The concept of ITEM's approach on regulatory government led to an article for the latest handbook on "Territorial Impact Assessment" edited by Prof. Eduardo Medeiros (Instituto Universitário de Lisboa) and published by Springer in 2020.⁶⁶ In 2022, the peer-reviewed publication of "Cross-Border Impact Assessment for EU's Border Regions" appeared in the European Journal of Law Reform, discussing ITEM's methodology, border effects and implications for EU policy.⁶⁷ Furthermore, ITEM has co-organised a EU Regions Week workshop on "Evaluation and assessment of EU policies: how to strengthen the voice of cross-border regions?", together with the European Committee of the Regions (CoR) on 13 October 2021. It thus actively promotes the development of the Committee's "Fit for Future platform" as an essential tool for regional input into EU policy assessment and evaluation. On the same line, the CoR's Regional Hub network (RegHub) is a recent approach to better integrating the expertise of regional administrations. The workshop served to examine how RegHub can include cross-border perspectives.⁶⁸

Looking ahead, ITEM will continue to map the effects of international, European, national and regional legislation and policy in its Cross-Border Impact Assessments. The Expertise Centre is dedicated to developing⁶⁹ its impact assessment methodologies further and is looking forward to doing so in cooperation with its partners, stakeholders and researchers.

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

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

64 Read more in the reflection: <https://www.maastrichtuniversity.nl/blog/2022/06/facilitating-cross-border-home-working-important-precondition-euroregional-labour>

65 N. Büttgen, 'Cross-border impact assessment: a bottom-up tool for better regulation and more cohesion' in "Blizej Brukseli" ("Closer to Brussels") - Special Issue on Cross-Border Cooperation, e-magazine of the Malopolska Region (PL) Brussels Office, 2019, No. 26, pp. 10-13: https://issuu.com/blizejbrukseli/docs/26_closer_to_brussels_-_cross-border_cooperation.

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

67 Martin Unfried, Pim Mertens, Nina Büttgen & Hildegard Schneider, 'Cross-Border Impact Assessment for EU's Border Regions', (2022) European Journal of Law Reform 47-67

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

69 In this context, ITEM is currently collaborating with UHasselt, RWTH Aachen and ULiège in the INTERREG EMR Crossquality project, which is developing a border effects methodology to understand the effects of the INTERREG programme on the quality of cross-border cooperation.

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

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

Mailing address:

PO Box 616, 6200 MD Maastricht, The Netherlands

Visitors:

Kapoenstraat 2, 6211 KW Maastricht, The Netherlands

T: 0031 (0) 43 388 32 33

E: item@maastrichtuniversity.nl

www.twitter.com/ITEM_UM

For more cross-border news and scientific insights, visit the ITEM Cross-Border Portal:

<https://itemcrossborderportal.maastrichtuniversity.nl>

www.maastrichtuniversity.nl/item

