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

Cross-border Impact Assessment 2016

The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM is the pivot of research, counselling, knowledge exchange and training activities with regard to cross border mobility and cooperation.
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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 Meuse-Rhine Euregion (EMR) and the Province of Limburg (NL).
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1. Introduction

1.1 Objective and background

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

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

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

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

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

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

In 2016, ITEM investigated primarily national topics that were the subject of much discussion along the Dutch border, such as the new tax treaty between the Netherlands (NL) and Germany (DE) or the national application of diploma recognition. As a result, much of the cross-border impact assessment 2016 pertains to legislation that has just come into effect, but the effects of which cannot yet be easily quantified. The new tax treaty between Germany and the Netherlands is one of these, and accordingly its impact on the pensions of former mobile workers (including frontier workers) is not yet readily accessible.
The new NL-DE tax treaty entered into effect on 1 January 2016, but the first tax returns under its regime have not yet been filed. We do know more about the potential consequences, but in view of the lack of hard data (more or less tax on the wages or pensions of present and former mobile workers?), any analysis we can provide remains somewhere between ex ante and ex post. Despite this, ITEM did see the need to investigate this area, because frontier workers, mobile workers, and front office advisors are already dealing with the issues.

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

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

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

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

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

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

2.1 Framework

Definition

In this initial cross-border impact assessment, we define border regions as the areas surrounding where the borders of the Netherlands, Belgium, and Germany meet. This definition will be further refined in the individual sections of this report, as appropriate to the subject. The idea underlying this specific definition is that general observation reveals few if any generic causes of the effects on border regions. A recent European Commission survey reveals that many frontier regions are encountering issues in the mobility of labour\(^1\). These issues are rooted in the national conversion and implementation of European law and the level of coordination between the neighbouring countries. Even though the European legislation has been on the books for years, a number of obstacles arise from the way in which the Member States have implemented EU law, the quality of the national law, and its implementation in practice. ITEM therefore advocates more of a bottom-up approach from and for the border regions, and calls for more study of the effects on specific regions.

More cross-border impact reviewing

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

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

National governments have difficulty integrating cross-border impact assessments cohesively within their own impact assessment frameworks. For a number of years, the Dutch government and the Lower House of Parliament have been discussing the introduction of a cross-border review for national legislation and policy initiatives. The latest development here is that there is a new proposal initiative from the Ministry of the Interior and Kingdom Relations on the table designed to improve consideration of cross-border effects in the proposals of the various line ministries. Enabling more legislators (at the national or regional levels) to take the impact on border regions into account in their considerations would be an important step forward.

That said, it is not particularly realistic to expect a line ministry to have detailed knowledge of all border regions. For instance, the Federal Government in Berlin could hardly be expected to be able

to conduct an ex ante assessment of the situation at the borders with all nine of Germany’s neighbouring countries. For certain effects, the diversity is simply too great. This shows that there is a need for small-scale, bottom-up border assessments from the perspective of individual border regions. In the future, these could be one of the building blocks of a national analysis designed to better identify the impact of legislation and policy.

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

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

Table 1: Impact evaluation – various tools

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

What is a border region?

The research area of this impact assessment is, in the broad sense, the border regions along the German/Dutch/Belgian border. This research area could be defined as the same area defined by the Dutch CBS\(^3\)/PBL\(^4\) in the 2015\(^5\) study *Arbeidsmarkt zonder grenzen*, namely NUTS 3 areas\(^6\) immediately along the border (*Landkreise* in Germany) or at a defined distance from the border. The disadvantage of this definition is that these border regions are defined purely on a national basis. Unlike Euregions or urban partnerships, these border regions are not cross-border political entities. A nationally defined border region (such as the Province of Limburg, for example) understandably has, first and foremost, a national perspective on the border. The disadvantage from that perspective (for example, in the case of unequal excise duties) can, on the flip side, translate into an advantage for the Belgian or German neighbours. For this reason, the research area for ITEM’s cross-border impact assessment is first and foremost not the border region, but the cross-border Euregio Meuse-Rhine.

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

- In the case of the INTERREG dossier, for example, these are the geographic areas of the three INTERREG programmes, which are not the same as the Euregions or NUTS 3 areas along the border.
- The impact of a tax treaty between the Netherlands and Germany should, as a first move, be investigated for the German-Dutch relationships and the German-Dutch mobile workers living in the border area. But the new treaty also has an effect on people who moved after retirement and suddenly find themselves living outside the Euregions. Independently of the geographic boundaries, former mobile workers might also have to deal with the consequences of the tax treaty as well. And these can also, in turn, have indirect effects on the Euregional situation.

The Euregio Meuse-Rhine as a benchmark?

Euregions and other cross-border partnership structures formulate strategies and programmes that identify priorities for improving cross-border situations. Many Euregional partnerships have, in recent years, developed collectively-supported vision documents with policy goals, like Euregio Meuse-Rhine’s EMR 2020 strategy. For a number of dossiers in ITEM’s cross-border impact assessment, it proved possible to use the perspective and the objectives of border regions as a benchmark for desired or undesired effects.

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

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


\(^6\) NUTS 3 areas for the Netherlands are the same as the COROP areas; https://www.cbs.nl/nl-nl/dossier/nederland-regionaal/gemeente/gemeenten-en-regionale-indelingen/nuts-regionale-indeling-voor-europese-statistieken
For some subjects, the geographic definition was added as an element. For example, employment services are broken down into labour market regions (the Dutch UVW) and, in Germany, into Arbeitsmarktbezirke (Bundesagentur für Arbeit). This means that the work of the UWV and German and Belgian partners plays out along the border in regions that do not exactly correspond to the existing Euregions. This is why for these partners cross-border goals are also defined alongside the geographic boundaries of the labour market regions along and on the other side of the border.

Figure 1 Cross-border partnerships along the border (BE/NL/DE/LU)
2.3 Research themes, principles, benchmarks and indicators

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

1. the cross-border impact from the perspective of individuals, associations and enterprises correlated with the objectives and principles of European integration (freedoms, citizenship, non-discrimination)

2. the cross-border impact on socioeconomic development/sustainable development

3. the cross-border impact on Euregional cohesion and cross-border governance structures (cooperation with governmental agencies, private citizens, the business sector, etc.).

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

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

On the other hand, it is possible to open a discussion about the potential impact on individual positions of employees or employers. A number of the evaluations look at what effects legislation or its application in practice has on the freedom of individuals and businesses in a cross-border context (theme 1). To what extent are measures in violation of the principles of non-discrimination as described in the EU treaty or defined by directives, regulations, and case law. This approach is different from that of, for example, the 2013/2014 Panteia study, which primarily concerned concrete economic impact.

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

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

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

Table 2: Examples of principles, benchmarks, and indicators

<table>
<thead>
<tr>
<th>Goals/principles</th>
<th>Good practice/benchmark</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>European integration, European citizenship, Non-discrimination</td>
<td>No border controls, open labour market, easy recognition of qualifications, good coordination of social security facilities, taxes</td>
<td>Number of border controls, cross-border commuting, duration and cost of recognition of qualifications, access to housing market, etc.</td>
</tr>
<tr>
<td>Regional competitive strength, Sustainable development of border region</td>
<td>Cross-border initiatives for establishing companies, Euregional labour market strategy, cross-border spatial planning</td>
<td>Euregional: GDP, unemployment, quality of cross-border cluster, environmental impact (emissions), poverty</td>
</tr>
<tr>
<td>Cross-border cooperation/Good Governance, Euregional cohesion</td>
<td>Functioning of cross-border services, cooperation with organizations, coordination procedures, associations</td>
<td>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</td>
</tr>
</tbody>
</table>

2.4 The dossiers of the cross-border impact assessment 2016

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

With a look ahead to ITEM’s focus for 2016 and 2017, the survey asked the professionals and officials to primarily raise issues relating to the cross-border labour market and mobility that also had a legal component. Subsequent cross-border impact assessments produced by ITEM will continue to focus on how to investigate economic issues in the most comprehensive possible way. Fundamental research in this area is currently impeded by the unavailability of cross-border economic figures and data.
ITEM stresses the importance and necessity of cross-border data, and would welcome working with Statistics Netherlands (CBS) and other partners to develop a system for ongoing monitoring and collection of more cross-border figures.

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

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

Table 3: Themes of the Impact Assessment 2016

<table>
<thead>
<tr>
<th>Subject</th>
<th>Nature</th>
<th>Formulation of question</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Large-scale analyses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 The new NL-DE tax treaty a. Labour; b. Pension</td>
<td>Ex post / Ex ante (in force since 1 January 2016), but tax impact for 2017 not yet known</td>
<td>What are possible effects of the new tax treaty between the Netherlands and Germany on frontier workers and former frontier workers, with a focus on labour and pension?</td>
</tr>
<tr>
<td>2 Recognition of professional qualifications National application of Directive 2013/55/EU BE/NL/DE</td>
<td>Ex post Recent EU Directive and national legislation, application in administrative practice</td>
<td>How does the recognition of certain significant professions work for the frontier labour market and what are the biggest effects on frontier workers (costs, procedures, complexity of the recognition of qualifications)?</td>
</tr>
<tr>
<td>3 Cross-border cooperation Investigation of INTERREG programmes on the Dutch border</td>
<td>Ex post</td>
<td>What were and are the effects of the new INTERREG programme and national programmes on the quality of the programmes (EMR, Netherlands-Germany, Flanders-Netherlands), approval, and closure of projects?</td>
</tr>
<tr>
<td>Subject</td>
<td>Nature</td>
<td>Formulation of question</td>
</tr>
<tr>
<td>---------</td>
<td>--------</td>
<td>------------------------</td>
</tr>
<tr>
<td><strong>Legal analyses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Social security: illness and disability</td>
<td>Ex post</td>
<td>What consequences do the Dutch systems governing illness and disability have for the free movement of labour across the border, and can these lead to legal uncertainty?</td>
</tr>
<tr>
<td>5 The qualifying foreign tax obligation of section 7.8, Income Tax Act, and EU law</td>
<td>Ex post/Ex ante</td>
<td>What impact does the Dutch 90% scheme have on frontier workers? Is this scheme in conflict with European law?</td>
</tr>
<tr>
<td>6 Proposal for a directive amending Directive 96/71/EC (COM(2016) 128 def)</td>
<td>Ex ante</td>
<td>How good is the proposed revision of the EU posting of workers directive?</td>
</tr>
<tr>
<td>7 Flexibilisation of the Old-Age Pension Commencement Date Act</td>
<td>Ex ante</td>
<td>What are the effects on the position of workers who have accrued both a Dutch General Old Age Pension and a statutory pension in another country?</td>
</tr>
<tr>
<td><strong>Evaluation with focus or Euregional Cohesion</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Cross-border employment services: Effects of mandate and capacities of the Dutch UWV</td>
<td>Ex post</td>
<td>What is the impact of the UWV’s current financing and mandate on the implementation of cross-border employment services?</td>
</tr>
<tr>
<td>9 Cross-border train transport – Fourth Rail Package</td>
<td>Ex ante</td>
<td>What effect can be expected concerning the coordination surrounding the allocation and organization of cross-border interlocal public transport?</td>
</tr>
<tr>
<td><strong>Practical ad hoc evaluation of effects, Fontys Hogeschool</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 The Belgian toll system for lorries</td>
<td>Ex post</td>
<td>What are the additional costs for cross-border transport for the logistics sector in Belgium/the Netherlands/Germany? What are the consequences in reference to the routes used by German and Dutch lorries?</td>
</tr>
</tbody>
</table>
3. Dossiers
3.1 A. Tax Treaty Germany-Netherlands: Labour

Kilian Heller, LL.M.
Prof. Anouk Bollen-Vandenboorn
Dr. Marjon Weerepas

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1. Introduction

The following cross-border impact assessment report analyses the effects of the new tax treaty (hereinafter: new tax treaty) between Germany and the Netherlands, which recently entered into force on 1st January 2016.8 The focus of the impact assessment is based on the changes that can be found in the new tax treaty relating to current frontier workers and pensioners that used to work across borders. In this respect it should be mentioned that one of the Netherlands’ major concerns in regard to the old tax treaty, was the unfavourable situation of Dutch resident frontier workers working in Germany.9

Tax treaties are typically concluded between states that have strong economic, financial and political cooperation. In the given case Germany and the Netherlands do not only have strong relations with each other, but are also in a geographical proximity, being direct neighbours.10 This close relationship prompts many questions concerning cross-border work and cross-border pensions.

The new tax treaty was signed on 12th April 2012 in Berlin. It replaces the old double tax treaty from 16th June 1959, which was concluded in Den Haag (hereinafter: old tax treaty). Underlying interests for the negotiations of a new tax treaty were essentially that the old tax treaty did not meet the standards set forth by the OECD Model Convention.11 The old tax treaty with Germany dated back to 1959 and was one of the oldest tax treaties the Netherlands concluded after the tax treaty with Malawi. Additionally, the old tax treaty did not reflect the recent economic ties between the two states anymore, therefore a change was inevitable.12

Apart from those common interests both states shared, the Netherlands as well as Germany had also their own for the new treaty. For Germany the main interest was to prevent improper use of the tax treaty.13 In contrast, for the Netherlands the main concern was to strengthen the fiscal situation of Dutch resident frontier workers14 – which shall be investigated in this report – and a better fiscal position for Dutch resident pension funds.15

In relation to frontier workers for the Netherlands particular a compensation scheme and the conditions of the German ‘Splittingverfahren’ for Dutch resident cross-border workers were of vital importance. A compensation scheme was already put in place in the Dutch-Belgian tax treaty

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8 Bundesgesetzblatt Jahrgang 2012 Teil II Nr. 38; Tractatenblad van het Koninkrijk der Nederlanden Jaargang 2012, No 123.
9 In this respect there is a paragraph in the parliamentary memoire that mentions the explicit aim in the negotiations for the new tax treaty to consider the situation of frontier workers (see Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), subsection I.4 Grensarbeiders). This paragraph was inserted in accordance with the concessions made from the former state secretary for finances de Jager to include explicit considerations on the effects the new tax treaty would have on frontier workers (see for that Kabinetsstandpunt met betrekking tot de aanbevelingen van de Commissie grensarbeider, 9 januari 2009, BCPP 2008/2455 met verwijzing naar Kamerstukken II 2000/01, 26 834, nr. 5); whereas the Netherlands was concerned main with frontier workers, Germany was more concerned about cross-border investment structures and abuse of treaty benefits.
10 Is explicitly mention in Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), section I.1; for the strong relationship see Statistisches Bundesamt, Statistisches Jahrbuch 2011, p. 474.
11 Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), onderdeel I.1.
13 Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), onderdeel I.1. Denk hierbij met name aan treaty shopping, waarbij een inwoner van een derde land zich via kunstmatige constructies toegang verschaf naar een voordeel uit het belastingverdrag.
15 Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), onderdeel I.1.
in 2001. Based on this example negotiations were aimed at implementing a similar scheme to offset higher paid taxes and social security in Germany, in situations where it is not possible to take into account benefits available in the Netherlands.

This cross-border impact assessment investigates in how far the new tax treaty changes the situation of frontier workers and which potential effects it may have. However, it must be noted that there is a general transition period of one year, which enables taxpayers to follow the old tax treaty provisions up to January 2017. This already indicates one of various limitations this impact report faces. Since frontier workers may opt for continuing to apply the old treaty, only very few that benefit from the treaty will make use of it. This makes available data and expertise scarce and hard to acquire.

2. Objective of the Research, Definitions, Subject, Indicators

2.1 Effects today or in the Future, Objective: Ex-Post or Ex-Ante

The cross-border impact assessment shall deliver a contribution in form of an ex-post analysis of the negative cross-border effects from the new tax treaty between Germany and the Netherlands, which entered into on the 1st of January 2016. Since the treaty has been in force only for a short period of time, there are none or only very little effects for the cross-border region measurable. In addition, difficulties in measuring the effects of the new treaty arise due to the general transitional provision in the treaty, which allows the application of the old treaty from 1959 for the entire year 2016. This transition period, along with the lack of awareness among frontier workers about the changes in the new tax treaty, prevent an elaboration on real effects caused by the new tax treaty. Therefore, definite effects in relation to frontier workers can only be measured as from the end of 2018 once the transition period is over and first statements have been delivered and then also only with the help of collected data.

Taking into account these above mentioned limitations an intended ex-post evaluation cannot be realised at this stage. However, the changes for frontier workers in the new tax treaty and a potential outlook can be highlighted based on available calculations provided for frontier workers by the Dutch parliament, which represents a de facto ex-ante projection for the coming years using past data. Those predictions can in turn be intensified, reinforced or opposed in following impact assessment.

2.2 Effects on which Geographical Area? Definition of the ‘Cross-border Region

The effects that are analysed in this report refer to the German-Dutch border strip. Active workers are employed within an area of a distinct distance towards the border, which are defined by political units (such as Landkreise, Gemeenten, Arrondissements etc.). In the figure below is an illustration of the German-Dutch border-line. The Dutch-Belgian border strip is for the purpose of this assessment excluded.

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16 Art. 33, lid 6 van het verdrag: “Niettegenstaande het tweede en derde lid, indien een persoon uit hoofde van de Overeenkomst van 1959 recht zou hebben op grotere voordelen dan uit hoofde van dit Verdrag, blijft de Overeenkomst van 1959 naar keuze van een dergelijke persoon met betrekking tot deze persoon volledig van toepassing gedurende een tijdvak van één jaar, te rekenen vanaf de datum waarop de bepalingen van dit Verdrag van toepassing zouden zijn uit hoofde van het tweede lid.”
To illustrate the relevance of the cross-border issues the following section provides some numbers in relation to cross-border workers. However, it must be pointed out that the necessary data for the cross-border impact assessment lacks proper collection. Therefore, only currently publicly available data can be presented. The accuracy of those data may be questionable and in some instances rather appear estimated than precise, especially in cases where there are only round numbers available. A suggestion, which should already be made at this point is that continuing and appropriate monitoring of frontier worker activities is necessary in order to acquire a representative picture of impacts legislative changes have on them.

As explained above, data in relation to frontier workers are rare and possibly not very accurate. Across the EU there were approximately 1.1 Million cross-border workers in 2014, according to an estimation by the European Commission. Those estimations suggest that the number of cross-border workers within the EU has increased by 41% as compared to the numbers available in

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Table 1: numbers of Cross-border commuters DE-NL 2006/2007

<table>
<thead>
<tr>
<th>Name of Eures Region</th>
<th>Number of Cross-Border Commuters 2006/2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhein-Waddenzee Germany – Netherlands</td>
<td>9,194</td>
</tr>
<tr>
<td>Euregio Rhein-Waal &amp; Euregio Rhein-Maas-Nord Germany – Netherlands</td>
<td>17,626</td>
</tr>
<tr>
<td>Euregio Maas-Rhein Belgium – Germany – Netherlands</td>
<td>8,872</td>
</tr>
<tr>
<td>Total</td>
<td>35,692</td>
</tr>
</tbody>
</table>


More recent data for active cross-border workers can be found in various publications surrounding data gathered by the Centraal Bureau voor de Statistiek (CBS). However, comparing the numbers of the CBS and what has been published by the European Commission, the available data varies significantly. In the above mentioned Commission Report, the total number of cross-border commuters’ amount in total to 35.692 in the year 2006/2007. In 2009 CBS published a paper that suggests already 40,000 – 49,000 frontier workers from early 2007 until late 2007 considering only German residents that work in the Netherlands. This result implies a much higher number of cross-border workers. Deviations in respect of the numbers publicly available can easily be explained by the differing approaches to collect the data. Thus, one important suggestion for future assessments is to establish a coherent approach towards the gathering and monitoring of frontier workers. Coherence in data collection enables a more representative analysis that helps a future evaluation of increasing or decreasing cross-border mobility and in this respect also the success of the European integration project.

The following two graphs compare the development in nationalities as concern Dutch and German frontier workers of 2008 and 2012.

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German resident frontier workers commuting to the Netherlands by nationality

Source: CBS 2014; Taken from CBS 2015 Arbeidsmarkt zonder grenzen, p. 19 and amended.

Dutch resident frontier workers commuting to Germany by nationality

The newest publication of the CBS from 15th September 2016\(^2\) (see figure below) shows a comparison of the numbers of German nationals working in the Netherlands and Dutch nationals working in Germany between 2012-2014. According to the figure on the website, there is an increase (by 819) of Dutch nationals working in Germany resulting in 5689 Dutch nationals and a decrease (by 2,877) of Germans working in the Netherlands that leaves 13961 German nationals.

Grenspendel Nederland-Duitsland

As concerns the total numbers of frontier workers we used the available data from CBS in order to provide a good overview. Therefore, all the data found, has been gathered together and resulted in the figure below, which shows the amount of frontier workers between Germany and the Netherlands between 2008 and 2014.

Whereas it can clearly be observed that there is an overall decrease of frontier workers between Germany and the Netherlands from over 60,000 to below 40,000, this change is mostly caused by drastic decline of workers resident in Germany and working in the Netherlands. In general, the main reasons for people that work in the Netherlands and reside in Germany, are less concerned with the cross-border job market, but rather include the more attractive housing market, a better fiscal climate or personal reasons.\footnote{Internationaliseringsmonitor 2016 – Derde kwartaal, p. 25; \url{http://www.noz.de/deutschland-welt/niedersachsen/artikel/780083/mehr-pendler-zwischen-niedersachsen-und-den-niederlanden}; \url{http://www.noz.de/lokales/papenburg/artikel/611679/niederlander-zieht-es-ins-nordliche-emsland#gallery&0&0&611679}.}
2.3 Cross-Border Effects on? What are the Focus Points of the Research, The Principles, Benchmarks and Indicators

2.3.1 Dossier: Tax Treaty Germany – Netherlands and effects on? What is the main Focus, the main points of Research?

The focus point of this impact assessment lies on the effects of cross-border situations from the perspective of citizens, associations and companies in the light of the objectives and principles of the European integration project (freedoms, citizenship and non-discrimination). Of particular relevance are the cross-border effects from the perspective and fiscal position of citizens/taxpayers.

2.3.2 Dossier: Tax Treaty Germany – Netherlands – What are the Principles, Objectives and Benchmarks for a Positive Situation in the Cross-border Region

<table>
<thead>
<tr>
<th>Principles</th>
<th>Benchmarks</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Law:</td>
<td>No juridical double taxation: one object (income from employment) and one subject (frontier worker) are taxed by two states.</td>
<td>Investigate under which circumstances the new tax treaty results in double taxation or double non-taxation (in this respect having regard also to domestic legislation and guidance for the interpretation provided by domestic authorities).</td>
</tr>
<tr>
<td>a. Rationale of tax treaty: prevention of juridical double taxation.</td>
<td></td>
<td></td>
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<tr>
<td>b. Art. 24 OECD-Model Convention and Commentary</td>
<td></td>
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<tr>
<td>→ non-discrimination.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free movement of workers Art. 45 TFEU and Art. 7(2) of Regulation 492/2011/EU: no fiscal discriminatory treatment of frontier workers.</td>
<td>The fiscal position of the Dutch frontier worker under the old as well as the new tax treaty. The Fiscal Position of a German frontier worker under the old and the new tax treaty.</td>
<td>A general comparison of the changes between the old and the new tax treaty that affecting frontier workers. Concerning in particular the common cross-border employees, making general projections about possible net salary changes.</td>
</tr>
</tbody>
</table>

22 Bijvoorbeeld de doorwerking van de Nederlandse nettopensioenregeling onder het nieuwe belastingverdrag.
3. Does the New Tax Treaty Foster or Limit European Integration and what does it imply for the Population of the Cross-Border Region?

In the following subsections it is outlined in how far the new tax treaty may promote European integration and what that implies for the citizens in the cross-border region. As mentioned in paragraph 2.3., this analysis shall be based on the principles, benchmarks and indicators described above. Starting point, or rather benchmarks, for this are the changes for the fiscal position of the active Dutch frontier worker under the old and new tax treaty on the one hand and the retired frontier worker on the other hand. In other words, the investigation will show in how far the tax situations have changed for both categories of frontier workers. This ex- ante (early stage ex-post) overview is based on the changes in the new tax treaty and potential income projections as they were expected to work out before the treaty entered into force, which serve as indicators. With the help of information currently available an assessment of income projections shall enable an evaluation of the possible cross-border effects the new tax treaty has in some general situations. From the income projections the increase or decrease of the net salary or net pension – not to be confused with ‘nettopensions’ – shall become visible. On hand of those results, preliminary conclusions can be drawn, which indicate potential obstacles for cross-border work.

At this point it should be stressed again that there is no exact data available about the increase or decrease in numbers of frontier workers/ retired frontier workers over the period between 2014-2016. In the future better opportunities to assess the impact the new tax treaty has on cross-border work and pensions should arise, when careful monitoring takes place.

3.1 Changes applicable for active frontier workers and retired frontier workers

3.1.1 Non-discrimination in respect of the ‘Splittingverfahren’

For the changes that are investigated in this impact assessment, the non-discrimination principle plays a vital role and therefore it is taken into account in how far compliance with it has been improved. In the new tax treaty, the non-discrimination principle is laid down in Art. 24, which is drafted after Art. 24 of the OECD Model Tax Convention and also reflects the Dutch treaty policy for the negotiations of the new tax treaty.23

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23 Zie Notitie Fiscaal Verdragsbeleid 2011.
The new treaty text of Art. 24 reads as follows:

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. Contributions paid by, or on behalf of, an individual exercises employment or self-employment in a Contracting State to a pension plan that is recognised for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first-mentioned State, provided that:
   a) such individual was contributing to such pension plan before he exercises employment or self-employment in the first-mentioned State; and
   b) the competent authority of the first-mentioned State agrees that the pension plan generally corresponds to a pension plan recognised for tax purposes by that State.

   For the purpose of this paragraph, "pension plan" includes a pension plan created under a public social security system.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

A change that can be attributed to the non-discrimination principle is found in Art. XVI, first paragraph of the protocol complementing the new tax treaty.
The new text of the protocol reads as follows:

1. The limitations of the second sentence of subsection 3. of section 1 in conjunction with subsection 2. of section 1a of the German Income Tax Act (Einkommensteuergesetz, EStG) shall not be applied to spouses resident in the Netherlands. This shall presuppose that the spouse liable to tax in the Federal Republic of Germany personally fulfils the preconditions of subsection 3. of section 1 of the Income Tax Act.

2. Paragraph 5 of Article 24 does not prevent a Contracting State to limit income taxation on a consolidated basis ("Organschaft" or "fiscale eenheid") to persons who are residents of that state or permanent establishments in that state.

In this provision Germany makes concessions for Dutch residents that have income from Germany (from employment or pensions). Those concessions are expressed by a simplification for the application of the ‘Splittingverfahren’, in Art. 1(3) of the EStG. On the basis of this ‘Splittingverfahren’ married couples can under certain conditions be assessed together for the German income tax. For this, the tax liability is calculated on half of the income taken together from both spouses. Accordingly, the calculated income tax liability is based on each half. This results in an advantage in terms of progression.

The most significant requirement for non-residents of Germany, that are liable to tax in Germany, used to be that at least 90% of the income of both spouses have to liable to tax in Germany in order to be eligible for the ‘Splittingverfahren’ or that the in Germany taxable income does not exceed the ‘Grundfreibetrag’ of €17,304. 24

The simplification provided in the new tax treaty consists in a detachment of the 90% and the absolute income requirement of both spouses. 25 In this respect, it is only necessary that one spouse that is taxable in Germany is personally fulfilling the requirements. Thus, if one of the spouses complies with the 90% condition or the absolute income requirement, the entire income of both spouses can be taken together for the more favourable treatment in progression on the basis of the ‘Splittingverfahren’.

This new favourable treatment makes it possible for one of the two spouses to earn additional income outside of Germany (e.g. in the Netherlands) and still profit from the ‘Splittingverfahren’ in Germany. 26 In certain cases the application of the German ‘Splittingverfahren’ can have remarkable positive influences on the tax pressure in Germany. Considering that the income from the spouse working in the Netherlands, would exceed the 90% threshold, the income of the main wage earner then faces a relatively higher tax burden and that requires a higher compensation in order to ensure equal treatment between neighbours in the Netherlands. 27 With the introduction of the simplification of the ‘Splittingverfahren’, Germany makes its contribution to guarantee ‘equality at the workplace’ and fosters in this respect non-discrimination.

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24 Par. 1, lid 3 jo. par. 1a, lid 2 jo. par. 32a, lid 1, sub 2, nummer 1 EStG.
25 In artikel XVI, lid 1 van het Protocol bij het verdrag worden de beperkingen van de tweede volzin van artikel 1, lid 3, jo. artikel 1a, lid 2, van de Duitse wet op de inkomstenbelasting ("Einkommensteuergesetz") niet van toepassing verklaard op echtgenoten die in Nederland wonen.
26 Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), onderdeel II.24 Non-discriminatie.
However, Germany was not willing to ensure complete equality at the workplaces, as only a simplification of the ‘Splittingverfahren’ was granted. No concessions were given in relation to other personal allowances, such as other deductions laid down in German regulations relating to the family, that are granted in Germany.28 Considering the complexity of such a pro-rate parte basis Germany does not intend to eliminate all the obstacles. Germany thinks that with the changes made, which were mentioned above, it fulfilled its obligations in respect of fiscal treatment of frontier workers, taking into account the judgements of the CJEU.29

3.2 Changes in the Area of Frontier workers

In this section the, for the impact assessment, relevant changes in the new tax treaty concerning the allocation of taxation rights for active frontier workers are compared to the old treaty. First, the new general provision on taxation of employment income is outlined. Although the new provisions concerning the allocation of taxation rights in relation to income from employment have not changed to a great extent some changes in particular concerning the allocation rules for director’s fees and personnel aboard ships and aircrafts in Arts. 1430 and 1531 and minor changes in relation to artists and sportsmen as well as docents and professors can be observed. The greatest changes for Dutch frontier workers can be found in the protocol added to the treaty and relate to the new compensation scheme and the above mentioned new conditions for the splitting tariff. Each of the changes is shortly discussed below, however, the focus for discussed calculations provided by the Dutch parliament is going to be on some general situations of frontier workers only.

3.2.1 General Provision for Taxation of Employment Income in Art. 14

In the new tax treaty the general provision for taxation of employment income is found in Art. 14. The provisions in the new tax treaty changed to a certain extend and correspond to mostly to Art. 10 of the old tax treaty. For the overview of this provision both Art. 10(3) of the old and Art. 14(4) of the new tax treaty are not dealt with here, as there is a separate section dealing especially with the changes therein.

The old tax treaty text of Art. 10 reads as follows:

1. Where an individual who is a resident of one of the States derives income from employment, the said income shall be taxable in the other State, if the employment is exercised in that State.
2. Notwithstanding paragraph 1, income derived from employment shall be taxable solely in the Contracting State of which the employed person is a resident if:
   (1) he is present in the other State temporarily, for a total of not more than 183 days in one calendar year;
   (2) the remuneration for his employment activities during that time is paid by an employer who is not a resident of the other State; and

28 Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), onderdeel I.4 Grensarbeiders. Een dergelijke bepaling is overigens wel opgenomen in art. 26, lid 2 van het belastingverdrag met België.
31 Ibid, p. 25
(3) the remuneration for his work is not borne by a permanent establishment or fixed base which the employer has in the other State.

The new treaty text of Art. 14 reads as follows:

1. Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
   a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
   b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
   c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment which an individual who is a resident of one of the Contracting States which is borne by a fixed place of business, situated in a cross-border economic area and through which the common border between the Contracting State runs, shall be taxable only in the State of which the individual is a resident, unless under Council Regulation (EEC) No 1408/71 of 14 June 1971, Council Regulation (EC) No 883/2004 of 29 April 2004, or under a regulation of the European Union which substitutes them following the signature of this Convention, this individual is subject to the legal provisions of the other State. If under Council Regulation (EEC) No 1408/71 of 14 June 1971, under Council Regulation (EC) No 883/2004 of 29 April 2004, or under a regulation of the European Union which substitutes them following the signature of this Convention, the individual is subject to the legal provisions of the other State, this remuneration may be taxed in that other State.

In a direct comparison between the old Art. 10 provision and the new Art. 14, some changes become obvious. First, the wording of the new Art. 14 has been in conformance with the Art. 15 of the OECD MC. Especially the hierarchical order between Art. 14 and Arts. 15, 16, 17, and 18 has been clarified. In addition, another change is expressed in the calculation period for the 183 days threshold in Art. 14(2)(a), which in the new tax treaty considers any twelve month period instead of a calendar year according to the old tax treaty. As a consequence, the new period for the calculation of the 183 days in order to maintain taxation in the residence state does not consider the end of a calendar year anymore, but starts with any day of work activity in the country. Form that day a twelve month period is taken into account in order to determine the days worked in the other contracting state. This new calculation period is in accordance with the approach used in the OECD Model Tax Convention.

The new third paragraph of Art. 14 represents the formal implementation in the new tax treaty of the third protocol added to the old tax treaty. It concerns the taxation of workers that work on cross-border business premises. In such cases the procedure of Regulation 883/2004/EC is...
followed and means that taxation shall take place in the state where the worker is socially secured.32

One particularly interesting sector that was neither mentioned, nor was dedicated a new provision in the new tax treaty concerns the taxation of cross-border truck/lorry drivers and the fiscal consequences of their income. Due to the fact that truck drivers often work in multiple jurisdictions they have to deal with various tax law jurisdictions and double tax treaties, it is difficult to determine how to allocate which part of the income to which jurisdiction for the purpose of taxation.33 The Belgian Supreme Court34 classifies truck drivers under the provision laid down in Art. 14(4) and equates them with personnel aboard ships and aircrafts. However, the German and the Dutch courts do not follow such a perspective. They rather follow the approach that the truck driver should be taxed where he performed the work and respectively also the income should be allocated to that country.35 The new tax treaty could have been a good momentum to insert a specific clause for truck drivers, nevertheless the provisions adopted in the new tax treaty remain silent about the tax treatment of truck drivers.

3.2.2 Changes for Director’s Fees in Art. 15

One significant change that affects cross-border employment of frontier workers is the new Art. 15 of the new tax treaty on the allocation of taxing rights for directors’ fees. Formerly there was only paragraph 4 of Art. 9 that dealt with allocation of taxing rights of income from board members, but only concerning the supervisory board.

The old treaty text of Art. 9(4) reads as follows:

4. Where an individual who is a resident of one of the States receives fees as a member of a board of directors or a non-managing member of a similar organ from a body corporate resident in the other State, the said fees shall be taxable in the latter State.

This has changed in the newly implemented Art. 15. Whereas in the old tax treaty there was no separate article on the allocation for director’s income, the new tax treaty adopted such an article in Art. 15, which covers directors, members of the board and members of the supervisory board.

The new treaty text of Art. 15 reads as follows:

1. Directors’ fees and other remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.
2. The term "member of the board of directors" includes both persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

The approach used in the new provision is similar to the one recommended in the OECD Model Convention and accordingly any income of a director, may it be supervisory or managing director, shall be taxable in the state in which the company for which the director is active is located.36

This change means that none of the director’s activities can fall under the article on employment income (now Art. 14). Thus, the application of the 183 day rule is not applicable and the full enjoyment of the 30% ruling is now limited for directors resident in Germany working for a Dutch company.

3.2.3 Changes in Art. 19 on Students and Professors

Art. 19 of the new tax treaty represents a special rule to the allocation of taxing rights in relation to income from employment. In the new tax treaty Art. 19 in principle reflects the same treatment of income for tutors and professors as it was laid down in Art. 17 of the old tax treaty. Therefore, as can be observed in the treaty texts below, tutors and professors that teach in the other state are taxed in the resident state for a period of maximum two years. After that the taxing right is granted to the work state.37

The old treaty text of Art. 17 reads as follows:

Professors or teachers who are residents of one of the States and who receive remuneration, during a period of temporary residence not exceeding two years, for teaching at a university, college, school or other educational establishment in the other State may be taxed in respect of such remuneration only in the State of which they are a resident.

The new treaty text of Art. 19 reads as follows:

1. Payments and other remuneration which a professor or a teacher who is a resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years, starting from the date of the actual start of the teaching or scientific activities, in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be exempt from taxation in the other Contracting State if these payments or other remuneration do not originate from that other Contracting State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

The Netherlands were not interested in such a provision and were against the implementation in the new tax treaty, Germany however insisted on it. This article was generally not in line with the Dutch objectives for the treaty negotiations and represents one of the Dutch concessions.38

Looking at the new article, for the first two years the residence state has the right to tax for the income of visiting professors and docents. That means a person resident in Germany, who works in the Netherlands for a German employer, is taxable in Germany. Would this person work for a Dutch employer, then it would fall under Art. 14 of the new tax treaty and consequently the tax...
liability would arise in the Netherlands. Thus, the rules laid down in Art. 19 mainly concern only short term secondments and conduct of research. 39

One specific example, which is also expressed by the new paragraph 2 concerns the following: Research falling under this provision may not primarily be conducted out of private interest for a project which relates to the development of pharmaceutical products. 40 In addition, there are slowly emerging discussions, whether a new rule in form of cross-border test should be implemented to determine whether the research is being carried out primarily for private interest. 41

3.2.4 Changes for Personnel Aboard Ships, Aircrafts and International traffic in Art. 14(4)

Another major change in the new tax treaty concerns the allocation of taxing rights in relation to personnel aboard a ship or an aircraft. In the old tax treaty the income from such employment was taxed according to Art. 10(3) in the state of the effective management of the shipping or aircraft company. This has substantially changed in the new treaty. The new Art. 14(4) states that income from personnel aboard a ship or aircraft shall exclusively be taxed in the state of resident of the employee. 42 Those changes can directly be observed from the excerpts of the treaty texts below.

The old treaty text of Art. 10(3) reads as follows:

3. Where an individual's services are performed exclusively or predominantly on board a ship or aircraft of a shipping or air transport enterprise, they shall be deemed to have been performed in the State in which the place of management of the enterprise is situated. In case the latter State fails to tax the income derived from such services, the State of which the employee is a resident, shall be entitled to do so.

The new treaty text of Art. 14(4) reads as follows:

4. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship, aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, shall be taxable only in that State.

3.2.5 Changes for Artists and Sportsmen in Art. 16

In the old tax treaty no separate provision for artists and sportsmen existed. Merely Art. 9 on income from self-employment mentions and allocates the taxing rights accordingly.

The old treaty text of Art. 9 reads as follows:

41 Zie bij voorbeeld Handelingen II 2014-2015, nr. 50, p. 50-9-1 e.v.; Zo was er de motie-Nijboer/Kerstens over in kaart brengen van de gevolgen van werken over de grens voor fiscaliteit en sociale zekerheid (33615, nr. 10) zie, Tweede Kamer, vergaderjaar 2013-2014, 33 615, nr. 10; Deze motie is aangenomen, zie Handelingen Tweede Kamer, vergaderjaar 2014-2015, nr. 15, p. 1-1.
1. Where a resident of one of the States derives income in respect of present or past independent activities performed in the other State, the said income shall be taxable in the latter State.
2. A person shall not be considered to perform independent activities in the other State unless he makes use, in the exercise of his occupation, of a permanent base regularly available to him there. This restriction, however, shall not apply to independent activities of artists, performers, athletes or entertainers.

The new treaty text of Art. 16 reads as follows:

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of Paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is financed for more than 50 per cent from public funds of one or both of the Contracting States, a "Land", a political subdivision or a local authority of one or both of the Contracting States or a "Land" or by an organisation which in one of the Contracting States is recognised as a charitable organisation, or takes place under a cultural agreement between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Although the Dutch position on the taxation of income from artists and sportsmen is clearly regulated in Dutch domestic law, as being taxed in the residence state, Germany insisted in introducing a new article in relation to the income of sportsmen and artists. The underlying reason that was brought forward was that this is done so typically, also in respect of the OECD Model Convent (Article 17). The Netherlands in the end agreed and Art. 16 was adopted in the new tax treaty. As a consequence, income that artists and sportsmen receive in the contracting state of performance are to be taxed in that state, which represents the OECD approach for artists and can be regarded as contradicting the previous Dutch treatment.

3.2.6 Adoption of Compensation Scheme for Art. 14, 15, 16

Another important change in the new tax treaty, which concerns all forms of income from active employment is the adoption of the compensation scheme. The change is found in the additional protocol at point XII and establishes a compensation scheme for Dutch resident frontier workers working in Germany, which cannot profit from tax advantages such as the mortgage deduction and pay higher social security contributions.

The new text of the new protocol reads as follows:

1. An individual who is a resident of the Netherlands and who derives income, remunerations or gains from the Federal Republic of Germany, that according to the Articles 14, 15, 16 and paragraph 1 of Article 18 may be taxed in the Federal Republic of Germany, may opt for a tax relief to be granted by the Netherlands insofar as the total amount of the Dutch and German tax due, together with the amount of premiums concerning the Netherlands general social insurances due by the residents concerned or similar contributions and premiums due on the basis of the German domestic social security rules, exceeds the amount of Netherlands tax and premiums concerning the Netherlands general social insurances that would have been levied from them, if that income, remunerations or those gains had been derived from the Netherlands and the Netherlands had levied from them tax and premiums concerning the general social insurances on those items of income, remunerations or gains.

This relief is provided by way of regarding the German tax, contributions and premiums due by the residents concerned themselves on their income, remunerations and gains on the basis of the German social security rules - insofar as these contributions and premiums are equivalent to the premiums concerning the Netherlands general social insurances - as Dutch wage tax and by way of crediting the German tax, contributions and premiums with the tax and premiums concerning the general social insurances due in the Netherlands.

2. The competent authorities shall determine to which extent the contributions and premiums based on regulations of the Netherlands general social insurances and on the German domestic social security rules are comparable for the purpose of the application of paragraph 1 of this Article.

3. For the purposes of paragraphs 1 and 2 the tax, contributions and social security premiums as referred to in those paragraphs that are due in the Federal Republic of Germany do not include the tax, contributions and premiums, levied on the wages that in the Netherlands are not considered taxable wages on the basis of Article 11, first paragraph, subparagraph g, of the Netherlands Wage Tax Act 1964 ("Wet op de loonbelasting 1964" or the legal successor to this provision if this successor is identical or substantially similar to the provision it replaces).

In such situations the Dutch frontier workers can now ask the Netherlands for a compensation, which shall equate the higher tax liability in Germany and counteract the negligence of allowances available in the Netherlands. The calculation for the compensation works as follows and the difference between the following has to be taken into account.

The total amount of taxes the worker pays in the Netherlands including social security premiums, added to the taxes and contributions for social security that the worker pays in Germany divided by the amount of taxes and social security contributions that the worker would have to pay in the Netherlands, if the German salary would be taxable in the Netherlands.44

In short that means:

\[
\begin{array}{c}
\text{German tax and social} \\
\text{security contribution} \\
+ \\
\text{Taxes payable in the} \\
\text{Netherlands} \\
\end{array}
\]

\[
\begin{array}{c}
\text{Taxes the worker would have to} \\
\text{pay, if the German salary were} \\
\text{considered taxable in the} \\
\text{Netherlands.} \\
\end{array}
\]

Thus, the new compensation scheme is beneficial for Dutch resident cross-border workers, as they are now able to get a compensation for Dutch tax advantages via the compensation paid by the Netherlands, what they previously were not able to do.

However, various uncertainties remain in respect of the compensation scheme. Those include in particular:

- The comparability of German and Dutch social security contributions paid by the frontier workers.
- The relation between the German ‘Kindergeld’ and ‘Kindergeldfreibeträge’ as regards their consideration for the calculation of the compensation.
- The treatment of the health care contribution paid by the employer for workers that voluntarily chose to join the general health care scheme even though they surpass the salary threshold that makes joining the scheme obligatorily. If the employer’s contribution falls within Art. 11d of Wet op de loonbelasting 1964, the treatment of this contribution shall be determined by the foreign tax authority. How this is done, is still uncertain.
- The way in which the German tax liability is calculated for the purposes of the compensation scheme. A preliminary way to determine the German taxes due is through a copy of the German final tax report. However, whether this suffices or not is still unclear, further ways may be possible.

Concerning the first mentioned uncertainty, the comparability of social security premiums, clarification has been provided by the recently published mutual agreement between Germany and the Netherlands on a regulation for Dutch resident frontier workers working in Germany. The new regulation enters into force as from 28 May 2016 and stipulates that German social security contributions paid by Dutch resident frontier workers are not considered in the calculations for the compensation. The underlying rationale is that Dutch and German social security contributions are not comparable.

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\(^{46}\) Staatscourant, Officiële uitgave van het Koninkrijk der Nederlanden, Nr. 31614, 15 juni 2016.
3.2.7 Concluding Remarks Concerning the Changes in the New Tax Treaty

As has been shown in the foregoing provided overview of the changes in the new tax treaty, various changes for cross-border workers can be highlighted. Whereas only minor changes can be found in the actual general employment provision (Art.14(1-3). In contrast, quite some changes can be observed for the tax treatment of personnel working aboard ships and aircrafts, directors, as well as artists and sportsmen. The allocation of taxing rights for personnel aboard a ship or aircraft shifted from state of effective management of the employer to the resident state of the employee. Artists and Sportsmen are now taxed in the state of performance according to the OECD approach and not in the state of residents anymore and Directors irrelevant of their function as member of supervisory or management board are now taxed in the state where the company is resident for which the director works. Not much changed in relation to the income professors and docents for short term visits, except for the fact that a separate provision has been implemented in the new tax treaty.

Apart from all those changes in the new tax treaty, the most influential for all forms of employment income derived by frontier workers between Germany and the Netherlands may be the adoption of a compensation scheme for the higher tax burden Dutch resident workers are facing in Germany. Therefore, the next section is dedicated to discuss projections provided by the Dutch parliament in relation to benefits the compensation scheme may or may not have in some general employment situations, covered by Art. 14 of the new tax treaty.

3.2.8 Case examples for Frontier Workers

For the purpose of the discussion of the compensation scheme in the new tax treaty (additional protocol at point XII), the calculations provided by the Dutch Commission for Finances in 2013 are taken. Those examples were requested in the Dutch parliament to demonstrate the changes the compensation scheme along with the splitting tariff may have in some general situations on the net salaries. In ten different scenarios net salary changes for married couples, solitaries, single working parents, with or without children is calculated on estimated gross salaries. For each scenario the possible compensation and benefits from the splitting tariff is shown.

Before the cases that have been worked out by the Dutch parliament are presented some limitations have to be mentioned at this point. First, the situations used for the examples are hypothetical examples, since the new tax treaty only recently, in January 2016, entered into force no current numbers are available. Second, the scenarios presented were drawn up in 2013 and therefore illustrate merely a potential impact the compensation scheme and the German splitting tariff can have in these situations. In addition, due to the fact that the examples were drawn up in 2013 recent developments such as the mutual agreement between Germany and the Netherlands regarding a regulation for calculation of the compensation scheme are not accounted for. Thus, the reality, which will only be measurable after the general transition period is over, may turn out

to be quite different. Third and lastly, the situations dealt with only observe some general case scenarios. In real life many different constellations and very specific cases may arise, which require tailor made analyses. Such cases are not included in the samples provided below. Thus, the examples laid down by parliament shall serve only as an indication of how the new treaty may change the situation of frontier workers. In the following paragraphs the cases and respective calculations are outlined, taken directly from the parliamentary documents publicly available.

‘Case 1: both parents working in Germany

Case 1A

Both spouses reside in the Netherlands and are in paid employment in Germany. Spouse 1 earns a gross annual salary of €30,000. Spouse 2 earns a gross annual salary of €20,000. They have their own home that is mortgaged. The outstanding balance on their home is €5,000. The employment income of both spouses is taxed fully in Germany. Both spouses are subject to German social security legislation.

Effect of Case 1A

Both spouses enjoy the benefit of the German splitting tariff. The combined German tax of €5,902 is allocated in proportion to each spouse’s gross salary. If the own-home tax deduction is allocated to spouse 2 as the lower earner, the box-1 income of this person is €12,810 and the compensation calculation works out at €1,136. The compensation in this case is €1,225. The benefit of the German splitting tariff is €68.
### Spouse 1

**Salary conversion**

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**Calculation of compensation**

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Case 1B

See case 1A, but with two school-aged children of 13 and 16.

Effect of Case 1B

Both spouses enjoy the benefit of the German splitting tariff. The combined German tax of €5,608 is allocated in proportion to each spouse’s gross salary. If the own-home tax deduction is allocated to spouse 2 as the lower earner, the compensation in that case is €1,106. The benefit of the German splitting tariff is €157.

Spouse 1

Salary conversion

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Calculation of compensation

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Spouse 2

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**Case 2: single person working in Germany**

Case 2A A single person resides in the Netherlands and is in paid employment in Germany. The employee earns a gross annual salary of €30,000. He has his own home that is mortgaged. The outstanding balance on his home is €5,000. The employment income of the employee is taxed fully in Germany. He is subject to German social security legislation.

**Effect of Case 2A**

**Salary conversion**

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**Calculation of compensation**

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Case 2B

See case 2A, but with salary at €95,000 and outstanding balance on the home at €16,000.

Effect of Case 2B

Salary conversion

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Calculation of compensation

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**Case 3: sole earner in Germany**

Case 3A

Both spouses reside in the Netherlands. Spouse 1 is in paid employment in Germany. Spouse 2 does not receive any employment income. Spouse 1 earns a gross annual salary of €30,000. They have their own home that is mortgaged. The outstanding balance on their home is €5,000. The employment income of spouse 1 is taxed fully in Germany. He is subject to German social security legislation. The benefit of the German splitting tariff is €2,830.

**Effect of Case 3A**

### Salary conversion

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### Calculation of compensation

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Case 3B

See case 3A, but with two school-aged children of 13 and 16. The benefit of the German splitting tariff is €2,610.

Effect of Case 3B

Salary conversion

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Calculation of compensation

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**Case 4: both parents working in the Netherlands and Germany**

**Case 4A**

Both spouses reside in the Netherlands and are in paid employment. Spouse 1 works in Germany and earns a gross annual salary of €30,000. Spouse 2 works in the Netherlands and earns a gross annual salary of €20,000. They have their own home that is mortgaged. The outstanding balance on their home is €5,000. The employment income of spouse 1 is taxed fully in Germany. Spouse 1 is subject to German social security legislation. They have two school-aged children of 13 and 16.

**Effect of Case 4A**

**Salary conversion**

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**Calculation of compensation**

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</tbody>
</table>

In this case, the spouses will choose to allocate the own-home tax deduction to spouse 2, who only has Dutch income, thus producing a tax advantage of €1,868. The benefit of the German splitting tariff is €1,304. **Case 4B** See case 4A, but with spouse 1’s salary at €60,000, spouse 2’s salary at €35,000, and the outstanding balance on their home at €16,000.
Effect of Case 4B

Salary conversion

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>60,000</td>
</tr>
<tr>
<td>Minus:</td>
<td></td>
</tr>
<tr>
<td>German pension insurance</td>
<td>5,670</td>
</tr>
<tr>
<td>German unemployment insurance</td>
<td>900</td>
</tr>
<tr>
<td>Taxable salary NL</td>
<td>53,430</td>
</tr>
<tr>
<td>Own home</td>
<td>16,000</td>
</tr>
<tr>
<td>Box 1 income</td>
<td>37,430</td>
</tr>
</tbody>
</table>

Calculation of compensation

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>German tax</td>
<td>12,166</td>
</tr>
<tr>
<td>Income tax</td>
<td>4,345</td>
</tr>
<tr>
<td>National insurance premium</td>
<td>10,392</td>
</tr>
<tr>
<td>Minus:</td>
<td></td>
</tr>
<tr>
<td>Tax credits</td>
<td>3,197</td>
</tr>
<tr>
<td>Compensation calculation</td>
<td>11,540</td>
</tr>
<tr>
<td>Compensation</td>
<td>626</td>
</tr>
</tbody>
</table>

In this case, the spouses will choose to allocate the own-home tax deduction to spouse 2, who only has Dutch income, thus producing a tax advantage of €6,687. They will then waive the option of compensation for spouse 1. The benefit of the German splitting tariff is €1,850.
Case 4C

See case 4A, but with spouse 1’s salary at €60,000, spouse 2’s salary at €35,000, the outstanding balance on their home at €16,000, and no children.

Effect of Case 4C

Salary conversion

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>60,000</td>
</tr>
<tr>
<td>Minus:</td>
<td></td>
</tr>
<tr>
<td>German pension insurance</td>
<td>5,670</td>
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<td>German unemployment insurance</td>
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</tr>
<tr>
<td>Taxable salary NL</td>
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<tr>
<td>Own home</td>
<td>16,000</td>
</tr>
<tr>
<td>Box 1 income</td>
<td>37,430</td>
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</tbody>
</table>

Calculation of compensation

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>German tax</td>
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<td>Income tax</td>
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<td>Compensation calculation</td>
<td>11,540</td>
</tr>
<tr>
<td>Compensation</td>
<td>816</td>
</tr>
</tbody>
</table>

In this case, the spouses will choose to allocate the own-home tax deduction to spouse 2, who only has Dutch income, thus producing a tax advantage of €6,687. They will then waive the option of compensation for spouse 1. The benefit of the German splitting tariff is €1,902.
Case 4D

See case 4A, but with spouse 1’s salary at €60,000 (taxed 75% in Germany and 25% in the Netherlands), spouse 2’s salary at €35,000, and the outstanding balance on their home at €16,000. Spouse 1 is covered by social insurance in the Netherlands.

Effect of Case 4D

Salary conversion

| Gross salary | 60,000 |
| Minus: |
| German pension insurance | 0 |
| German unemployment insurance | 0 |
| Taxable salary NL | 60,030 |
| Own home | 16,000 |
| Box 1 income | 44,000 |

Calculation of compensation

| German tax | 6,586 |
| Income tax | 0 |
| National insurance premium | 10,392 |
| Total collection | 16,044 |
| Income tax | 7,104 |
| National insurance premium | 10,392 |
| Minus: |
| Tax credits | 2,934 |
| Compensation calculation | 14,562 |
| Compensation | 1,482 |

In this case, the German splitting tariff produces no benefit. In this case, the spouses will choose to allocate the own-home tax deduction to spouse 2, who only has Dutch income, thus producing a tax advantage of €6,687.

Spouse 1 will then waive compensation of €1,482. Spouse 1 will also owe €3,556 more in the Netherlands. The total tax loss for spouse 1 is €5,038, which is compensated by spouse 2’s tax advantage of €6,687. The members of the Christian Democratic Appeal (CDA) party ask whether the Netherlands and Germany have agreed on the comparability of the German social security contributions and the Dutch national insurance premiums for the application of the compensation scheme. Although this discussion has not yet taken place, this aspect will be taken up with the German authorities together with the other aspects of the implementation process of the new Treaty.
Lastly, the members of the CDA party present a final simplified case which they say occurs often in practice. The taxpayer is a resident of the Netherlands, married, with no children, and the spouse does not earn any income. The gross employment income for work performed in Germany amounts to €85,000. The German income tax deducted at source amounts to €20,000, the employee’s contribution towards ‘Gesetzliche Rentenversicherung’ (statutory pension insurance) is €6,500, towards ‘Arbeitslosenversicherung’ (unemployment insurance) is €1,000, and towards ‘Pflegeversicherung’ (long-term care insurance) is €560. The outstanding balance on their own home is approximately €16,000. The Dutch taxes are further already set at €14,000 + €7,200 for income tax/national insurance premiums and payment of a tax credit of €2,000 for the non-earning partner has been taken into account. Based on the above cases, this case would lead to the following outcome.

Salary conversion

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<th>Description</th>
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<tbody>
<tr>
<td>Gross salary</td>
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<td>Minus:</td>
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<tr>
<td>German pension insurance</td>
<td>6,500</td>
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<tr>
<td>German unemployment insurance</td>
<td>1,000</td>
</tr>
<tr>
<td>Taxable salary NL</td>
<td>77,500</td>
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<tr>
<td>Own home</td>
<td>16,000</td>
</tr>
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<td>Box 1 income</td>
<td>61,500</td>
</tr>
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</table>

Calculation of compensation

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>German tax</td>
<td>20,000</td>
</tr>
<tr>
<td>Income tax</td>
<td>14,000</td>
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<tr>
<td>National insurance premium</td>
<td>7,200</td>
</tr>
<tr>
<td>Minus:</td>
<td></td>
</tr>
<tr>
<td>Tax credits of non-earning partner</td>
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<td>Compensation calculation</td>
<td>19,200</td>
</tr>
<tr>
<td>Compensation</td>
<td>800</td>
</tr>
</tbody>
</table>

In this case, the benefit of the German splitting tariff is €7,608.48

---

3.2.9 Conclusion Parliamentary Examples

As can be seen from the various cases above the compensation scheme as it has been expected to work in 2013 does not warrant great benefits for Dutch frontier workers that work in Germany. In the presented situations the compensation scheme up to a salary of gross € 60,000 rendered only minor compensations reaching a maximum € 1,600, but often remaining below € 1,000. For workers earning a salary above € 80,000 the compensation scheme may become lucrative as compensations of € 2,000 and higher. Only if specific conditions for one of the wage earner are met, then the actual compensation can in certain situations result in a higher amount. Also the splitting tariff that can now be applied easier, potentially leading to tax advantages in Germany and consequently an increase in net salary. In the end, as can be observed by the general examples provided, much depends on the specific situation and benefits can vary a great deal.

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

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49 In this respect see cases 1A and 1B.
51 ibid.
4. Conclusion and Suggestions from a Euregional Perspective

This cross-border impact assessment was supposed to evaluate the effects of the new tax treaty on frontier workers. As mentioned in section 2.1, such an ex-post evaluation is not possible at this stage due to two reasons. On the one hand there is no reliable data available that provides an accurate overview of amount of frontier workers working in the cross-border region of Germany and the Netherlands. This can be ascribed to the differing approaches to investigate frontier workers and to the fact that some frontier workers find themselves in very specific situations which are not captured by these approaches. On the other hand effects can only be measured once the first numbers can be gathered. This however, requires the tax treaty to be applicable in its entirety. Since Art. 33 of the new tax treaty introduces a transition period of one year, in which the old tax treaty may still be applied, only at the end of 2018 real effects on frontier workers may be measurable.

Grounded in those limitations this cross-border impact assessment provides little added value in terms of evaluation, it rather provides an overview of the new changes introduced that affect frontier workers. Furthermore, it shortly discusses projections made by the Dutch parliament in 2013 involving the new compensation scheme and the German ‘Splittingverfahren’. As became clear those estimations are merely indicative and due to new developments such as the recently published mutual agreement may not be realistic anymore. The mutual agreement on a regulation for the calculation of the compensation scheme denies comparability of German social security contributions with Dutch contributions and those are therefore not considered in the calculation of the compensation.

Thus, to draw definite conclusion patience, until reliable data becomes available, is required. One lesson that can be drawn from this impact assessment is clearly that a timely and coherent monitoring of frontier workers and of the consequences stemming from the new tax treaty is essential for future impact assessments.
3.1 B. Tax Treaty Netherlands-Germany: Pension

Prof. Anouk Bollen-Vandenboorn

Dr. Marjon Weerepas

Bastiaan Didden LL.M.

Sander Kramer LL.M.

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List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOW</td>
<td>Algemene Ouderdomswet</td>
<td>Dutch National Old Age Pensions Act</td>
</tr>
<tr>
<td>Anw</td>
<td>Algemene nabestaandenwet</td>
<td>Dutch Survivor Benefits Act</td>
</tr>
<tr>
<td>EStG</td>
<td>Einkommensteuergesetz</td>
<td>German Income Tax Act</td>
</tr>
<tr>
<td>EStG</td>
<td>Einkommensteuer-</td>
<td>German Income Tax Implementing</td>
</tr>
<tr>
<td></td>
<td>Durchführungsverordnung 1955</td>
<td>Regulation 1955</td>
</tr>
<tr>
<td>MBB</td>
<td>Maandblad Belasting Beschouwingen</td>
<td>Dutch monthly journal on tax law-related issues</td>
</tr>
<tr>
<td>MvT</td>
<td>Memorie van Toelichting</td>
<td>Explanatory Memorandum</td>
</tr>
<tr>
<td>PW</td>
<td>Pensioenwet</td>
<td>Dutch Pensions Act</td>
</tr>
<tr>
<td>SVB</td>
<td>Sociale Verzekeringbank</td>
<td>Dutch Social Insurance Bank</td>
</tr>
<tr>
<td>Wajong</td>
<td>Wet arbeidsongeschiktheidsvoorziening jonggehandicapten</td>
<td>Disablement Assistance Act for Handicapped Young Persons</td>
</tr>
<tr>
<td>WAO</td>
<td>Wet op de</td>
<td>Incapacity Benefits Act</td>
</tr>
<tr>
<td>WAZ</td>
<td>Wet arbeidsongeschiktheidsverzekering zelfstandigen</td>
<td>Incapacity Insurance Act for self-employed persons</td>
</tr>
<tr>
<td>Wet LB 1964</td>
<td>Wet op de loonbelasting 1964</td>
<td>Wages and Salaries Tax Act 1964</td>
</tr>
<tr>
<td>WIA</td>
<td>Wet werk en inkomen naar arbeidsvermogen</td>
<td>Work and Income according to Labour Capacity Act</td>
</tr>
</tbody>
</table>
1. Introduction
The new Dutch-German Tax Treaty came into effect on 1 January 2016. Tax Treaties seek to avoid the occurrence of double taxation or lack of taxation.\textsuperscript{52} They are concluded between states with strong political, financial and economic relations, such as between the Netherlands and Germany.\textsuperscript{53} Since the Netherlands and Germany are of course also neighbouring countries, this raises issues of cross-border labour and cross-border retirement. The latter issue will be addressed in this section of the cross-border impact assessment.

The new Tax Treaty replaces the one concluded on 16 June 1959 in The Hague (hereinafter: the old Treaty). The main reasons to replace the old Treaty were that it was no longer in line with current OECD standards and no longer reflected the current economic relationship between both nations.\textsuperscript{54} During the revision of the old Treaty, the Netherlands pursued the improvement of the fiscal position of frontier workers residing in the Netherlands and a more favourable fiscal treatment of pension funds established in the Netherlands.\textsuperscript{55} Germany valued the fight against improper use of the Treaty.\textsuperscript{56}

The Tax Treaty and the amendments included were extensively discussed during the preparation. This is demonstrated, among others, by the very extensive Dutch Parliamentary treatment.\textsuperscript{57} During the Lower House sessions, for example, attention was regularly drawn to the position of pensioners with a Dutch pension, residing in Germany.\textsuperscript{58} Treatment in the Senate also included.

\textsuperscript{52} Two concepts are relevant in case of double taxation:
- economic double taxation: “bij twee natuurlijke personen of lichamen over één object door een of twee instanties belasting wordt geheven of bij een persoon twee maal over formeel verschillende, doch materieel identieke objecten door een of twee instanties belasting wordt geheven.” (when tax is levied on one object of two natural persons or bodies by one or two authorities or when it is levied twice on formally different yet materially identical objects of one person by one or two authorities.)
- legal double taxation: “één persoon over één object door twee heffingsbevoegde instanties wordt belast.” (when one person is taxed for one object by two different competent authorities.) Both definitions taken from the Dutch Syllabus Vrijstelling, Verrekening, Verliescompensatie Internationaal Belastingrecht (Exemption, Settlement, Loss Compensation in International Tax Law) [http://wetten.overheid.nl/BWBR0016602/2004-04-13].

\textsuperscript{53} This was also recognized during the parliamentary process, see Kamerstukken II 2013/14, 33 615, nr. 3 (MvT) (Explanatory Memorandum), part I.1.

\textsuperscript{54} See Deutscher Bundestag, 17. Wahlperiode, Gesetzentwurf der Bundesregierung, Drucksache 17/10752, A. Problem und Ziel and Kamerstukken II 2013/14, 33 615, nr. 3 (MvT) (Explanatory Memorandum), section I.1.\textsuperscript{55} Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), section I.1. Thus, the Explanatory Memorandum (Dutch: MvT) includes a separate paragraph regarding the impact of the new Tax Treaty on frontier workers (see Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), section I.4. Frontier Workers). The inclusion of this paragraph reflects the commitment made by former Secretary of State for Finance De Jager to explicitly include the consideration of the consequences for frontier workers in new legislation (see the Cabinet’s Opinion about the recommendations of the Frontier Worker Commission, 9 January 2009, 2008/2455 BCPP with reference to Kamerstukken II 2000/01, 26 834, nr. 5).

Although the parliamentary documents often use the term ‘frontier workers’, this assessment will use the less old-fashioned term ‘cross-border workers’.

\textsuperscript{56} Kamerstukken II 2013/14, 33 615, nr. 3 (MvT), section I.1. This is particularly aimed at preventing ‘treaty shopping’, whereby third-country residents obtain access to a benefit from the Tax Treaty.

\textsuperscript{57} The complete Dutch parliamentary history of the new Tax Treaty is included in full in Douven (red.), Het Belastingverdrag met Duitsland 2012 Teksten, toelichtingen en parlementaire geschiedenis, p. 301-535, accessible through: [http://www.grensoverschrijdendwerken.nl/ebook-verdrag-nl-dld].

\textsuperscript{58} During Parliamentary treatment in the Lower House, only one motion was adopted regarding the mapping of the consequences of cross-border employment for taxation and social security, including pensions. See Netherlands
this explicit call for attention to the position of pensioners with Dutch pension rights, residing in Germany.\textsuperscript{59} The new Tax Treaty has financial consequences for this group, due to an amended treaty article on pensions and despite both a general and a special transitional regime to mediate these consequences.\textsuperscript{60} The special transitional regime is geared specifically to mediating the financial consequences of the change to the pension article. Contrary to the Netherlands, the new Tax Treaty received only very concise treatment in the German Parliament.\textsuperscript{61} Partly as a result of the comprehensive parliamentary treatment in The Netherlands, the original target date of entry into force of 1 January 2014 was not met. Besides in the parliamentary procedure, the new Tax Treaty was also dealt with in detail, and particularly commented on, in the relevant tax literature and media.\textsuperscript{62}

1.1 Approach

This section of the cross-border impact assessment will be using calculation examples to clarify the income effects of the new Tax Treaty for pensioners who reside in Germany and have previously built up a pension in the Netherlands. As already indicated briefly before, this is the group of pensioners 'hit' by the new Tax Treaty. Besides Dutch nationals who moved to Germany during their retirement, this also includes Germans who used to be cross-border workers in the Netherlands: 

\begin{quote}
"In totaal gaat het om naar schatting 5.500 in Duitsland wonende gepensioneerden (Nederlanders en Duitsers) die een Nederlands pensioen hebben van meer dan € 15.000."\textsuperscript{63}
\end{quote}

(This involves an estimated total of 5,500 pensioners, both Dutch and German nationals, residing in Germany and receiving a Dutch pension of more than €15,000). This €15,000 limit will be treated further when discussing the current Treaty article. Besides a review of the old and the new Treaty article, the general and special transitional regimes will also be considered here, as well as their practical application in the form of the so-called ‘verdragsverklaring’ (literally: Treaty Declaration). The calculation examples provided will take into account the general and special transitional regimes. The so-called Dutch net pension scheme is also addressed here to illustrate the potential effects on cross-border workers of a recent national fiscal measure under a tax treaty. The net pension product is the result of a unilateral, national, fiscal 'capping measure'.

\textsuperscript{59} See Netherlands Parliamentary Papers: \textit{Kamerstukken I} 2014/15, 33 615, nr. B.
\textsuperscript{60} In this context, the State Secretary of Finance repeatedly referred to the general and special transitional regimes and the examples as elaborated in parliamentary history.
\textsuperscript{61} See, for example, the following German draft law: Deutscher Bundestag, Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zu dem Abkommen vom 12. April 2012 zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung auf dem Gebiet der Steuern vom Einkommen, Drucksache 17/10752, 24.09.2012.
\textsuperscript{62} Media coverage includes, among others, the Dutch opinion pieces ‘Belastingverdrag hakt er te diep in (Tax Treaty too Incisive), \textit{Het Financieele Dagblad}, 13 August 2014 and K. Broekhuizen, ‘Belastingverdrag met Duitsland treedt pas per 2016 in werking’ (Tax Treaty with Germany not to take effect until 2016), \textit{Het Financieele Dagblad}, 30 December 2014. The paragraphs below will refer to the fiscal literature whenever it is relevant to this cross-border impact assessment.
implementation of this capping measure may lead to legal double taxation under the Tax Treaty, whereby one income object and one subject, i.e. the taxpayer, are taxed by two states.\footnote{See also <http://wetten.overheid.nl/BWBR0016602/2004-04-13>.

Art. 33, paragraph 6 of the new Treaty: "Niettegenstaande het tweede en derde lid, indien een persoon uit hoofde van de Overeenkomst van 1959 recht zou hebben op grotere voordelen dan uit hoofde van dit Verdrag, blijft de Overeenkomst van 1959 naar keuze van een dergelijke persoon volledig van toepassing gedurende een tijdvak van één jaar, te rekenen vanaf de datum waarop de bepalingen van dit Verdrag van toepassing zouden zijn uit hoofde van het tweede lid." (Notwithstanding the second and third paragraph, if a person, by virtue of the Agreement of 1959, were entitled to greater benefits than under this Treaty, the Agreement of 1959 shall remain fully applicable to such a person at the discretion of this person for a period of one year from the date on which the provisions of this Treaty would apply under the second paragraph.)}

This dossier opts for a fiscal-legal assessment of the cross-border effects. It is imaginable that further investigation of the effects of the new Tax Treaty on the sustainable economic development and the business climate of the border regions will take place from an economic perspective in the future, provided that sufficient cross-border data is available to substantiate the findings.

2. \textbf{Research Objectives, Definitions, Themes and Indicators}

\section*{2.1 Effects today or in the future, objective: ex-post or ex-ante}

This cross-border impact assessment will contribute to the 'ex-post' mapping of the border effects of the new Dutch-German Tax Treaty, which entered into force on 1 January 2016. Since the Treaty has only recently entered into force, its effects on the border regions are still barely measurable. Moreover, the general transitional regime provides that the old Treaty from 1959 can still be applied for 2016.\footnote{The aforementioned Dutch net pension scheme will be dealt with in Paragraph 3.1.4, in particular with a view to the consequences of national tax legislation under the new Tax Treaty.} As a result, the first consequences for the border regions can only be established after 1 January 2017.

Using facts and data already known, this cross-border impact assessment will make an estimate of the border effects of the new Tax Treaty on the basis of income projections. On the basis of these income projections, the increase or decrease of the net pension payable - not to be confused with the Dutch 'net pension scheme' - will become visible and provisional conclusions can be drawn.\footnote{See Kamerstukken II 2013/14, 33 615, nr. 8 (Nota naar aanleiding van het nader verslag) (Note as a result of the follow-up report), p. 6, which states: 'Uit de meest recente gegevens van de Belastingdienst (…).'}

\section*{2.2 Effects: on which geographical area? Definition of the border region}

For various reasons, it is next to impossible to provide concrete insight into the geographical scope of the Tax Treaty. As cited in the previous paragraph, a group of approximately 5,500 pensioners with a pension of more than € 15,000, residing in Germany, would be hit by the new Treaty article on pensions. However, the year of origin of this data is unknown.\footnote{See Kamerstukken II 2013/14, 33 615, nr. 8 (Nota naar aanleiding van het nader verslag) (Note as a result of the follow-up report), p. 6, which states: 'Uit de meest recente gegevens van de Belastingdienst (…).'} Moreover, no distinction was made between Dutch nationals who moved to Germany after retirement and German nationals who used to be cross-border workers in the Netherlands. Furthermore, it is very difficult for retired cross-border workers to concretely define in which geographical area they reside, as they are not necessarily tied to a border region, unlike active cross-border workers. As a
result, the geographical area may be difficult to specify any further, partly because the statistical information about the residence of retired cross-border workers or their relocation after retirement is not kept up to date. A future recommendation would be to map these data and to provide a clear picture of the number of pensioners who live in Germany and receive a pension, both first- and second-pillar, from the Netherlands and vice versa.

2.3 Border effects on? What are the themes of the research, its principles, benchmarks and indicators?

2.3.1 Dutch-German Tax Treaty Dossier on pension consequences and the effects on the cross-border situation from the perspective of citizens, associations and businesses in light of the objectives and principles of European integration

In this dossier, cross-border effects should be read as income effects. For the pension topic, calculation examples are used to clarify the concrete income effects for retired cross-border workers. To this end a comparison will be made between the new and old Tax Treaty. On the basis of this comparison and the calculation examples, it is possible to indicate the extent to which the new Tax Treaty differs positively or negatively in a certain situation. To ensure a maximally comprehensive comparison and for the assessment of equal fiscal treatment, i.e. non-discrimination on the basis of art. 24 of the Treaty, it is of interest to map the following subsequent to this first cross-border impact assessment:

- The income position of the neighbour and former colleague of the Dutch retired cross-border worker under both the old and the new Tax Treaty;
- The income position of the neighbour and former colleague of the German retired cross-border worker under both the old and the new Tax Treaty.

68 The records of the Dutch Social Insurance Bank (SVB), as well as the Parliamentary treatment provide some data, which is indicative only and non-exhaustive:
- For the number of ‘AOW’ pensioners outside the Netherlands in the period of 2005 to 2014, see <http://www.svbkennisplatform.nl/kennisbank/a1201_Algemene-Ouderdomswet-AOW/> (last consulted: 14 August 2016).
- Number of ‘AOW’ clients in the Netherlands and abroad, including Germany; for the most recent data from the 4th quarter of 2015, published in March 2016, see: <https://www.svb.nl/Images/KB%202015%204e%20kwartaal.pdf>.
- Data from parliamentary history:
- 63.917 persons who reside in the Netherlands received a German pension (German: ‘Rente’) in 2014; see the ‘Rapportage fiscale knelpunten grenswerknemers’ (Report on Fiscal Difficulties Encountered by Cross-Border Workers) from 11 September 2015, DGB/2015/3635YOU, p. 1.
- In 2013 over 64.500 Dutch residents received a German pension. Of those, approximately 2,500 people received an amount that exceeded € 15,000, while over 62,000 people remained under the € 15,000 limit. According to the information available, approximately 1,000 of these 62,000 persons would exceed the € 15,000 limit after all due to a supplementary pension received from Germany. Thus, the number of persons with a German pension income that, together with any other relevant income, remains below the € 15,000 limit can be estimated at 61,000 people in total; see Goedkeuring belastingverdrag Nederland-Duitsland (2012); Nadere Memorie van Antwoord; 6 februari 2015 IZV/2015/79U, p. 3.
- 17.066 residents of Germany receive a pension, an annuity or social benefits from the Netherlands, of whom 12.856 pensioners remain under the € 15,000 limit. The total annual amount of Dutch pension payable to this group is EUR 65.6 million, causing an annual tax loss of around € 1.5 million after deduction of the income tax-related part of the tax credits; see Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report).
2.3.2 Dutch-German Tax Treaty Dossier on pension-related issues: what are the principles, objectives and benchmarks for achieving and measuring a positive situation in border regions

The overview below contains the principles, benchmarks and research method as applied in this dossier.

<table>
<thead>
<tr>
<th>Principles</th>
<th>Benchmarks</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>International law:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. rationale for the Tax Treaty: preventing legal double taxation.</td>
<td>To avoid legal double taxation: one object, i.e. income from employment or pension benefits, and one subject, i.e. the (retired) cross-border worker, taxed by two states.</td>
<td>To examine the cases under the current Tax Treaty that might be subject to double taxation, including analysis of national legislation and regulations and their effect on the Tax Treaty. 69</td>
</tr>
<tr>
<td>b. art. 24 OECD Model Convention and comment: non-discrimination.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pension:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The free movement of EU citizens pursuant to Article 21 TFEU: no discriminatory fiscal treatment of retired cross-border workers. 70</td>
<td>The fiscal position of Dutch retired cross-border workers under both the old and the new Tax Treaty. The fiscal position of German retired cross-border workers under both the old and the new Tax Treaty.</td>
<td>To calculate the difference between the net payable pension of Dutch retired cross-border workers under the old and new Tax Treaty. To calculate the difference between the net payable pension of German retired cross-border workers under the old and new Tax Treaty.</td>
</tr>
</tbody>
</table>

The principles and benchmarks included in the above overview give direction to the analysis of the cross-border effects of the new Tax Treaty on retired cross-border workers. This assessment constitutes a first step, specifically for the position of German retired cross-border workers, taking into account the application of the general and special transitional regime.

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69 For example, the influence of the Dutch net pension scheme under the new Tax Treaty.
70 ECJ 23 April 2009, C-544/07 (Rüffler).
71 As pointed out above, the transfer of tax jurisdiction may influence the income position of both Dutch nationals who moved to Germany after retirement and German nationals who used to work as cross-border workers in the Netherlands and thus built up a pension there. For this reason, the calculations include both the position of a Dutch and a German retired employee.
3. Does the measure promote or impede European integration and what does that mean for the citizens of the border regions?

Given the very recent date of entry into force of the new Tax Treaty, it is not yet possible to indicate to which extent the changes relating to pensions actually promote or hinder European integration. Based on income projections, it is possible, however, to draw tentative conclusions regarding the income effects for the retired cross-border worker. For this reason, it is important that this is monitored in the future. This note is in line with the note as published in section 2.2. It is important that appropriate statistical data are available and, if possible, qualitative research is carried out to ensure that the concrete effects of the new Tax Treaty on the citizens of the border regions are measured. While this remains a pipe dream, the next section discusses the pension-related changes in the Tax Treaty and subsequently offers income projections and calculation examples, on the basis of which a tentative assessment can be made of whether there is a potential obstacle to European integration.

3.1 Pension-Related Changes

This section deals with the changes in the allocation of taxation power over pensions in the new Tax Treaty that are relevant to this cross-border impact assessment.\(^{72}\)

3.1.1 Allocation rules under the old Tax Treaty (1959)

Under the old Treaty, taxation power over (private) occupational pensions was generally allocated to the state of residence on the basis of Art. 12, paragraph 1 of the Treaty. The old Tax Treaty text read as follows:

\begin{quote}
(1) Indien een natuurlijk persoon met woonplaats in een van de Staten wachtgelden, pensioenen, weduwe- of wezenpensioenen, andere uitkeringen of op geld waardeerbare voordelen ter zake van vroegere diensten verkrijgt, heeft de woonstaat het recht tot belastingheffing voor deze inkomsten.

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(1) If a natural person, resident in one of the States, receives a tide-over allowance, pensions, survivor's pensions, benefits or other advantages measurable in money in relation to previously provided services, the state of residence shall have the right of taxation over this income.
\end{quote} 

Thus Germany held taxation power over pensioners living in Germany and receiving a Dutch occupational pension, i.e. the 2nd pillar of the Dutch pension system. On the other hand, the source state obtained taxation rights over the social insurance pension, e.g. the AOW state pension as the first pillar of the Dutch pension system, on the basis of Art. 12, paragraph 2 jo paragraph 3, sub a of the Treaty. The AOW pension of pensioners living in Germany was therefore taxed in the Netherlands. The old Treaty text of this article read as follows:

\(^{72}\) For a full explanation, see: P.H.J. Essers, ‘Pensionado’s in Duitsland met in Nederland opgebouwde pensioenrechten en het nieuwe verdrag Nederland-Duitsland’, in: Ondernemend met pensioen (Dietvorstbundel), Deventer: Kluwer 2015.
3.1.1.1 AOW state pensions

The 'old' pension article established a favourable tax position for pensioners residing in Germany with a Dutch pension, in that the AOW state pension was taxed in the Netherlands as wage from previous employment, according to Article 11 (1) c jo. Paragraph 2 Implementation Decision Income tax, 1965. Thus, on the basis of Art. 2.10 of the Dutch Income Tax Act of 2001 (hereinafter: Wet IB 2001), these AOW benefits were subject to a maximum of 5.85% income tax in the first tax bracket and 10.85% in the second bracket in the Netherlands.73

Pensioners living in Germany are, in principle, not required to make any national insurance contributions in the Netherlands since they are insured in Germany. After all, based on Art. 11 (3), part A, Regulation 883/2004, post-active persons are insured in their state of residence, regardless of whether the state that provides the benefits has an insurance obligation.74

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73 Percentages from 2016.
74 Post-active persons are persons who have definitively or otherwise ceased their professional activities (ECJ 11 June 1998, Case C-275/96 (Kuusijärvi), ECR 1998, p. I-3419.
3.1.1.2 Occupational pensions

Moreover, German taxation of occupational pensions is significantly lower due to the reduced rates in the German 'Einkommensteuer' on the one hand and, in part, because these pensions are not completely included in the tax base in Germany on the other hand.\textsuperscript{75} Germany considers occupational pensions as other income, with application of the so-called 'Ertragsanteil'.\textsuperscript{76} Due to this 'Ertragsanteilsbesteuerung', combined with the reduction of the tax base, which was doubled for partners in case of a joint declaration, no German income tax was payable on the Dutch occupational pension in many cases.\textsuperscript{77}

3.1.2 Allocation rule under the new Tax Treaty (2012)

The Dutch fiscal treaty policy, as set out in the policy note from 2011, shows that the Netherlands pursues source-state levying on pensions in its treaty negotiations.\textsuperscript{78} The Tax Treaty with Germany, like that with Belgium, includes a source-state levy on a proviso basis. The tax agreement with Belgium, signed in 2001 and effective since 1 January 2003, includes a limit of €25,000. The allocation rule from the new Tax Treaty with Germany is explained further below.

Under the new Treaty, taxing powers over pensions were generally allocated to the state of residence on the basis of Art. 17, paragraph 1 of the Treaty. For the Netherlands, these include the regular pensions as stipulated in Art. 18 Income Tax Act 1964 as well as benefits from occupational pension funds and industry pension funds.\textsuperscript{79} The Netherlands also assumes that the German 'Rentenversicherung', the 'Rürup-Rente', the benefits from 'landwirtschaftlichen Alterskassen' and the 'berufständischen Versorgungseinrichtungen', the 'Riester-Rente', the 'Betriebliche Altersvorsorge', benefits from a 'Pension Fund', from 'Pensionkassen', from 'Direktversicherungen' and the proceeds of annuities of private insurance companies are further German statutory pensions that fall within the scope of the Treaty.\textsuperscript{80}

Moreover, the source state has taxation power over the benefits paid under the provisions of a social security system.\textsuperscript{81} For the Netherlands, this refers to the social benefits, i.e. social insurance and social services.\textsuperscript{82} It particularly concerns benefits pursuant the AOW, Anw, ZW, WAO, WIA

\textsuperscript{75} See section 32A EStG. For example: amounts up to €8,652 are exempt from taxation as 'Grundfreibetrag', and amounts over €254,447 are taxed at a maximum rate of 45%.
\textsuperscript{76} Sonstige Einkünfte (§ 2 Absatz 1 Satz 1 Nummer 7), § 22 Arten der sonstigen Einkünfte EStG (Einkommensteuergesetz).
\textsuperscript{77} Under specific conditions, no German tax was payable by recipients of a Dutch pension with a maximum amount of €50,000 residing in Germany. T. Lühn, ‘Quellenstaatsbesteuerung von Renten und Ruhegehalten im neuen DBA mit den Niederlanden’, IWB No. 4 dated 26.02.2016, NWB DokID (YAAAF-67040).
\textsuperscript{78} Ministry of Finance, Notitie Fiscaal Verdragsbeleid 2011, 11 February 2011, p. 53.
\textsuperscript{79} The term 'pension' also includes survivor and incapacity benefits from the Dutch second pension pillar. Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 16.
\textsuperscript{80} Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 16.
\textsuperscript{81} The Netherlands will ask Germany for an overview of the most common German social security benefits covered by Article 17. However, the legislator does point out that 'Elterngeld' is regarded as a social security benefit. See Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 61.
\textsuperscript{82} Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 15.
and the WAZ regulations. This distribution of taxation powers means that, in principle, the situation remains unchanged for beneficiaries living in Germany with a Dutch pension.

The text of the Treaty reads as follows:

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(1) Subject to the provisions of Article 18, second paragraph, pensions and other similar remunerations paid to a resident of a Contracting State, as well as annuities paid to a resident of a Contracting State, shall only be only taxable in that State. Pensions and other benefits paid under the provisions of a social security system of a Contracting State (social security pensions) to a resident of the other contracting state shall only be taxable in that other state.

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On the basis of Art. 17, paragraph 2 of the Treaty, an exception will be made to the above taxation rule. The source State has the right to levy taxes if the total gross amount of (private) pension or other similar remuneration, as well as an annuity or social security pension in any calendar year, exceeds the sum of € 15,000.\(^{83}\) This threshold of € 15,000 also ensures that small pensions, annuities and social security benefits are only taxed in the state of residence. It prevents taxpayers from submitting mandatory tax declarations in the source state for relatively small amounts in pensions, annuities and social security benefits received. This limit is applied on an annual basis, thus making determination of whether a taxpayer has exceeded the € 15,000 limit possible only at the end of the year.\(^{84}\) If the taxpayer is found to have received less than € 15,000 in pensions, i.e. taxation power has been unduly assigned to the source state, this state will make a refund of the taxes levied.\(^{85}\)

The text of the Treaty reads as follows:

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\(^{83}\) According to Art.17, paragraph 5 of the Treaty, the state where the contributions to the pension or the annuity for tax reduction have been made shall be considered the source state of a pension, an annuity or other similar remunerations. Moreover, it is Dutch treaty policy to seek maximal allocation of taxation powers to the source state if that source state has, during the accumulation, allowed a facility in which there is also abstraction from the treatment in the new state of residence (Ministry of Finance, Notitie Fiscaal Verdragsbeleid 2011, 11 February 2011).

\(^{84}\) Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 32.

\(^{85}\) Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 34.
If a pensioner lives in Germany with a Dutch AOW pension and a Dutch occupational pension that together exceed €15,000, the Netherlands shall hold taxation power over both pensions and Germany shall offset the tax levied in the Netherlands. It is irrelevant how the pensions and annuities are included in taxation in the state of residence. Thus, under the new Treaty, the only relevant criterion for source-state levying is the amount of the benefits. This means, among other things, that for pensioners living in Germany with a partly German and a partly Dutch pension, it depends on the height of the Dutch pension whether The Netherlands have taxation power over it. Note that the Tax Administration can determine whether or not a taxpayer exceeds the €15,000 limit based on the information obligation regarding pensions.

In short, pensioners residing in Germany were subject to taxation on their AOW benefits in the Netherlands and on their occupational pension in Germany under the old Tax Treaty. Under the new Treaty, both the AOW and the occupational pension are taxable in the Netherlands, provided that the total gross amount exceeds €15,000. Pensions are thus integrally taxed in the Netherlands, and taxpayers may thus be designated as qualifying foreign taxpayers if they fulfil the conditions. This grants them the same deductions and tax credits as a resident of the Netherlands, including, for example, mortgage interest deduction. Under the old Treaty, a pensioner living in the Netherlands was liable to taxation of his German 'Rente' pension in Germany and to taxation of his German occupational pension in the Netherlands. Under the new Treaty, both the 'Rente' pension and the occupational pension are taxable in Germany, provided that the total gross amount exceeds €15,000.

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For this franchise, the public pensions receivable are relevant, cf. Art. 18 of the Treaty.

Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 35.

Art. 7.8 Wet IB 2001.
An example can illustrate the consequences of this change in taxation power. An unmarried Dutch citizen moved to Germany in the past and receives an occupational pension of €30,000 built up in the Netherlands and an AOW state pension of €13,500. Under the old Treaty, the Netherlands only held taxation power over the AOW pension, whereas Germany was given taxation power over the occupational pension. In 2014 this Dutch citizen would have had to pay €735 in total in German and Dutch taxes together. Under the new Treaty, the Netherlands has been granted taxation power over both the AOW pension and the occupational pension since it exceeds the €15,000 limit. As a result, the taxpayer in point will need to pay a total of €7,316 in Dutch income tax in 2016, constituting a rounded increase of €6,581 or 895%. The above transfer of taxation powers was introduced to eliminate an unintentional advantage for the Dutch in particular: the fiscal treatment of pension accrual in the Netherlands and the favourable German taxation of foreign pensions.

3.1.3 Avoidance of double taxation under the new Tax Treaty and the per-country-limitation: double taxation

This section covers the methods on the avoidance of double taxation under the new Tax Treaty from the principle of the rationale behind tax treaties: the prevention of double taxation. The starting point and benchmark is avoiding legal double taxation. The analysis also takes into account the national laws and regulations of both countries.

Pensioners living in Germany and receiving a Dutch pension of more than €15,000 are liable to Dutch taxation as well under the new Treaty. The fact that the Netherlands has taxation power too seems to cause taxation of the pension in both the Netherlands and Germany, thus leading to double taxation. In order to avoid such double taxation Germany shall provide an offset on the basis of art. 22, paragraph 1, subsection b, sub ee of the Treaty. This article provides that, in accordance with the provisions of the relevant German tax law regarding the offsetting of foreign tax, the relevant German tax of a resident of Germany, payable on the income items that can be taxed in the Netherlands in accordance with Article 17, paragraph 2 & 3 (on pensions, annuities and social security benefits), will be settled with the Dutch taxes payable under Dutch tax law. However, this deduction shall be granted only in compliance with German tax law regarding the settlement of foreign tax. Paragraph 34c EstG (Einkommensteuergesetz) io. paragraph 68a, paragraph 1 EStGV 1955 (Einkommensteuer-Durchführungsverordnung 1955) apply to the adoption of this deduction. As addressed earlier, Germany imposes low taxes on the Dutch pensions of pensioners residing in Germany. The settlement to be offered by Germany regarding the taxes due in the Netherlands has been maximized at this low German tax. This increases the total tax burden of the pensioner living in Germany.

90 Example based on Kamerstukken II 2013/14, 33 615, nr. 8, p. 27 et seq.
91 Kamerstukken II 2013/14, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 16.
92 This article provides that: “Die für die Einkünfte aus einem ausländischen Staat festgesetzte und gezahlte und um einen entstandenen Ermäßigungsanspruch gekürzte ausländische Steuer ist nur bis zur Höhe der deutschen Steuer anzurechnen, die auf die Einkünfte aus diesem ausländischen Staat entfällt.”
However, if a resident of the Netherlands receives a German pension, taxable in Germany on the basis of art. 17, paragraph 2 of the Treaty, i.e. amounting to a total exceeding € 15,000, the Netherlands, on the basis of art. 22 (2) (b) of the Treaty, shall exempt this pension by means of the proportionality methodology with a tax progression clause. This reduction shall be calculated on the basis of the provisions in Dutch legislation for the avoidance of double taxation.\(^{93}\)

### 3.1.4 The Dutch net pension scheme and the cross-border worker: double taxation?

This section is intended to clarify the effects of a recent national measure under a tax treaty, i.e. the Dutch net pension scheme, on cross-border workers.

The net pension scheme is a voluntary pension scheme, the fiscal relief of which focuses on participants with a pensionable income of more than € 101.519 (2016). On the basis of art.18ga (1) Wet LB 1964, the so-called ‘Witteveen framework’ offers no fiscal relief above this amount. Thus, deferred taxation, known as the ‘reverse rule’ (Dutch: ‘omkeerregel’), does not apply to the net pension scheme. In this case, tax relief consists of a Box 3 exemption, i.e. entitlements from a net pension scheme are not considered property on the basis of Art. 5.17 (1) Wet IB 2001.\(^{94}\)

In addition to the aforementioned case of possible double taxation, this may also affect a cross-border worker with a net pension.\(^{95}\) This refers to a post-active cross-border worker residing in Germany who used to work in the Netherlands for an employer who made use of a net pension scheme.

#### 3.1.4.1 The Old Tax Treaty with Germany (1959)

Cross-border workers who reside in Germany and work in the Netherlands can make use of the net pension scheme via their Dutch employer. Since cross-border workers already live outside the Netherlands, they do not qualify for the fiscally inconspicuous buyout option. As they are not emigrating, they will have to have the net pension paid out to them.

In the above example, Germany will consider the pension as pension in the sense of Art. 12, paragraph 1 of the Treaty of 1959. As a general rule, the taxation power was allocated to the state of residence, Germany, in this example. It is unlikely in this scenario that Germany will make the distinction between gross pension, to which deferred taxation applied, and net pension.\(^{96}\) As a result, Germany will tax the benefits from the net pension, leading to double taxation since the Netherlands never granted an exemption for pension entitlements, nor a deduction for pension contributions paid.

\(^{93}\) See Art. 10 Besluit voorkoming dubbele belasting 2001 (decision prevention of double taxation 2001).

\(^{94}\) To achieve this tax relief, Art. 5.17A (1) Wet IB 2001 describes a net old-age pension as a pension, built up on the basis of a defined contribution scheme, focused on providing a pension that, after 40 years of accrual, does not exceed 75% of the average amount that does not belong to the pensionable income under Art.18ga Wet LB 1964, multiplied by the net factor referred to in art. 5.16 (4) Wet IB 2001.

\(^{95}\) For an elaborate explanation of this issue, see: A.H.H. Bollen-Vandenboorn, ‘De vergeten grensarbeider en zijn nettopensioen’, MBB 2015/09.

\(^{96}\) In the same spirit: A.H.H. Bollen-Vandenboorn, ‘De vergeten grensarbeider en zijn nettopensioen’, MBB 2015/09. As the secretary of state asserts, it depends on the national law of the new country of residence whether the net pension is actually, in whole or in part, included in the levy (Kamerstukken II 2015/16, 32 042, nr. 329 (Verslag van een schriftelijk overleg) (Report of a written consultation)).
3.1.4.2 The New Tax Treaty with Germany (2016)

As a general rule, the Member State of residence, i.e. Germany, in this example, has taxation power under the new Treaty, on the basis of art. 17, paragraph 1 of the Treaty: In such cases, the same problem arises as in the previous section.

On the basis of Art. 17, paragraph 2 of the Treaty, the source state - in this example: the Netherlands - can also tax the benefits from the net pension, provided that the total gross amount of pensions receivable exceeds €15,000. The Netherlands will not tax these benefits on the basis of national law, so no double taxation will ensue. The new Treaty does not contain any specific agreements on net pensions either. As a result, Germany will not distinguish between gross and net pensions under the new Treaty either. Source-state levying does not grant the Netherlands exclusive taxation power though.

If the Netherlands, as the source state, can tax the net pension of the cross-border worker residing in Germany, the offsetting procedure is applied to prevent double taxation, according to Art. 22, paragraph 1, subsection b, sub ee of the Treaty. This implies that the German tax will be offset against the tax payable on the basis of Dutch tax law. As has already been pointed out, the net pension benefits in the Netherlands are not taxed. The offsetting method prescribes that a tax offset shall only be granted when taxation has effectively taken place. Since no actual taxation takes place, Germany offers no tax offset for the benefits resulting from the net pension scheme, effectively leading to double taxation.

3.1.4.3 Summary

The preceding makes it clear that the treaty negotiations anticipated insufficiently on potential negative consequences of the ‘capping measure’ introduced unilaterally by the Netherlands. For a concrete explanation of these consequences, it is important to have insight in the number of cross-border workers that use a net pension scheme.

3.1.5 General and special transitional regime for pensions

As a result of the transfer of taxation power in the new Tax Treaty, pensioners residing in Germany who used to be cross-border workers in the Netherlands and who receive a pension from the Netherlands that exceeds €15,000 are faced with substantial changes in their income position in comparison with the old Tax Treaty. This group is the most affected by the transfer of this power of taxation. An estimated 5,500 pensioners are involved.

Under the old Tax Treaty, the Netherlands had only been allocated taxation power over the AOW state pension. Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there. The fact that Germany hardly taxes Dutch pensions

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98 After all, Art. 17, paragraph 2 of the Treaty provides that ‘a pension or other similar remuneration, as well as an annuity or a social security pension can also be taxed in the contracting state from which it was derived’.
99 See also Netherlands Parliamentary Papers: Kamerstukken II 2015/16, 32 043, nr. 329. According to the Secretary of State, the number of pensioners with a net pension has not been registered at an aggregate level.
100 Kamerstukken II 2013/14, 33 615, nr. 8, p. 6, which references to the most recent data from the Tax Administration.
relates to the so-called 'Besteuerungsanteil' of paragraph 22, Part 1, third sentence, letter a, letter aa of the Einkommensteuergesetz, EStG (income tax act). A person who has been receiving an AOW benefit since 2005, for example, is only taxed for 50% of this benefit in Germany. A person enjoying an AOW benefit since 2016 will face a level of 72% taxation on that benefit. This exemption shall remain effective for all of the following years. Dutch occupational pensions are subject to the so-called 'Ertragsanteil', according to paragraph 22, Part 1, third sentence, letter a, letter bb, of the German Income Tax Act (EStG). Only 18% of the occupational pension of someone who retires at age 65 or 66 years, is added to the tax base under the German income tax regime. For a 67-year-old pensioner this percentage is only 17%. However, a qualification problem has arisen in Germany with regard to supplementary pensions. Some Tax Authorities (‘Finanzämter’) equate such pensions with 'Leistungen aus einer betrieblichen Altersvorsorge', thus causing 58% of the pension to be added to the tax base as 'Besteuerungsanteil', while other Tax Authorities brand these pensions as 'Leibrente aus einem Altersvorsorgevertrag oder aus einer betrieblichen Altersvorsorgung', in which case only 18% of the pension is taxed as 'Ertragsanteil'.

The aforementioned transfer of taxation power from Germany to the Netherlands, may have substantial tax consequences for pensioners. For this reason and as a first step, the general transitional regime was introduced, as laid down in Article 33, paragraph 6 of the Treaty. On the basis of this transitional regime taxpayers can still choose application of the old Tax Treaty for the year 2016. Given the favourable German taxation of Dutch pensions mentioned above, the majority of pensioners are expected to opt for this. This implies that the consequences for pensioners residing in Germany with a Dutch pension will only become noticeable per 1 January 2017.

In drawing up these transitional regimes, the Secretary of State for Finance did take into account a number of factors, including the height of the tax rates in both countries, the number of pensioners with a Dutch pension and the ratio between the number of pensioners in both countries. In view of these factors, among others, Germany and the Netherlands deemed the general transitional regime of one year, as laid down in Article 33, paragraph 6 of the Treaty, to be appropriate.

In addition, the Dutch cabinet saw reason to unilaterally provide an additional special transitional regime as part of the ratification act. The comparative tax levels in Germany and the Netherlands have been a major factor in the design of this unilateral transitional regime. This special transitional regime was introduced for certain items of income that fall under Article 17, paragraph 2 of the new Treaty and over which Germany held taxation power under the old tax

101 In 2011 it was found that the Finanzämter lacked a consistent approach to the qualification of Dutch company pensions. Some Tax Authorities (‘Finanzämter’) equate such pensions with 'Leistungen aus einer betrieblichen Altersvorsorge', thus causing 58% of the pension to be added to the tax base as 'Besteuerungsanteil', while other Tax Authorities brand these pensions as 'Leibrente aus einem Altersvorsorgevertrag oder aus einer betrieblichen Altersvorsorgung', in which case only 18% of the pension is taxed as 'Ertragsanteil'. According to B. Kloosterman, Ulrich P. Meyer and D. Laruelle, 'Welk buurland is een fiscaal paradijs voor gepensioneerden?', Over de grens 2011/3.

102 Kamerstukken II 2013/14, 33 615, nr. E (Nadere memorie van antwoord) (Further Memorandum of Reply).
law. Under certain conditions, these items of income will be taxed at a lower rate for the first six calendar years following the year of entry into force, i.e. 2016.

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Maximum tax burden</th>
</tr>
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<tbody>
<tr>
<td>2016</td>
<td>10%</td>
</tr>
<tr>
<td>2017</td>
<td>10%</td>
</tr>
<tr>
<td>2018</td>
<td>15%</td>
</tr>
<tr>
<td>2019</td>
<td>20%</td>
</tr>
<tr>
<td>2020</td>
<td>25%</td>
</tr>
<tr>
<td>2021</td>
<td>30%</td>
</tr>
</tbody>
</table>

The compensation is provided by offering a reduction on the income tax that would have been payable according to the 2001 Income Tax Act had this transitional regime not been applied. The calculations below will further clarify this.

This transitional regime can be applied under a number of cumulative conditions:

1. the object is a pension or another, similar remuneration, an annuity or a pension or other type of benefit paid according to the stipulations of the Dutch social security system;
2. the receiving natural person has been a resident of Germany without interruption since the ratification of the Treaty on 12 April 2012.
3. payment of said income item already took place prior to the date of entry into force of the Treaty on 1 January 2016; in other words: this concerns existing pensions, annuities, etc.
4. according to Art. 17, paragraph 2 of the Treaty said income items are taxable in the Netherlands, meaning that the total gross amount of pension or other, similar remuneration, annuity or other type of benefit paid per calendar year according to the stipulations of the Dutch social security system exceeds the amount of € 15,000.
5. taxation on the income item was solely assigned to Germany under the old Treaty.

The above implies that a taxpayer who became a resident of Germany between 12 April 2012 and 1 January 2016 has no right to apply this special transitional regime. Likewise, pensioners residing in Germany with a Dutch pension who migrated back to the Netherlands before 1 January 2016 cannot invoke the transitional regime. Nor does the special transitional regime apply to retired civil servants who reside in Germany and only receive an AOW pension besides their occupational government pension. The income consequences will not be mitigated for these groups. Moreover, it can be inferred from the condition under 4 that lump-sum payments of annuities and pensions do not fall under the transitional regime as they fall under Article 17, paragraph 3 of the Treaty.

103 Introduced in Netherlands Parliamentary Papers: Kamerstukken II 2013/14, 33 615, nr. 6 (Nota van wijziging) (Letter of Amendment).
Under 5 it is stipulated that the income item has to have fallen under German taxation authority under the old Treaty. This condition implies that Dutch social security benefits such as AOW, WIA, WAO and Wajong remain outside of this transitional regime. These benefits do, on the other hand, count towards the € 15,000 limit.

The reduction mentioned earlier is calculated as follows: the total of tax payable by a taxpayer in one calendar year is reduced by the difference between the part of the total income tax on the taxpayer’s taxable income from work and home, according to section 7.2 of the 2001 Dutch Income Tax Act, in a calendar year proportionally attributable to the income items without application of the transitional arrangement, and the tax payable on these income items as calculated using the lower rates. The part of the total tax on work and home which is proportionally attributable to the income items without application of the transitional regime is the amount of tax payable on income and home multiplied by the proportion of the relevant income items to the total positive income from work and home. The example below will clarify this calculation.

Furthermore, taxpayers may have other income components taxable in the Netherlands besides their pension, annuity or social security benefits, to which the transitional regime does not apply. In that case, the tax burden on the pension, annuity or social security benefits will increase with the income as a result of the progressive income tax rates. The application of the aforementioned lower rates could then lead to greater compensation as income rises. This is also evident from the following calculations.

**Example of the reduction**

A taxpayer lives in Germany, is older than 65 years and receives a Dutch occupational pension of € 30,000. He also receives other Dutch income to the amount of € 20,000, taxable in the Netherlands as well. Assuming that the taxpayer uses the transitional regime in 2016, the amount of Dutch tax is calculated as follows:

---

104 These types of benefits were not taxed in Germany under the old Treaty. They were, however, included in the tax progression clause.

105 The example below was derived from *Kamerstukken II* 2013/14, 33 615, nr. 6 (Nota van wijziging) (Letter of Amendment). A plenary report (*Handelingen II* 2013/14, 92, item 12, p. 2) mentions that the Association of European Border Region Residents (Vereniging Europese Grenslandbewoners) has also illustrated the impact of the new Tax Treaty through various examples.

106 This calculation uses the 2016 Dutch income tax rates and does not include deductions or tax credits.
<table>
<thead>
<tr>
<th><strong>Total income from work and home (BOX 1)</strong></th>
<th><strong>€50,000</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dutch income tax payable in 2016</td>
<td><strong>€9,853</strong></td>
</tr>
<tr>
<td>Ratio occupational pension - total income</td>
<td><strong>€ 30,000/€ 50,000 = 60%</strong></td>
</tr>
<tr>
<td>Proportional part of the taxation of pension without transitional regime (60% * €9,853)</td>
<td><strong>€5,911</strong></td>
</tr>
<tr>
<td>Maximum amount of tax payable on the pension</td>
<td>10%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the pension as a result of the transitional regime (10%)</td>
<td><strong>€ 3,000 (10% * € 30,000)</strong></td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td><strong>€2,911 (€5,911 -€3,000)</strong></td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td><strong>€6,942 (€9,853 -€2,911)</strong></td>
</tr>
</tbody>
</table>

Article 2, paragraph 5 of the special transitional regime regulates the overlap with the general transitional rules of Article 33, paragraph 6 of the Treaty. Taxpayers who choose this transitional regime in 2016 are not entitled to any of the special transitional regimes in that year.

The fact that the transitional regime is not already being applied by the paying agencies (pension funds, insurers, and the Dutch Sociale Verzekeringsbank) when paying the income components (pensions, annuities and social security benefits) has also been brought up in parliamentary history. However, the reduction in Dutch income tax payable, to be granted according to the transitional regime, depends on the size of any income to which the transitional regime does not apply. It is for this reason that the paying agencies do not take into account the application of the transitional regimes when collecting any Dutch income tax. Compensation cannot be obtained through a provisional assessment; taxpayers have to report their income / national insurance contributions.

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107 Kamerstukken II 2013/14, 33 615, nr. 6 (Nota van wijziging) (Letter of Amendment).
3.2 Treaty declarations
Under the old Treaty, taxing powers over pensions were generally allocated to the state of residence. For pensioners living in Germany, this means that Germany held exclusive taxation power over occupational pensions. In practice, the paying agency, in this case, the pension provider, deducts wage tax and transfers it to the Tax Administration. These executing bodies may be exempt from their deduction duties if a so-called ‘verdragsverklaring’, i.e. an exemption request for deductions of tax and national insurance contributions, has been issued to the person entitled to a pension.

Since the taxation power over occupational pensions with a total gross amount exceeding €15,000 was transferred to the Netherlands under the new Treaty, these ‘verdragsverklaringen’ have lost their validity. The executive bodies will in fact have to deduct wage tax and national insurance contributions in such cases. One may ask the question of who will inform the pensioner of the changes in such cases. The Tax Administration has promised to inform those pensioners with a Dutch pension or benefits who reside in Germany and who have received a relevant ‘verdragsverklaring’ in writing about the consequences of the new Treaty and the possibility of using the one-year transitional regime.

Note that ‘verdragsverklaringen’ already issued have not been repealed as per immediately, particularly because of the option to still apply the old Treaty in 2016, as regulated by Art. 33, paragraph 6 of the Treaty. Moreover, repeals depend on the facts and circumstances of each individual case, such as whether or not the €15,000 limit has been exceeded. The Tax Administration actively approached pensioners with a Dutch pension, residing in Germany, asking them whether they wished to make use of the transitional regime mentioned above. Subsequently, the Tax Administration assessed which ‘verdragsverklaringen’ were to be repealed and informed both the taxpayers involved and the executing bodies.

3.3 Calculations on pensions: the pensioner living in Germany with a Dutch pension\footnote{For various other examples, see Kamerstukken 2013/14 II, 33 615, nr. 5, NNV II, p. 27-30. The calculations as included in this report do not take into account national insurance contributions, since the person is assumed to be covered under social insurance in Germany. See also the examples listed in the annex to the above Parliamentary Papers.}

The group of pensioners living in Germany which have built up a pension in The Netherlands, AOW state pension as well as an occupational pension, are confronted with a possible decline in income as a result of the new Tax Treaty. This paragraph will outline the income effects under the old Treaty and the new Treaty using five cases and taking into account the application of the general and special transitional regimes. To this end, we will apply the system used in the example in paragraph 3.1.5. The following principles govern these cases:

- The pensioner is assumed to have built up both an AOW pension and an occupational pension in the Netherlands, and, for example, no annuity.

- Regarding the amount of AOW pension: the two most common situations will be elaborated in the five cases: single pensioners with a gross annual AOW pension of €13,736.64 and married or cohabitant pensioners, both of pensionable age, with a gross annual AOW pension of €9,465.72. The AOW amounts are therefore fixed. In addition, for the sake of convenience, no further indexation is assumed of the AOW pension amounts after 2016.

- For the gross occupational pension, the following annual amounts are used:
  - €10,000;
  - €30,000;
  - €50,000;
  - €75,000;
  - €110,000.\footnote{This income category has been included to provide insight into the effects on the highest incomes rather than to demonstrate the application of the net pension scheme. To qualify for application of the transitional regime, a payment from the net pension scheme must have been made before the date of entry into force of the Treaty, i.e. 1 January 2016. This is unlikely given the recent date of entry into force of the net pension scheme, i.e. 1 January 2015. This makes application of the transitional regime to benefits from the net pension scheme unlikely.}

The calculations are based on the tax laws and regulations of 2016. The elaboration of the following situations assumes application of the general transitional regime in 2016. As mentioned above, this means that the special transitional regime can only be invoked for five years, from 2017 to 2021. The application of the special transitional regimes will be mapped for this period.
### 3.3.1 Case 1: €10,000 occupational pension and AOW (Dutch State Pension)

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOW (Dutch State Pension)</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
</tr>
<tr>
<td>Occupational pension</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
</tr>
<tr>
<td>Total income from work and home (BOX 1)</td>
<td>€23,736.64</td>
<td>€23,736.64</td>
<td>€23,736.64</td>
<td>€23,736.64</td>
<td>€23,736.64</td>
</tr>
<tr>
<td>Dutch income tax payable</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
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<tr>
<td>Ratio occupational pension - total income</td>
<td>42.13%</td>
<td>42.13%</td>
<td>42.13%</td>
<td>42.13%</td>
<td>42.13%</td>
</tr>
<tr>
<td>Proportional part of the taxation of occupational pension without transitional regime</td>
<td>€901.87</td>
<td>€901.87</td>
<td>€901.87</td>
<td>€901.87</td>
<td>€901.87</td>
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<tr>
<td>Maximum amount of tax payable on the occupational pension</td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</td>
<td>€1,000.00</td>
<td>€1,500.00</td>
<td>€2,000.00</td>
<td>€2,500.00</td>
<td>€3,000.00</td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td>No reduction (€901.87 - €1,000.00)</td>
<td>No reduction (€901.87 - €1,500.00)</td>
<td>No reduction (€901.87 - €2,000.00)</td>
<td>No reduction (€901.87 - €2,500.00)</td>
<td>No reduction (€901.87 - €3,000.00)</td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
<td>€2,140.74</td>
</tr>
</tbody>
</table>
Married or cohabitant, both of pension age

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOW (Dutch State Pension)</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
</tr>
<tr>
<td>Occupational pension</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
<td>€10,000.00</td>
</tr>
<tr>
<td>Total income from work and home (BOX 1)</td>
<td>€19,465.72</td>
<td>€19,465.72</td>
<td>€19,465.72</td>
<td>€19,465.72</td>
<td>€19,465.72</td>
</tr>
<tr>
<td>Dutch income tax payable</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
</tr>
<tr>
<td>Ratio occupational pension - total income</td>
<td>51.37%</td>
<td>51.37%</td>
<td>51.37%</td>
<td>51.37%</td>
<td>51.37%</td>
</tr>
<tr>
<td>Proportional part of the taxation of occupational pension without transitional regime</td>
<td>€830.98</td>
<td>€830.98</td>
<td>€830.98</td>
<td>€830.98</td>
<td>€830.98</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension</td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</td>
<td>€1,000.00</td>
<td>€1,500.00</td>
<td>€2,000.00</td>
<td>€2,500.00</td>
<td>€3,000.00</td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td>No reduction (€ 830.98 - €1,000.00)</td>
<td>No reduction (€ 830.98 - €1,500.00)</td>
<td>No reduction (€ 830.98 - €2,000.00)</td>
<td>No reduction (€ 830.98 - €2,500.00)</td>
<td>No reduction (€ 830.98 - €3,000.00)</td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
<td>€1,617.55</td>
</tr>
</tbody>
</table>
Conclusion

This case shows that the special transitional regime has no effect for occupational pensions of €10,000 supplemented by an AOW pension of €13,736.64 for single persons or €9,465.72 for married or cohabitant couples. This is caused by the small reduction due to lower rates. The transitional regime has little or no effect on incomes below this line, whereas it is exactly this group that should receive compensation given that the tax increase puts a relatively heavier burden on these taxpayers.

Under the old Tax Treaty, the Netherlands had only been allocated taxation power over the AOW state pension, in which case taxpayers would have to pay a mere €1,153.88 in income tax on an AOW pension of €13,736.64, or €795.12 on an AOW pension of €9,465.72 for married or cohabitant couples. Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

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113 Based on the 2016 percentages.
### 3.3.2 Case 2: €30,000 occupational pension and AOW (Dutch State Pension)

**Single**

<table>
<thead>
<tr>
<th>Year</th>
<th>AOW (Dutch State Pension)</th>
<th>Occupational Pension</th>
<th>Total income from work and home (BOX 1)</th>
<th>Dutch income tax payable</th>
<th>Ratio occupational pension - total income</th>
<th>Proportional part of the taxation of occupational pension without transitional regime</th>
<th>Maximum amount of tax payable on the occupational pension</th>
<th>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</th>
<th>Reduction as a result of the transitional regime</th>
<th>Total Dutch tax on income after application of transitional regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>€13,736.64</td>
<td>€30,000.00</td>
<td>€43,736.64</td>
<td>€7,324.01</td>
<td>68.59%</td>
<td>€5,023.71</td>
<td>10.00%</td>
<td>€3,000.00</td>
<td>€2,023.71 (€5,023.71 - €3,000.00)</td>
<td>€5,300.30 (€7,324.01 - €2,023.71)</td>
</tr>
<tr>
<td>2018</td>
<td>€13,736.64</td>
<td>€30,000.00</td>
<td>€43,736.64</td>
<td>€7,324.01</td>
<td>68.59%</td>
<td>€5,023.71</td>
<td>15.00%</td>
<td>€4,500.00</td>
<td>€523.71 (€5,023.71 - €4,500.00)</td>
<td>€6,800.30 (€7,324.01 - €523.71)</td>
</tr>
<tr>
<td>2019</td>
<td>€13,736.64</td>
<td>€30,000.00</td>
<td>€43,736.64</td>
<td>€7,324.01</td>
<td>68.59%</td>
<td>€5,023.71</td>
<td>20.00%</td>
<td>€6,000.00</td>
<td>No reduction (€5,023.71 - €6,000.00)</td>
<td>€7,324.01</td>
</tr>
<tr>
<td>2020</td>
<td>€13,736.64</td>
<td>€30,000.00</td>
<td>€43,736.64</td>
<td>€7,324.01</td>
<td>68.59%</td>
<td>€5,023.71</td>
<td>25.00%</td>
<td>€7,500.00</td>
<td>No reduction (€5,023.71 - €7,500.00)</td>
<td>€7,324.01</td>
</tr>
<tr>
<td>2021</td>
<td>€13,736.64</td>
<td>€30,000.00</td>
<td>€43,736.64</td>
<td>€7,324.01</td>
<td>68.59%</td>
<td>€5,023.71</td>
<td>30.00%</td>
<td>€9,000.00</td>
<td>No reduction (€5,023.71 - €9,000.00)</td>
<td>€7,324.01</td>
</tr>
</tbody>
</table>
Married or cohabitant, both of pension age

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOW (Dutch State Pension)</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
</tr>
<tr>
<td>Occupational pension</td>
<td>€30,000.00</td>
<td>€30,000.00</td>
<td>€30,000.00</td>
<td>€30,000.00</td>
<td>€30,000.00</td>
</tr>
<tr>
<td>Total income from work and home (BOX 1)</td>
<td>€39,465.72</td>
<td>€39,465.72</td>
<td>€39,465.72</td>
<td>€39,465.72</td>
<td>€39,465.72</td>
</tr>
<tr>
<td>Dutch income tax payable</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
</tr>
<tr>
<td>Ratio occupational pension - total income</td>
<td>76.02%</td>
<td>76.02%</td>
<td>76.02%</td>
<td>76.02%</td>
<td>76.02%</td>
</tr>
<tr>
<td>Proportional part of the taxation of occupational pension without transitional regime</td>
<td>€4,255.76</td>
<td>€4,255.76</td>
<td>€4,255.76</td>
<td>€4,255.76</td>
<td>€4,255.76</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension</td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</td>
<td>€3,000.00</td>
<td>€4,500.00</td>
<td>€6,000.00</td>
<td>€7,500.00</td>
<td>€9,000.00</td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td>€1,255.76 (€4,255.76 - €3,000.00)</td>
<td>No reduction (€4,255.76 - €4,500.00)</td>
<td>No reduction (€4,255.76 - €6,000.00)</td>
<td>No reduction (€4,255.76 - €7,500.00)</td>
<td>No reduction (€4,255.76 - €9,000.00)</td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td>€4,342.79 (€5,598.55 - €1,255.76)</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
<td>€5,598.55</td>
</tr>
</tbody>
</table>
Conclusion

This case shows that the special transitional regime only has an effect for pensions of € 30,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. For a pension of € 13,736.64 and an occupational pension of € 30,000, the arrangement will be advantageous in 2017 and 2018. For a pension of € 9,465.72 and an occupational pension of € 30,000, the arrangement will only be advantageous in 2017. The transitional regime has little or no effect on incomes below this line, whereas it is exactly this group that should receive compensation given that the tax increase puts a relatively heavier burden on these taxpayers.

Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465.72 for married or cohabitant couples.\textsuperscript{114} Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

\textsuperscript{114} Based on the 2016 percentages.
### 3.3.3 Case 3: €50,000 occupational pension and AOW (Dutch State Pension)

**Single**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AOW (Dutch State Pension)</strong></td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
</tr>
<tr>
<td><strong>Occupational pension</strong></td>
<td>€50,000.00</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
</tr>
<tr>
<td><strong>Total income from work and home (BOX 1)</strong></td>
<td>€63,736.64</td>
<td>€63,736.64</td>
<td>€63,736.64</td>
<td>€63,736.64</td>
<td>€63,736.64</td>
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<td><strong>Dutch income tax payable</strong></td>
<td>€15,404.01</td>
<td>€15,404.01</td>
<td>€15,404.01</td>
<td>€15,404.01</td>
<td>€15,404.01</td>
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<tr>
<td><strong>Ratio occupational pension - total income</strong></td>
<td>78.45%</td>
<td>78.45%</td>
<td>78.45%</td>
<td>78.45%</td>
<td>78.45%</td>
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<td><strong>Proportional part of the taxation of occupational pension without transitional regime</strong></td>
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<td>€12,084.11</td>
<td>€12,084.11</td>
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</tr>
<tr>
<td><strong>Maximum amount of tax payable on the occupational pension</strong></td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td><strong>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</strong></td>
<td>€5,000.00</td>
<td>€7,500.00</td>
<td>€10,000.00</td>
<td>€12,500.00</td>
<td>€15,000.00</td>
</tr>
<tr>
<td><strong>Reduction as a result of the transitional regime</strong></td>
<td>€7,084.11 (€12,084.11 - €5,000.00)</td>
<td>€4,584.11 (€12,084.11 - €7,500.00)</td>
<td>€2,084.11 (€12,084.11 - €10,000.00)</td>
<td>No reduction (€12,084.11 - €12,500.00)</td>
<td>No reduction (€12,084.11 - €15,000.00)</td>
</tr>
<tr>
<td><strong>Total Dutch tax on income after application of transitional regime</strong></td>
<td>€8,319.90 (€15,404.01 - €7,084.11)</td>
<td>€10,819.90 (€15,404.01 - €4,584.11)</td>
<td>€13,319.90 (€15,404.01 - €2,084.11)</td>
<td>€15,404.01</td>
<td>€15,404.01</td>
</tr>
<tr>
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<td>2021</td>
</tr>
<tr>
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<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
</tr>
<tr>
<td>AOW (Dutch State Pension)</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
</tr>
<tr>
<td>Occupational pension</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
<td>€50,000.00</td>
</tr>
<tr>
<td>Total income from work and home (BOX 1)</td>
<td>€59,465.72</td>
<td>€59,465.72</td>
<td>€59,465.72</td>
<td>€59,465.72</td>
<td>€59,465.72</td>
</tr>
<tr>
<td>Dutch income tax payable</td>
<td>€13,678.55</td>
<td>€13,678.55</td>
<td>€13,678.55</td>
<td>€13,678.55</td>
<td>€13,678.55</td>
</tr>
<tr>
<td>Ratio occupational pension - total income</td>
<td>84.08%</td>
<td>84.08%</td>
<td>84.08%</td>
<td>84.08%</td>
<td>84.08%</td>
</tr>
<tr>
<td>Proportional part of the taxation of occupational pension without transitional regime</td>
<td>€11,501.21</td>
<td>€11,501.21</td>
<td>€11,501.21</td>
<td>€11,501.21</td>
<td>€11,501.21</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension</td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</td>
<td>€5,000.00</td>
<td>€7,500.00</td>
<td>€10,000.00</td>
<td>€12,500.00</td>
<td>€15,000.00</td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td>€6,501.21</td>
<td>€4,001.21</td>
<td>€1,501.21</td>
<td>No reduction</td>
<td>No reduction</td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td>€7,177.34 (€13,678.55 - €6,501.21)</td>
<td>€9,677.34 (€13,678.55 - €4,001.21)</td>
<td>€12,177.34 (€13,678.55 - €1,501.21)</td>
<td>€13,678.55</td>
<td>€13,678.55</td>
</tr>
</tbody>
</table>
Conclusion

This case shows that the special transitional regime has an effect for a pension of € 50,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. For both cases, single and married/cohabitant, the regime will remain effective from 2017 to 2019. The transitional regime has little or no effect on incomes below this line, whereas it is exactly this group that should receive compensation given that the tax increase puts a relatively heavier burden on these taxpayers.

Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465,72 for married or cohabitant couples. Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

---

115 Based on the 2016 percentages.
3.3.4 Case 4: €75,000 occupational pension and AOW (Dutch State Pension)

**Single**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOW (Dutch State Pension)</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
</tr>
<tr>
<td>Occupational pension</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
</tr>
<tr>
<td>Total income from work and home (BOX 1)</td>
<td>€88,736.64</td>
<td>€88,736.64</td>
<td>€88,736.64</td>
<td>€88,736.64</td>
<td>€88,736.64</td>
</tr>
<tr>
<td>Dutch income tax payable</td>
<td>€28,092.62</td>
<td>€28,092.62</td>
<td>€28,092.62</td>
<td>€28,092.62</td>
<td>€28,092.62</td>
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<tr>
<td>Ratio occupational pension - total income</td>
<td>84.52%</td>
<td>84.52%</td>
<td>84.52%</td>
<td>84.52%</td>
<td>84.52%</td>
</tr>
<tr>
<td>Proportional part of the taxation of occupational pension without transitional regime</td>
<td>€23,743.82</td>
<td>€23,743.82</td>
<td>€23,743.82</td>
<td>€23,743.82</td>
<td>€23,743.82</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension</td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</td>
<td>€7,500.00</td>
<td>€11,250.00</td>
<td>€15,000.00</td>
<td>€18,750.00</td>
<td>€22,500.00</td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td>€16,243.82 (€23,743.82 - €7,500.00)</td>
<td>€12,493.82 (€23,743.82 - €11,250.00)</td>
<td>€8,743.82 (€23,743.82 - €15,000.00)</td>
<td>€4,993.82 (€23,743.82 - €18,750.00)</td>
<td>€1,243.82 (€23,743.82 - €22,500.00)</td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td>€11,848.80 (€28,092.62 - €16,243.82)</td>
<td>€15,598.80 (€28,092.62 - €12,493.82)</td>
<td>€19,348.80 (€28,092.62 - €8,743.82)</td>
<td>€23,098.80 (€28,092.62 - €4,993.82)</td>
<td>€26,848.80 (€28,092.62 - €1,243.82)</td>
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</tbody>
</table>
Married or cohabitant, both of pension age

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AOW (Dutch State Pension)</strong></td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
</tr>
<tr>
<td><strong>Occupational pension</strong></td>
<td>€75,000.00</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
<td>€75,000.00</td>
</tr>
<tr>
<td><strong>Total income from work and home (BOX 1)</strong></td>
<td>€84,465.72</td>
<td>€84,465.72</td>
<td>€84,465.72</td>
<td>€84,465.72</td>
<td>€84,465.72</td>
</tr>
<tr>
<td><strong>Dutch income tax payable</strong></td>
<td>€25,871.74</td>
<td>€25,871.74</td>
<td>€25,871.74</td>
<td>€25,871.74</td>
<td>€25,871.74</td>
</tr>
<tr>
<td><strong>Ratio occupational pension - total income</strong></td>
<td>88.79%</td>
<td>88.79%</td>
<td>88.79%</td>
<td>88.79%</td>
<td>88.79%</td>
</tr>
<tr>
<td><strong>Proportional part of the taxation of occupational pension without transitional regime</strong></td>
<td>€22,972.40</td>
<td>€22,972.40</td>
<td>€22,972.40</td>
<td>€22,972.40</td>
<td>€22,972.40</td>
</tr>
<tr>
<td><strong>Maximum amount of tax payable on the occupational pension</strong></td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td><strong>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</strong></td>
<td>€7,500.00</td>
<td>€11,250.00</td>
<td>€15,000.00</td>
<td>€18,750.00</td>
<td>€22,500.00</td>
</tr>
<tr>
<td><strong>Reduction as a result of the transitional regime</strong></td>
<td>€15,472.40</td>
<td>€11,722.40</td>
<td>€7,972.40</td>
<td>€4,222.40</td>
<td>€472.40</td>
</tr>
<tr>
<td></td>
<td>(€22,972.40 - €7,500.00)</td>
<td>(€22,972.40 - €11,250.00)</td>
<td>(€22,972.40 - €15,000.00)</td>
<td>(€22,972.40 - €18,750.00)</td>
<td>(€22,972.40 - €22,500.00)</td>
</tr>
<tr>
<td><strong>Total Dutch tax on income after application of transitional regime</strong></td>
<td>€10,399.34</td>
<td>€14,149.34</td>
<td>€17,899.34</td>
<td>€21,649.34</td>
<td>€25,399.34</td>
</tr>
</tbody>
</table>
Conclusion

This case shows that the special transitional regime has an effect for a pension of € 50,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. For both cases, single and married/cohabitant, the regime will remain effective from 2017 to 2021. Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465.72 for married or cohabitant couples. Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

116 Based on the 2016 percentages.
### Case 5: €110,000 occupational pension and AOW (Dutch State Pension)

#### Single

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AOW (Dutch State Pension)</strong></td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
<td>€13,736.64</td>
</tr>
<tr>
<td><strong>Occupational pension</strong></td>
<td>€110,000.00</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
</tr>
<tr>
<td><strong>Total income from work and home (BOX 1)</strong></td>
<td>€123,736.64</td>
<td>€123,736.64</td>
<td>€123,736.64</td>
<td>€123,736.64</td>
<td>€123,736.64</td>
</tr>
<tr>
<td><strong>Dutch income tax payable</strong></td>
<td>€46,292.62</td>
<td>€46,292.62</td>
<td>€46,292.62</td>
<td>€46,292.62</td>
<td>€46,292.62</td>
</tr>
<tr>
<td><strong>Ratio occupational pension - total income</strong></td>
<td>88.90%</td>
<td>88.90%</td>
<td>88.90%</td>
<td>88.90%</td>
<td>88.90%</td>
</tr>
<tr>
<td><strong>Proportional part of the taxation of occupational pension without transitional regime</strong></td>
<td>€41,153.44</td>
<td>€41,153.44</td>
<td>€41,153.44</td>
<td>€41,153.44</td>
<td>€41,153.44</td>
</tr>
<tr>
<td><strong>Maximum amount of tax payable on the occupational pension</strong></td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td><strong>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</strong></td>
<td>€11,000</td>
<td>€16,500</td>
<td>€22,000</td>
<td>€27,500</td>
<td>€33,000</td>
</tr>
<tr>
<td><strong>Reduction as a result of the transitional regime</strong></td>
<td>€30,153.44</td>
<td>€24,653.44</td>
<td>€19,153.44</td>
<td>€13,653.44</td>
<td>€8,153.44</td>
</tr>
<tr>
<td><strong>Total Dutch tax on income after application of transitional regime</strong></td>
<td>€16,139.18</td>
<td>€21,639.18</td>
<td>€27,139.18</td>
<td>€32,639.18</td>
<td>€38,139.18</td>
</tr>
</tbody>
</table>
### Married or cohabitant, both of pension age

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>AOW (Dutch State Pension)</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
<td>€9,465.72</td>
</tr>
<tr>
<td>Occupational pension</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
<td>€110,000.00</td>
</tr>
<tr>
<td>Total income from work and home (BOX 1)</td>
<td>€119,465.72</td>
<td>€119,465.72</td>
<td>€119,465.72</td>
<td>€119,465.72</td>
<td>€119,465.72</td>
</tr>
<tr>
<td>Dutch income tax payable</td>
<td>€44,071.74</td>
<td>€44,071.74</td>
<td>€44,071.74</td>
<td>€44,071.74</td>
<td>€44,071.74</td>
</tr>
<tr>
<td>Ratio occupational pension - total income</td>
<td>92.08%</td>
<td>92.08%</td>
<td>92.08%</td>
<td>92.08%</td>
<td>92.08%</td>
</tr>
<tr>
<td>Proportional part of the taxation of occupational pension without transitional regime</td>
<td>€40,579.77</td>
<td>€40,579.77</td>
<td>€40,579.77</td>
<td>€40,579.77</td>
<td>€40,579.77</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension</td>
<td>10.00%</td>
<td>15.00%</td>
<td>20.00%</td>
<td>25.00%</td>
<td>30.00%</td>
</tr>
<tr>
<td>Maximum amount of tax payable on the occupational pension as a result of the transitional regime</td>
<td>€11,000</td>
<td>€16,500</td>
<td>€22,000</td>
<td>€27,500</td>
<td>€33,000</td>
</tr>
<tr>
<td>Reduction as a result of the transitional regime</td>
<td>€29,579.77 (€40,579.77 - €11,000)</td>
<td>€24,079.77 (€40,579.77 - €16,500)</td>
<td>€18,579.77 (€40,579.77 - €22,000)</td>
<td>€13,079.77 (€40,579.77 - €27,500)</td>
<td>€7,579.77 (€40,579.77 - €33,000)</td>
</tr>
<tr>
<td>Total Dutch tax on income after application of transitional regime</td>
<td>€14,491.97 (€44,071.74 - €29,579.77)</td>
<td>€19,991.97 (€44,071.74 - €24,079.77)</td>
<td>€25,491.97 (€44,071.74 - €18,579.77)</td>
<td>€30,991.97 (€44,071.74 - €13,079.77)</td>
<td>€36,491.97 (€44,071.74 - €7,579.77)</td>
</tr>
</tbody>
</table>
Conclusion

This case shows that the special transitional regime has an effect for a pension of €110,000 supplemented by an AOW pension of €13,736.64 for single persons or €9,465.72 for married or cohabitant couples. For both cases, single and married/cohabitant, the regime will remain effective from 2017 to 2021. Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere €1,153.88 in income tax on an AOW pension of €13,736.64, or €795 on an AOW pension of €9,465.72 for married or cohabitant couples. Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

This income category has been included to provide insight into the effects on the highest incomes rather than to demonstrate the application of the net pension scheme. To qualify for application of the transitional regime, a payment from the net pension scheme must have been made before the date of entry into force of the Treaty, i.e. 1 January 2016. This is unlikely given the recent date of entry into force of the net pension scheme, i.e. 1 January 2015. This makes application of the transitional regime to benefits from the net pension scheme unlikely.

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117 Based on the 2016 percentages.
4. Conclusions and recommendations from a Euregional perspective

4.1 Substantive conclusions: pension effects of the Tax Treaty between the Netherlands and Germany

As indicated previously, the income effects of the new Tax Treaty were central to this dossier. The income effects of the new pension article on various income groups have been illustrated for the next several years, while taking into account the application of the special transitional regime.

It can be concluded from this study that the special transitional regime is particularly advantageous for pensioners with a relatively high pension, residing in Germany, as evidenced by the five cases used to clarify the impact of the special transitional regime. One explanation for this effect can be found in the progressive rates in Art. 2.10a Wet IB 2001, which shows that the maximum rates of the first two tax brackets were 5.85% and 10.85% respectively in 2016. As a result, especially taxpayers in the third (42%) and fourth bracket (52%) will reap a relatively greater benefit from the transitional regime. As the amount of tax payable rises, the reduction available from the special transitional regime increases more rapidly in relative terms. The Dutch Secretary of Finance stated that the cabinet had made the special transitional regime for pensioners residing in Germany with the specific purpose of achieving a more gradual transition, mainly for those with higher pension incomes, as the new Treaty may entail a higher tax burden, particularly for them. Thus, the reduced rates mentioned above are specifically related to the level of tax rates in Germany and in the Netherlands. In addition, the Secretary of State emphasized that designing any transitional regime is a matter of customization. The State Secretary has ensured that residents of the Netherlands with a pension, an annuity or a social insurance benefit from Germany totalling less than € 15,000 suffer no income loss. For this reason, no transitional regime was made for this group of pensioners. This is due to the fact that the state of residence retains the power of taxation over pensions up to € 15,000, meaning that no transfer of taxation power takes place in such cases.

Despite the principle of achieving a more gradual transfer of taxation powers, it has had large income effects, particularly for pensioners residing in Germany with a Dutch pension of more than € 15,000, for whom the transitional regime was designed in particular. Regarding the above, it should be pointed out that pensioners residing in Germany with a pension exceeding € 15,000, making them integrally taxable in the Netherlands, can be regarded as qualifying foreign taxpayers. Taxpayers who meet these conditions may be granted the same deductions and tax credits as residents of the Netherlands, including, for example, mortgage interest deduction.

118 Kamerstukken II 2013/14, 33 615, nr. E (Nadere memorie van antwoord) (Further Memorandum of Reply).
119 Kamerstukken II 2013/14, 33 615, nr. 5 (tables 3 and 4 in the Appendix).
120 Art. 7.8 Wet IB 2001.
4.2 Conclusions regarding the cross-border impact assessment and the further development of the instrument

The production of this dossier can be seen as a first step from a Dutch fiscal-legal point of view towards further research in the future. As such, it does not pretend to be comprehensive, and explicit attention was paid to a national fiscal measure, i.e. the Dutch net pension scheme, which may raise questions about its fiscal treatment on treaty level. Future research might also study the Treaty from the German perspective. To this end, it is also important that adequate statistical data is available that can be used to clarify the impact of the new Tax Treaty in practice. The following topics could qualify for future research:

- The fact that the transitional regime is used for residents of Germany who have built up a pension in the Netherlands can be seen as an indication that the problems particularly occur there and not vice versa. Nevertheless, it would be recommendable to shed light on the latter situation as well in the future, with the ultimate goal of making a comparison of:
  - The income position of the ‘next-door neighbour’ and former colleague of the Dutch retired cross-border worker under both the old and the new Tax Treaty.
  - The income position of the ‘next-door neighbour’ and former colleague of the German retired cross-border worker under both the old and the new Tax Treaty.

- Pursuing further research from an economic perspective into the effects of the new Tax Treaty on the sustainable economic development of the border region and its business climate.

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121 For an illustration, see: Kamerstukken II 2013/14, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), Appendix 1.
3.2 Recognition of Professional Qualifications

Prof. Hildegard Schneider
Dr. Alexander Hoogenboom
Lavinia Kortese, LL.M.

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1. Introduction

The recognition of professional qualifications has been treated at the European level for over 50 years. The 1957 Treaty of Rome gave the European Community its first legislative powers regarding the recognition of professional qualifications. These powers marked the beginning of extensive legislation aimed at benefiting the free movement of people for professionals in regulated professions.

The final instrument in a long line of legislative instruments regarding the recognition of professional qualifications is Directive 2013/55/EU. This last directive did not introduce a new instrument for the recognition of professional qualifications, but amended and modernized the existing rules laid down in Directive 2005/36/EC. The European legal framework for the recognition of professional qualifications required modernization in order to better exploit the potential of an integrated services market and to mitigate the growing shortage of qualified labour.

The modernization of Directive 2005/36/EC was the result of, among others, extensive stakeholder consultation by the European Commission. This revealed a universal desire for improved access to information, simplified recognition procedures while retaining the quality of service provision and a modernized system of automatic recognition among all interested parties.

Directive 2013/55/EU introduced a number of amendments to Directive 2005/36/EC: accelerated procedures are now available to some professionals through the European Professional Card, an alert mechanism has been introduced, the requirements for language tests have been specified, automatic recognition can be expanded through common training principles and the principle of partial access has now been anchored in EU legislation.

These elements of Directive 2013/55/EU constitute the most prominent modernizations. Nevertheless, experience shows that professionals who wish to work across borders too often encounter obstacles that result from practical matters, such as finding the proper (source of) information, the duration of the recognition procedures and the cost of these procedures.

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122 Article 57 Treaty of Rome.
123 A regulated profession is a profession for which the law stipulates specific requirements regarding its practice. Access to non-regulated professions is free in the EU as a consequence of the free movement of people.
127 Ibid., p. 4.
analysis aims to discover how a number of essential practical matters, of great importance to cross-border workers, have been implemented and are being executed in a select number of countries and states since the modernization of Directive 2005/36/EC by Directive 2013/55/EU.

2. Research Objectives, Definitions, Themes and Indicators

2.1 Current or Future Effects, Objective: Ex-post

The aim of the Recognition of Professional Qualifications Dossier is to perform an ex-post analysis of a number of transpositions of Directive 2013/55/EU. The implementation deadline of this Directive was set on 18 January 2016. The recent transposition date, as well as the fact that the implementation activities regarding the Directive have not been concluded yet in some of the areas observed, make this an ex-post analysis in a very early stage.

Due to its structure, among others, Directive 2005/36/EC as amended by Directive 2013/55/EU is commonly implemented in both general and sectoral legislation. The Directive provides different regimes for the recognition of professional qualifications. A first categorization is made on the basis of the duration of the stay. On the one hand, the Directive provides rules for the free provision of services. These provisions are only applicable to service providers who temporarily and occasionally visit another Member State to practise their profession. The free provision of services is excluded from the present study.

The analysis in this dossier is focused on the freedom of establishment. In this case, the professional provides long-term services in a neighbouring country. The freedom of establishment offers professionals the opportunity to obtain recognition under three regimes:

- Recognition based on the coordination of the minimum training conditions

Professionals in certain professions can obtain automatic recognition if they meet the training requirements and hold the titles specified in the Directive. This system is only available for doctors having completed basic medical training/medical specialists, dentists, nurses, midwives, veterinarians, pharmacists and architects.

\[\text{niederländisch-deutschen Arbeitsmarkt: Chancen fuer die Bereiche Erziehung und Pflege},\]


129 Article 3, paragraph 1, Directive 2013/55/EU

130 Article 5, paragraph 2, consolidated version of Directive 2005/36/EC.

131 Title III, Chapter III, consolidated version of Directive 2005/36/EC.
Recognition of professional experience

Professionals in crafts and trade occupations can also obtain automatic recognition. In their case automatic recognition is based on professional experience instead of on minimum training requirements.

General system

The greater part of professionals fall under the general system. Those professionals who do not meet the requirements for automatic recognition can still obtain recognition through this system. It also includes all other regulated professions that do not qualify for automatic recognition. Although the system has recognition as its starting point, Member States are allowed to impose compensatory measures under certain conditions.

This subdivision into different categories of recognition and different professions usually results in implementation “in several places”. In the Netherlands, for instance, the greater part of the Directive has been implemented in the General Act on the Recognition of EU Professional Qualifications (Dutch: Algemene Wet Erkenning EU-Beroepskwalificaties), but several provisions, including those for doctors with basic medical training/medical specialists, dentists, nurses, midwives, veterinarians, pharmacists and architects, have been implemented in sectoral legislation.

Although the great complexity partially explains the fact that the transposition of the Directive has not been completed in some countries, this is not the only reason for delays in the implementation process. For example, the implementation of Directive 2013/55/EU is still in progress in Belgium as it coincides with the sixth state reform, which focuses on the transfer of certain powers, including the recognition of professional qualifications, to the Communities and the Regions.

2.2 Effects: on which geographical area? Definition of the border region

The Dossier on the Recognition of Professional Qualifications covers the geographical border region immediately adjacent to the Dutch Province of Limburg. It does have a special character, however, compared to the other dossiers in this Cross-Border Impact Assessment due to the definition of the border region. Recognition procedures are no different for cross-border workers who are seeking recognition of their professional qualifications from a neighbouring country than for professionals who have obtained their qualifications in a Member State that is not

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132 Title III, Chapter II, consolidated version of Directive 2005/36/EC.
133 Title III, Chapter I, consolidated version of Directive 2005/36/EC.
134 Article 14 consolidated version of Directive 2005/36/EC.
immediately adjacent to the relevant Member State. Thus, in this Dossier, the legal situation of cross-border workers is no different from that of EU citizens whose qualifications have been obtained in an EU Member State not immediately adjacent to the Dutch Province of Limburg.

As a consequence, the scope of this Dossier requires further specification. The analysis in this Dossier applies to the entire border region of Belgium and the Netherlands. Since EU legislation on the recognition of professional qualifications has largely been implemented on the level of the Bundesländer in Germany, the analysis of the German-Dutch border situation in this Dossier focuses on the border region between the Netherlands and North Rhine-Westphalia.

2.3 Border effects on? What are the themes of the research, its principles, benchmarks and indicators?

2.3.1 The Dossier Recognition of Professional Qualifications and Its Effects

The Dossier on the Recognition of Professional Qualifications has two themes: effects on European integration and cross-border sustainable development. The former is the main theme of this Dossier.

The recognition of professional qualifications is a subject that flows from the free movement of people, which is a part of European citizenship under the EU treaties. Workers not only have a right to free movement under the EU Treaties: this right is also paired with the prohibition of discrimination on the basis of nationality.

The subject of recognition of professional qualifications does have consequences for the sustainable development and business climate of the border region. EU citizens are free to move across borders, a freedom that goes hand in hand with realizing an optimal allocation of resources. The recognition of professional qualifications not only realizes the fundamental freedoms of the internal market for EU citizens, it also offers the possibility of addressing growing shortages of qualified labour.

The theme of Euregional cohesion is not addressed in the present study. The indicators tested in the context of Directive 2005/36/EC and its underlying principles are aimed at mapping the contact between the professional and the competent authority in the host Member State. In the framework of the indicators studied, the competent authorities of two Member States can only enter into contact with each other to request additional documents that the applicants cannot supply. The present study only considers the contact between the professional and the competent authority of the neighbouring country.

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137 Article 20(2)(a) TFEU.
138 Article 45(2) TFEU.
140 Annex VII, consolidated version of Directive 2005/36/EC.
2.3.2 Dossier on Recognition of Professional Qualifications: what are the principles, objectives and benchmarks for achieving and measuring a positive situation in border regions

<table>
<thead>
<tr>
<th>Principles</th>
<th>Benchmark</th>
<th>Indicator/Method</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>European Integration</strong></td>
<td>Recognition within a reasonable time frame and at costs no higher than necessary</td>
<td>What are the decision periods in the different countries/states?</td>
</tr>
<tr>
<td>Article 20 TFEU: citizenship of the Union is accompanied by ‘the right to move and reside freely within the territory of the Member States’</td>
<td></td>
<td>What are the costs involved in the respective recognition procedures?</td>
</tr>
<tr>
<td>Article 45(49) TFEU: the free movement of people is accompanied by the abolition of discrimination according to nationality; EU citizens have the opportunity to work and settle in another Member State.</td>
<td>Easy application for recognition</td>
<td>Are documents accepted in multiple languages?</td>
</tr>
<tr>
<td>The principle of mutual recognition as resultant from the case law of the European Court of Justice: the qualifications obtained according to the legislation and regulations of one Member State should be equally regarded in the other Member States.</td>
<td>Clarity about the competent authority and the location of information or support</td>
<td>How many documents are required for an application? Are there any additional costs to obtaining these?</td>
</tr>
<tr>
<td></td>
<td>Recognition is offered immediately as far as possible, i.e. without compensatory measures</td>
<td>Is there a central information point?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Are electronic procedures available?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Is there a support centre?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Is recognition offered immediately?</td>
</tr>
<tr>
<td><strong>Sustainable/socio-economic development</strong></td>
<td>Mobility after the implementation of Directive 2013/55/EU.</td>
<td>How high is cross-border mobility in Belgium, the Netherlands and North Rhine-Westphalia since the implementation of Directive 2013/55/EU?</td>
</tr>
<tr>
<td>Optimal allocation of qualified employees as a way of strengthening the economy in border region.</td>
<td></td>
<td>The data needed for this criterion will largely have to come from information provided by the relevant authorities.</td>
</tr>
</tbody>
</table>

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The border effects of the Dossier on the Recognition of Professional Qualifications will be analyzed by means of a mapping study. The analysis focuses on four professions, each of which represents a different scenario under Directive 2005/36/EC as amended by Directive 2013/55/EU. The professions selected represent different types of training, types of recognition and the combination of a non-regulated/regulated profession. The study focuses specifically on the following professions:

<table>
<thead>
<tr>
<th>Professions</th>
<th></th>
</tr>
</thead>
</table>
| Doctors of medicine  | – Higher education training  
                       | – Automatic recognition (minimum training requirements) |
| Nurses               | – Higher education training  
                       | – Automatic recognition (minimum training requirements) |
| Childcare workers    | – Professional education  
                       | – General system  
                       | – Regulated/non-regulated |
| Electricians         | – Professional education  
                       | – Automatic recognition (professional experience)  
                       | – Regulated/non-regulated |

Besides representing different scenarios under the European Directive, these professions also have a high degree of mobility. The Commission’s impact assessment showed that professions in healthcare (59%), teaching and social/cultural professions (17%), as well as crafts and technical professions, were among the most mobile professions under the first version of Directive 2005/36/EC.  

Nine indicators were used to investigate the border effects of Directive 2013/55/EU and its underlying principles for these professions. Each indicator contains three options, which score between 0 and 100 points. The more national legislation and procedures are aligned with the Directive and its underlying principles, the higher the score. Thus, a higher score implies positive border effects, whereas a lower score suggests negative border effects. The maximum score is 900 points. The table below displays the indicators.

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<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1. Decision period | - Less than 4 months (100 points)  
- 4 to 8 months (50 points)  
- More than 8 months (0 points) |
| 2. Procedural costs | - Less than 100 euro  
- 100-500 euro  
- More than 500 euro |
| 3. Languages in which the required documents are accepted | - 3+ languages  
- 2 languages  
- 1 language |
| 4. Documents required for recognition | - Solely the documents required by the Directive  
- Additional documents without significant extra costs  
- Additional documents with (potentially) significant extra costs |
| 5. Number of counters visited during the recognition process | - 1 counter  
- 2 counters  
- More than 2 counters |
| 6. Central information point | - With all information  
- Not central; all information available  
- No information point |
| 7. Electronic application procedures | - Fully electronic application  
- Electronic and in hard copy  
- Completely in hard copy |
| 8. Assistance Centre present | - Yes  
- Under construction  
- No |
| 9. Recognition of professional qualifications | - Immediately  
- After compensatory measures  
- No recognition |
3. Does the measure promote or impede European integration and what does that mean for the citizens of the border region

The table below presents the scores resulting from the study. A full representation of the analysis per profession can be found in the Annex. A number of differences between the professions can be identified based on the scores. The recognition procedures for doctors, for instance, generally score lowest, indicating potentially negative border effects. For this profession, the costs and the application method appear to form the main source of uncertainty in all areas studied. For North Rhine-Westphalia, it may be added that the documents can only be submitted in one language.

The recognition procedures for nurses score better, at 600 points or higher. For this profession, the indicator with potential frontier effects is the language of acceptance of the documents (North Rhine-Westphalia). Childcare workers show a high score of 750 points in the Netherlands and a lower score of 550 points in North Rhine-Westphalia. In this profession, there is some uncertainty regarding the availability of electronic procedures in the Netherlands and the level of the costs involved in North Rhine-Westphalia, which does not seem to be predetermined. Unclear information provision in Belgium and the prolongation of the three-month term with a ‘reasonable’ term in North Rhine-Westphalia can be considered sources of potential negative border effects for electricians.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Country/state</th>
<th>Score (maximum 900)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doctors of medicine (doctors with basic medical training/medical specialists)</td>
<td>Netherlands</td>
<td>575</td>
</tr>
<tr>
<td></td>
<td>Belgium</td>
<td>625</td>
</tr>
<tr>
<td></td>
<td>North Rhine-Westphalia</td>
<td>525</td>
</tr>
<tr>
<td>Nurse</td>
<td>Netherlands</td>
<td>750</td>
</tr>
<tr>
<td></td>
<td>Belgium</td>
<td>675</td>
</tr>
<tr>
<td></td>
<td>North Rhine-Westphalia</td>
<td>600</td>
</tr>
<tr>
<td>Childcare employee</td>
<td>Netherlands</td>
<td>750</td>
</tr>
<tr>
<td></td>
<td>North Rhine-Westphalia</td>
<td>550</td>
</tr>
<tr>
<td>Electrician</td>
<td>Belgium</td>
<td>700</td>
</tr>
<tr>
<td></td>
<td>North Rhine-Westphalia</td>
<td>550</td>
</tr>
</tbody>
</table>

Given the scores attained, the negative border effects connected to this Dossier seem to be limited. Nevertheless, practical cases of complications in the recognition process and the high frequency of their occurrence seem to point towards a different reality. This indicates a potential difference between the legislation and practice of the recognition of professional qualifications under EU law. Thus, while legislation seems compliant with the principles and benchmarks related to the theme of European integration, practice probably paints another picture.
4. Does the measure promote or impede the sustainable economic development and business climate of the border region

The recent entry into force of the new Directive 2013/55/EU and the fact that a number of Member States have not yet completed the implementation activities make it difficult to estimate the border effects of the new measure on mobility. The relevant authorities have been approached with requests for relevant data as part of this study in the Dossier Recognition of Professional Qualifications. The limited number of responses received constitutes an additional complication in assessing the frontier effects on mobility under Directive 2013/55/EU and the principle of optimal allocation of qualified employees.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Country/state</th>
<th>Data received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doctors of medicine (doctors with basic medical training/medical specialists)</td>
<td>Netherlands</td>
<td>According to information from the Dutch CIBG, the BIG register for medical practitioners included 133 doctors with a Belgian qualification and 14 doctors with a German qualification in 2015. After 18 January 2016, the implementation date of Directive 2013/55/EU, the BIG register included 133 doctors with a Belgian qualification and 5 doctors with a German qualification.</td>
</tr>
<tr>
<td>Belgium</td>
<td>According to information from the Belgian FOD Public Health, Food Safety and Environment, 170 Dutch-trained doctors applied for recognition of their professional qualification in 2015, of whom 96 had basic medical training and 71 were medical specialists. They all received automatic recognition. The applications of 2 doctors with basic medical training and 1 medical specialist were being processed at the time of measurement. Germany received 45 applications from doctors for recognition of their professional qualifications in 2015, of whom 20 had basic medical training and 18 were medical specialists. They all received automatic recognition. At the time of measurement, the applications of 2 doctors with basic medical training and 4 medical specialists were being processed, while 1 medical specialist was undergoing an adaptation period. The German-speaking Community has processed 7 applications from doctors since 1 January 2016 and granted them all automatic recognition.</td>
<td></td>
</tr>
<tr>
<td>North Rhine-Westphalia</td>
<td>The District Government (German: Bezirksregierung) of Cologne reports that it processed 85 applications for</td>
<td></td>
</tr>
<tr>
<td>Profession</td>
<td>Country/state</td>
<td>Data received</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>---------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>recognition of professional qualifications from EU Member States in 2015, according to the principle of automatic recognition. So far, the District Government has granted 58 licences ( Approbationen ) in 2016, 16 of which went to professionals with Dutch professional qualifications.</td>
</tr>
<tr>
<td>Nurse</td>
<td>Netherlands</td>
<td>The Dutch CIBG reports that 2429 foreign qualified nurses are currently active in the Netherlands, 63 of whom hold a German diploma and 401 of whom a Belgian diploma. It is not possible to establish the ratio of positive and negative decisions on recognition applications from the data provided. The related follow-up question has not received a response yet.</td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td>The Belgian FOD Public Health, Food Safety and Environment reports receiving 143 applications from the Netherlands in 2015. Of these, 120 received automatic recognition while 23 were still under review at the time of measurement. 2015 also saw 18 applications from Germany, 15 of which obtained automatic recognition and 3 were still under investigation. The German-speaking Community reports to have received 4 applications since it was first made responsible for applications in 2016; all of these were recognized.</td>
</tr>
<tr>
<td>North Rhine-Westphalia</td>
<td></td>
<td>The District Government of Düsseldorf reports 1499 applications for recognition from nurses between 2015 and 23 September 2016, 831 of which were received in 2015 and 668 in 2016. Of these applications, 418 were granted automatic recognition: 267 in 2015 and 151 in 2016. 78 nurses received recognition under the general system: 61 in 2015 and 17 in 2016. Compensatory measures were imposed in 219 cases: 159 in 2015 and 60 in 2016. The District Government of Düsseldorf indicates that these are absolute numbers and concern applications from the EU, EEA and third countries.</td>
</tr>
</tbody>
</table>
### Dossier 2: Recognition of Professional Qualifications

<table>
<thead>
<tr>
<th>Profession</th>
<th>Country/state</th>
<th>Data received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Childcare employee</td>
<td>North Rhine-Westphalia</td>
<td>The District Government of Cologne reports to have received 90 applications from the Netherlands and 15 from Belgium between 2014 and 2016. Recognition without compensatory measures, based on proven professional experience rather than on qualifications, was granted in one case from Belgium and one case from the Netherlands. The other applicants were granted recognition after compensatory measures or, in some cases, recognition was rejected.</td>
</tr>
<tr>
<td>Electrician</td>
<td>Belgium</td>
<td>The statistics from the European Commission show that 40 applications of Dutch professionals are registered for the period 2014-2015. 40 of these received immediate, i.e. automatic, recognition based on their experience in the Netherlands. The same period saw 7 applications from German professionals, all of which were automatically recognized based on professional experience. It is worth reporting, in this context, that this has led to a total of 1524 registered applications, only 32 of which were not granted.</td>
</tr>
<tr>
<td></td>
<td>North Rhine-Westphalia</td>
<td>The statistics from the European Commission show that 14 applications of Dutch professionals were registered in 2007, 2009 and 2011, 13 of which received recognition based on their experience in the Netherlands and 1 based on the qualification obtained, without a need for compensation. No applications from Belgian professionals have been registered.</td>
</tr>
</tbody>
</table>

5. Conclusions and recommendations from a Euregional perspective

5.1 Conclusions: Effects of Directive 2013/55/EU

The legislation regarding the recognition of professional qualifications is currently undergoing rapid changes. As a consequence, the conclusions of this chapter are provisional in nature. As already stated in paragraph 2.2, this Dossier is, in a sense, not a typical cross-border impact dossier as the recognition procedures for cross-border workers and professionals from a Member

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State that is not adjacent to the Dutch Province of Limburg are identical. This does not mean, however, that there are no border effects related to Directive 2013/55/EU.

Although the table in paragraph 3 shows that the different national transpositions and procedures regarding the recognition of professional qualifications under Directive 2013/55/EU do not seem to suggest the existence of any special border effects, there is an important way in which cross-border workers can be confronted with negative border effects of the European Directive. These negative border effects are mainly related to the terms of the recognition procedures. Cross-border workers who find a new position abroad will be expected to start at short notice. It is in this respect that the situation of cross-border workers differs from that of migrating professionals from non-adjacent EU Member States. Since the latter will probably have to move, a certain period of time will have to be taken into account before the activities can start. The procedures for the recognition of professional qualifications themselves can thus be considered a complication to cross-border labour. Employers in a neighbouring country who need employees on the short term will not be willing to wait a maximum of three to four months before the cross-border worker can start working when they can hire an employee from their own country who can start immediately. Therefore, cross-border workers benefit from swift and smooth recognition procedures.

Working across the border in regulated professions should not only be possible when there is an absolute need for certain professionals on the other side of the border. Measures to accelerate and ease the procedures could be highly beneficial to cross-border labour.

5.2 Conclusions regarding the cross-border impact assessment and the further development of the instrument

In conclusion, it can be said that the countries and states studied have properly implemented the provisions of Directive 2013/55/EU concerning the procedures for the recognition of professional qualifications. The study shows that, in general, a smooth recognition procedure should materially be possible. Nevertheless, procedural obstacles remain.

Language, for example, can be a complicating factor: North Rhine-Westphalia only accepts documents in German. Although Directive 2013/55/EU makes no requirements regarding the number of languages accepted, the lack of the option to submit documents in multiple languages may create substantial barriers for cross-border workers and may impede mutual recognition. Not only does this cause delays in the recognition process, the costs of the required (sworn) translations will also have to be borne by the applicant, potentially raising the total costs to substantial levels. A future language requirement regarding the documents to be submitted might contribute to smoother recognition in the border regions.

Another complication that applicants might encounter is the potential confusion regarding the competent authority. Medical specialists serve as an example in point. Medical specialists seeking recognition pass through a two-step procedure. In the Netherlands and North Rhine-Westphalia a
different organization is responsible for each step. In Belgium the competent authority is not always clear either, as a consequence of the ongoing sixth state reform. In general, it should be noted that too much fragmented, sometimes even conflicting information is available.

Moreover, with some authorities, there is prior uncertainty about the final costs of the procedures. Directive 2013/55/EU makes no requirements regarding the amount of the costs for the recognition procedures under both systems, i.e. automatic recognition, based on minimum training conditions and professional experience, or the general system. The introduction of a requirement that limits the costs of these recognition procedures and provides clarity about these costs may contribute to improved information provision and mobility in the future since professionals will be able to obtain prior insight into the costs of the procedures and will not become discouraged by overly high costs.

Finally, the discrepancy between legislation and practice should be mentioned. Although there are noticeable improvements in the legislation regarding the recognition of professional qualifications, these are not monumental in scope. Authorities and service providers in the border regions continue to receive complaints about problems with the recognition of professional qualifications. Therefore, consolidating the discrepancy between legislation and practice can be identified as one of the major aims regarding the recognition of professional qualifications.
Annex I – Doctors of medicine (doctors with basic medical training/medical specialists)

Netherlands - Basic Information

The profession of doctor is one of the professions under the BIG Act (Dutch: Wet op de Beroepen in de Individuele Gezondheidszorg) to which the system of registration and protection of professional titles applies. The minimum training requirements have been established by administrative decree (following Article 18 of the Big Act). However, the situation is different for foreign graduates as they fall under Chapter VI, Articles 41 through 44 of the BIG Act. Contrary to most regulated professions, doctors do not fall under the General Act on the Recognition of EU Professional Qualifications directly. The section of Directive 2005/36/EC as amended by Directive 2013/55/EU which regulates the automatic recognition of doctors has been implemented in sectoral legislation instead. Whereas the qualifications of doctors with basic medical training are recognized by the Dutch BIG register, the qualifications of medical specialists are recognized by the Royal Dutch Medical Association (Dutch: KNMG), but only after obtaining the BIG registration.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>Less than 4 months</td>
<td>The decision period for the recognition of the professional qualifications of doctors with basic medical training is 3 to 4 months. A maximum procedure of 3 months applies to professional qualifications eligible for automatic recognition. An additional month applies for files that require recognition under the general system,</td>
<td>The decision period for the recognition of the professional qualifications of medical specialists is identical to that of doctors with basic medical training. Procedures for automatic recognition take maximally 3 months and possibly a fourth month for recognitions under</td>
</tr>
</tbody>
</table>

145 Articles 18 and 19 Wet op de beroepen in de individuele gezondheidszorg (Dutch BIG Act).
146 Besluit opleidingseisen arts (Decision on training requirements for physicians).
147 Kamerstukken II 2006/07, 31059, 3, p. 36 (Dutch Parliamentary Papers).
148 Toelichting op het Besluit buitenslands gediplomeerden (KNMG) (Comments to the Decision regarding foreign graduates (KNMG)).
149 Article 19, paragraph 2, Algemene Wet Erkennen EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Doctor with basic medical training</strong></td>
<td>setting the decision period at maximally 4 months.</td>
<td>the general system.</td>
<td></td>
</tr>
<tr>
<td><strong>2. Procedural costs</strong></td>
<td>Less than 100 euro</td>
<td>The costs for BIG registration are EUR 85.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>100-500 euro</td>
<td>The rates for registration in the medical specialist register are set by the Dutch Royal Dutch Medical Association (Dutch: KNMG). The costs are EUR 521,81.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>More than 500 euro</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>3. Languages of acceptance of the required documents</strong></td>
<td>3+ languages</td>
<td>The documents are accepted in Dutch, English, French or German.</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>2 languages</td>
<td>The certified copy of the qualification is accepted in Dutch, English or German. Other documents such as the Certificate of Current Professional Status and the declaration of the professional activities performed are accepted in Dutch and English.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 language</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

150 Article 19, paragraph 2, Algemene Wet Erkennings EU-Beroepswaardigheden (General Act on the Recognition of EU Professional Qualifications).
152 Article 1 Regeling tarieven registratie beroepsoefenaren Wet BIG (Regulation on the registration rates for professionals BIG Act).
156 Ibid., p. 20-21.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A score of 75 points is awarded since doctors with basic medical training can submit their documents for recognition in four languages and medical specialists in 2 or 3 languages.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. Documents required for recognition

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solely the documents as per the Directive</td>
<td>The following documents are to be provided during the application: 157</td>
</tr>
<tr>
<td>Additional documents without significant extra costs</td>
<td>Application form</td>
</tr>
<tr>
<td>Additional documents with (potentially) significant extra costs</td>
<td>Proof of nationality</td>
</tr>
<tr>
<td></td>
<td>Authenticated copy of the certificate</td>
</tr>
<tr>
<td></td>
<td>Educational programme</td>
</tr>
<tr>
<td></td>
<td>Lists of grades and assessments</td>
</tr>
<tr>
<td></td>
<td>A document demonstrating that no judicial, disciplinary or administrative measures are in force</td>
</tr>
<tr>
<td></td>
<td>Documentary evidence of any professional experience or additional training.</td>
</tr>
<tr>
<td></td>
<td>From the explanatory note to the application form, it becomes clear that</td>
</tr>
<tr>
<td></td>
<td>The following documents are requested from the Registration Commission for Medical Specialists (Dutch: Registratiecommissie Geneeskundig Specialisten, RGS) in case of an application for automatic recognition: 159</td>
</tr>
<tr>
<td></td>
<td>Qualification</td>
</tr>
<tr>
<td></td>
<td>Declaration of conformity</td>
</tr>
<tr>
<td></td>
<td>Declaration of vested rights</td>
</tr>
<tr>
<td></td>
<td>Certificate of Current Professional Status</td>
</tr>
<tr>
<td></td>
<td>Proof of language proficiency (B2-level)</td>
</tr>
<tr>
<td></td>
<td>Proof of BIG registration</td>
</tr>
<tr>
<td></td>
<td>Declaration of professional activities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>the following documents are requested: 158</td>
<td>performed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Application form</td>
<td>Overview of development of expertise</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Copy of an identity document</td>
<td>The latter five documents are not requested on behalf of the recognition procedure, however, but as part of the Royal Dutch Medical Association's (KNMG) registration process. 160</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Authenticated copy of the diploma</td>
<td>The following documents are requested for applications under the general system: 161</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Statement from the competent authority in the state of origin that no limitations regarding professional practice are either in place or relevant. possibly an additional statement</td>
<td>Qualification</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Training curriculum</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Proof of professional experience</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Overview of development of expertise</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>CV</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Certificate of Current Professional</td>
<td></td>
</tr>
</tbody>
</table>


160. Ibid.

161. Ibid., p. 10.
## Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Status</td>
<td></td>
</tr>
<tr>
<td>5. Number of counters visited during the recognition process</td>
<td>Doctors with basic medical training seeking recognition of their professional qualifications can use a single counter.</td>
<td>Medical specialists seeking employment in the Netherlands can submit a combined BIG and KNMG application, in which case they can use a single counter.</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>1 counter</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 counters</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>More than 2 counters</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

162 Article 3 io. Article 41 Wet BIG (BIG ACT).
164 See [https://www.bigregister.nl/](https://www.bigregister.nl/); [https://www.epnuffic.nl/](https://www.epnuffic.nl/).

6. Central information point

| With all information | Information for doctors with basic medical training can be found on the BIG register’s website, run by the CIBG, and on the EP-Nuffic website. | Information for medical specialists can be found on the KNMG website, the BIG register’s website, run by the CIBG, and on the EP-Nuffic website. | 50 |
| Not central; all information available | | | |

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162 Article 3 io. Article 41 Wet BIG (BIG ACT).
164 See [https://www.bigregister.nl/](https://www.bigregister.nl/); [https://www.epnuffic.nl/](https://www.epnuffic.nl/).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicator 7: Use of electronic application procedure</td>
<td>Fully electronic application Electronic and in hard copy Completely in hard copy</td>
<td>The procedures are available electronically. However, procedures for automatic recognition appear to take place both by handing over documents in hard copy and electronically while assessments under the general system appear to take place by handing over documents exclusively in hard copy.</td>
<td>25</td>
</tr>
<tr>
<td>Indicator 8: Assistance Centre present</td>
<td>Yes</td>
<td>The Department of Educational Comparison (Dutch: Afdeling Onderwijsvergelijking) at EP-Nuffic is the assistance centre as of 18 January 2016.</td>
<td>100</td>
</tr>
<tr>
<td>Indicator 9: Recognition of professional qualifications</td>
<td>Immediately After compensatory measures</td>
<td>Automatic recognition is obtained if the qualification requirements as Automatic recognition may be obtained if the qualification</td>
<td>100</td>
</tr>
</tbody>
</table>

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165 See [https://www.knmg.nl/home.htm](https://www.knmg.nl/home.htm); [https://www.bigregister.nl/](https://www.bigregister.nl/); [https://www.epnuffic.nl/](https://www.epnuffic.nl/).

166 Article 34c Algemene Wet Erkenning EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).


168 Articles B.2 and B.3 Besluit buitenslands gediplomeerden (Decision on Foreign Graduates).

169 Article 1 Aanwijzingsbesluit Assistentiecentrum Erkenning EU-Beroepskwalificaties (Designation Decision on the Assistance Centre for the Recognition of EU Professional Qualifications).

170 Article 1 Aanwijzingsbesluit Assistentiecentrum Erkenning EU-Beroepskwalificaties (Designation Decision on the Assistance Centre for the Recognition of EU Professional Qualifications).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No recognition</td>
<td>stipulated in Annex V point 5.1.1. of Directive 2005/36/EC are met.(^{171}) Doctors with basic medical training who do not meet the qualification requirements fall under the general system. This allows for the imposition of compensatory measures on the basis of Article 11, paragraph 1 of the General Act on the Recognition of EU Professional Qualifications (Dutch: Algemene Wet Erkenning EU-Beroepskwalificaties), after advice from the Committee on Foreign Healthcare Graduates (Dutch: Commissie Buitenlands Gediplomeerden Volksgezondheid).(^{172}) Compensatory measures consist of an adaptation period of maximally 3 years.(^{173}) Article 8 of the General Act on the requirements as set in Annex V.1 point 5.1.3 or 5.1.4 Directive 2005/36/EC, as well as the registration requirements, are met.(^{174}) If automatic recognition cannot be granted, an adaptation period of minimally 3 months and maximally 3 years can be imposed after assessment by the Registration Commission for Medical Specialists (Dutch: Registratiecommissie Geneeskundig Specialisten, RGS).(^{175})</td>
<td></td>
</tr>
</tbody>
</table>

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\(^{171}\) Article 2 Regeling aanwijzing buitenlandse diploma’s volksgezondheid (Regulation on the Selection of Foreign Healthcare Diplomas).
\(^{172}\) Article 3, paragraph 1, Regeling Erkenning EU-Beroepskwalificaties Beroepen in de Individuele Gezondheidszorg (Regulation on the Recognition of EU Professional Qualifications in Individual Healthcare).
\(^{173}\) Article 4 Regeling Erkenning EU-Beroepskwalificaties Beroepen in de Individuele Gezondheidszorg (Regulation on the Recognition of EU Professional Qualifications in Individual Healthcare).
\(^{174}\) Articles B.2 Besluit buitenslands gediplomeerden (Decision on Foreign Graduates).
\(^{175}\) Article B.3 ao. B.5 Besluit buitenslands gediplomeerden (Decision on Foreign Graduates).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Recognition of EU Professional Qualifications (Dutch: Algemene Wet Erkenning EU-Beroepskwalificaties) Shows that recognition may be refused if there is a difference of 4 levels between the required qualifications and those of the applicant.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Final score: 575 points
Belgium - Basic Information

On grounds of Article 3, paragraph 1 of the Coordinated Law on the Exercise of the Health Professions (Dutch: Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen), medicine can only be practised by those who possess the relevant legal diploma. On the basis of Article 25 of the Coordinated Law, only doctors who have had their diploma approved by the Directorate General of the Health Professions (Dutch: Directoraat-generaal Gezondheidsberoepen) and are registered with the Order of Doctors (Dutch: Orde van Artsen) can practise their profession. Directive 2005/36/EC as already amended by Directive 2013/55/EU has partially been implemented in Chapter 9 of the Coordinated Law. According to Article 104 of the Coordinated Law, a migrant who holds an EU professional qualification and wishes to work in Belgium shall meet the provisions of that Law and comply with Article 25: doctors with a professional qualifications from another EU Member State need to have their diploma validated, thus obtaining recognition of their professional qualification. This recognition is then provided according to Articles 105, i.e. via the general system, and 106, i.e. through automatic recognition, of the Coordinated Law. Medical specialists do not seem forced to obtain two separate recognitions for their qualification as a doctor with basic medical training and as a medical specialist. Depending on whether recognition is being requested as a doctor with basic medical training or a medical specialist, the provisions of Articles 105 and 106 Coordinated Law are applicable, supplemented with those of the Ministerial Decision on the determination of the list of qualifications of doctors as issued by the EU Member States (Dutch: Ministerieel besluit tot vaststelling van de lijst van opleidingstitels van arts afgeleverd door de lidstaten van de Europese Unie) of 31 January 2008 for doctors with basic medical training or the Ministerial Decision on the determination of the list of qualifications of medical specialists as issued by the EU Member States (Dutch: Ministerieel besluit tot vaststelling van de lijst van opleidingstitels van geneesheer-specialist afgeleverd door de lidstaten van de Europese Unie) of 31 January 2008 for medical specialists.

176 Article 2 Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen (Coordinated Law on the Exercise of the Health Professions).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training/medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>The procedure for permission to practise a regulated profession is closed three months after submission of the complete file at the latest. A one month extension can be applied.</td>
<td>100</td>
</tr>
<tr>
<td>2. Procedural costs</td>
<td>No information available; the procedure seems free of charge. A score of 50 points is awarded as no conclusive cost information is available.</td>
<td>50</td>
</tr>
<tr>
<td>3. Languages of acceptance of the required documents</td>
<td>Applications for recognition are accepted in Dutch, French and German. Professionals should apply through the Flemish, French or German-speaking Community.</td>
<td>75</td>
</tr>
</tbody>
</table>
| 4. Documents required for recognition         | The following documents can be requested for the recognition of the professional qualifications of doctors with basic medical training/medical specialists: 

- Proof of nationality
- Copies of the certificates of competence, the qualification and any evidence of professional experience.
- Proof of good conduct, of the financial position of the applicant and documentary proof that no criminal offences have been committed.
- At the request of the competent authority: proof of the applicant’s national capacity. | 50    |

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177 Article 2 Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen (Coordinated Law on the Exercise of the Health Professions).
179 Article 22, paragraph 5, Wet tot instelling van een nieuw algemeen kader voor de erkenning van EG-beroepskwalificaties (Law on the Establishment of a New General Framework for the Recognition of EC Professional Qualifications).
### Indicator: Doctor with basic medical training/medical specialist

<table>
<thead>
<tr>
<th>Score</th>
</tr>
</thead>
</table>

- physical/mental fitness.
- If the competent authority demands this from its own subjects: proof of the applicant’s financial capacity or proof of the applicant's insurance.
- Sometimes, however, the Communities request additional documents, such as a letter of motivation.

<table>
<thead>
<tr>
<th>5. Number of counters visited during the recognition process</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 counter</td>
</tr>
<tr>
<td>1 counter, depending on the Community in which the doctor wishes to take up residence: The Flemish Community, the French Community, or the German Community.</td>
</tr>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Central information point</th>
</tr>
</thead>
<tbody>
<tr>
<td>With all information</td>
</tr>
<tr>
<td>Doctors with basic medical training can obtain information from the FPS Public Health, zorg-en-gezondheid.be, enseignement.be and bildungsserver.be.</td>
</tr>
<tr>
<td>50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. Use of electronic application procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fully electronic application</td>
</tr>
<tr>
<td>Forms for the Flemish and French Community need to be sent by mail. It is unclear how applicants submit their application to the German Community.</td>
</tr>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Assistance Centre present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>The Department of Intellectual Professions and Legislation of the General Directorate for SME Policy (Dutch: Algemene Directie K.M.O. beleid – Dienst Intellectuele beroepen en Wetgeving) of the FPS Economy, SMES,</td>
</tr>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

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### Indicator

#### Doctor with basic medical training/medical specialist

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>The Minister compiles a list of qualifications, minimum training requirements, competent bodies, additional declarations and rights acquired for the qualifications that obtain automatic recognition. The general system is applicable to all professions excluded from automatic recognition under Article 106. Medical specialists can be obligated to take an aptitude test or to follow an adaptation period on the basis of Article 105 paragraph 3 sub 2. Qualifications are recognized if they (a) have been issued by a competent authority according to the national law and (b) show that the level of the qualification is at least equivalent to the level immediately preceding the required level in Belgium. Compensatory measures are imposed if (a) the duration of the training is one year shorter, (b) essential differences exist and (c) the profession includes more activities in Belgium.</td>
</tr>
</tbody>
</table>

### Final score: 625 points

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185 Article 106, paragraph 1 and 2, Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen (Coordinated Law on the Exercise of the Health Professions).

186 Article 105, paragraph 1, Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen (Coordinated Law on the Exercise of the Health Professions).
North Rhine-Westphalia – Basic Information

Doctor with basic medical training

Doctors with basic medical training seeking to work in North Rhine-Westphalia need a so-called Approbation as per §2 paragraph 1 of the German Federal Regulation for Doctors (Bundesärzteordnung). Both doctors trained in Germany and doctors trained elsewhere within the EU require the Approbation. The procedures are handled according to the German Federal Regulation for Doctors (Bundesärzteordnung) and the Approbation Regulation for Doctors (Approbationsverordnung für Ärzte). The title of doctor (Ärzt/Ärztin) is reserved to those who have received the Approbation. The recognition of the professional qualification is realized during the application for the Approbation. Doctors with basic medical training must meet four criteria in order to obtain an Approbation: not being guilty of behaviour that prevents practise of the profession, being medically fit, having sufficient command of the German language and meeting the training requirements. Recognition takes place according to the latter point only.

Medical specialist

Medical specialists fall under the Bundesärztekammer’s Weiterbildungsordnung (Specialty Training Regulations), which has been converted into a relevant regulation by the individual Ärztekammern. Medical specialists in North Rhine-Westphalia fall under the respective Weiterbildungsordnungen of the Ärztekammer Nordrhein and of the Ärztekammer Westfalen.

187 §2a Bundesärzteordnung – Bäo.
189 §3 paragraph 1 Bundesärzteordnung – Bäo.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>Less than 4 months</td>
<td>The authorities decide on <em>Approbation</em> applications within maximally 3 months after submission of the documents. The general system allows the authorities maximally four months to establish the presence of essential differences that lead to an aptitude test.</td>
<td>Procedures in both Ärztekammern have a decision period of 3 months, which can be extended once, by a maximum of 1 month, in relevant cases.</td>
</tr>
<tr>
<td></td>
<td>4 to 8 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>More than 8 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The District Government of Düsseldorf charges costs between EUR 130 and EUR 1000. The other District Governments (Cologne, Arnsberg, Detmold and Münster) charge costs between EUR 150 and 1000.</td>
<td>The Ärztekammer Nordrhein charges EUR 50 for a recognition procedure without an aptitude test. An equivalence test incurs charges of EUR 200. A subsequent aptitude test costs another EUR 130.</td>
<td>0</td>
</tr>
</tbody>
</table>

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190 § 39 paragraph 5 Approbationsordnung für Ärzte – ÄaPrO.
191 § 3 paragraph 2 Bundesärzteordnung – BäO
192 § 19b paragraph 2 Weiterbildungsordnung Ärztekammer Nordrhein/ § 19b paragraph 2 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
195 § 2 paragraph 2 (2.5) Gebührenordnung der Ärztekammer Nordrhein.
196 § 2 paragraph 2 (2.3) Gebührenordnung der Ärztekammer Nordrhein.
197 § 1 paragraph 1 (1.6) Gebührenordnung der Ärztekammer Nordrhein.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Languages of acceptance of the required documents</td>
<td>Any documents not written in German require translation by a sworn translator and must be submitted in German.</td>
<td>The Ärztekammer Westfalen-Lippe charges EUR 300 for an equivalence test. An aptitude test costs EUR 130.</td>
<td>0</td>
</tr>
<tr>
<td>4. Documents required for recognition</td>
<td>The following documents are required for the application for recognition of the qualifications of doctors with basic medical training: Identity document Training received/economic activities in tabular form. Certified copy of the diploma/qualification Document stating that the applicant has not behaved in an unworthy or unreliable manner which conflicts with the exercise of the profession. Proof of sound health.</td>
<td>The following documents are required to apply for recognition of the qualifications of medical specialists: German Approbation, Berufserlaubnis or proof of equivalence of the training. Identity document An overview in German of the specialist training received and professional practice in tabular form. A certified copy from the medical specialist training programme and certificates of professional practice insofar as they</td>
<td>50</td>
</tr>
</tbody>
</table>

198 §1 A paragraph 4 Verwaltungsgebührenordnung der Ärztekammer Westfalen-Lippe.  
199 §1 A paragraph 5 Verwaltungsgebührenordnung der Ärztekammer Westfalen-Lippe.  
200 §39 paragraph 2 Approbationsordnung für Ärzte – AaprO.  
201 § 19a paragraph 1 Weiterbildungsordnung Ärztekammer Nordrhein/§ 19a paragraph 1Weiterbildungsordnung Ärztekammer Westfalen-Lippe.  
202 §3 paragraph 6 Bundesärzteordnung – Bäo.  
203 § 19a paragraph 1 Weiterbildungsordnung Ärztekammer Nordrhein/ § 19a paragraph 1 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
Indicator | Doctor with basic medical training | Medical specialist | Score
---|---|---|---
| Proof, provided by the competent authorities of the Member State of origin, that the training received meets the requirements of the Directive. Under the general system: documents to establish whether essential differences exist. Additional documents may be requested from applicants who took parts of their training in a third country. In case of doubt, the authorities can ask the Member State of origin whether applicants have been denied the exercise of their profession on grounds of grave professional misconduct or criminal convictions. | contribute to the establishment of equivalence. For training completed before a certain reference date: a declaration of conformity or a report of activities over the last 5 years. For recognition under the general system: Additional proof for the equivalence test For training provided by another EU Member State which partially took place in a third country: documents on which skills, performed in the third country, the authority of the EU Member State considers part of the training. A written statement as to whether recognition of the specialist training has already been requested from another Ärztekammer. | |
| 5. Number of counters visited during the recognition process | 1 counter 2 counters More than 2 counters | The competent authorities of the Land (Bundesland) in which the profession will be practised process the applications of professionals with an EU professional qualification. Applicants have to visit one counter, depending on the Landschaftsverband in which the profession will be practised. | Doctors are represented by the Ärztekammer Nordrhein and the Ärztekammer Westfalen-Lippe. They have to visit one counter, depending on the Landschaftsverband in which the profession will be practised. | 75

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204 §12 paragraph 3 Bundesärzteordnung – Bär.
### Indicator: Doctor with basic medical training

| District Governments of Düsseldorf, Cologne, Münster, Detmold, Arnsberg.²⁰⁵ |

Counter, depending on the District in which the professionals seek to practise their profession:

Given the large number of competent authorities, a score of 75 points is awarded.

### Indicator: Medical specialist

| Ärztekammer Nordrhein, Ärztekammer Westfalen-Lippe. |

Information on the recognition of the professional qualifications of medical specialists can be obtained through different channels, including the website anerkennung-in-deutschland.de and the websites of the different Ärztekammern: Nordrhein and Westfalen-Lippe.

### 6. Central information point

| With all information: Not central; all information available |

Information on the recognition of the professional qualifications of doctors can be obtained through different channels, including the website anerkennung-in-deutschland.de and the websites of the different District Governments: Düsseldorf, Cologne, Münster, Detmold and Arnsberg.

### 7. Use of electronic application procedure

| Fully electronic application |

The applications for the different District Governments should be submitted in writing.²⁰⁷

The application form of the Ärztekammer Nordrhein shows that professionals submit their applications both by email and by fax. Medical specialists also have the option of

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²⁰⁵ § 1 paragraph 1 and paragraph 2a Verordnung zur Regelung der Zuständigkeiten nach Rechtsvorschriften für Heilberufe.
### Indicator

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>copy</td>
<td>Copy</td>
<td>Automatic recognition of EU professional qualifications is granted if the qualification is listed in the Annex to the German Federal Regulation for Doctors (Bundesärzteordnung). If mutual recognition is not possible, medical specialists can still obtain recognition if the equivalence of the national and foreign training can be established. Both trainings shall be considered</td>
<td></td>
</tr>
<tr>
<td>Completely in hard copy</td>
<td>having the Einheitlicher Ansprechpartner Nordrhein-Westfalen handle their procedure of recognition as a medical specialist.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Assistance Centre present</td>
<td>The Bundesinstitut für Berufsbildung, through its portal Anerkennung in Deutschland, is the support centre as per Article 57b of Directive 2005/36/EC.</td>
<td>The Bundesinstitut für Berufsbildung, through its portal Anerkennung in Deutschland, is the support centre as per Article 57b of Directive 2005/36/EC.</td>
<td>100</td>
</tr>
<tr>
<td>Yes</td>
<td>The Bundesinstitut für Berufsbildung, through its portal Anerkennung in Deutschland, is the support centre as per Article 57b of Directive 2005/36/EC.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under construction</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Recognition of professional qualifications</td>
<td>Automatic recognition will be granted to holders of a diploma, certificate or other proof who have completed medical specialist training for which a legal claim to mutual recognition exists. If mutual recognition is not possible, medical specialists can still obtain recognition if the equivalence of the national and foreign training can be established.</td>
<td>Automatic recognition will be granted to holders of a diploma, certificate or other proof who have completed medical specialist training for which a legal claim to mutual recognition exists.</td>
<td>100</td>
</tr>
<tr>
<td>Immediately</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>After compensatory measures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No recognition</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---


209 Ibid.


211 Ibid.

212 § 3 paragraph 1 Bundesärzteordnung – Bäo.

213 § 3 paragraph 1 Bundesärzteordnung – Bäo.
## Dossier 2: Recognition of Professional Qualifications

### Indicator: Doctor with basic medical training

Has sufficient command of the German language.

Professionals who have not met the conditions for automatic recognition can still obtain an *Approbation* if equivalence to the national qualification can be established. If this is not the case, i.e. essential differences exist in courses taken or the profession includes more activities in Germany than in the Member State where the qualification was obtained, the professional will have to take an aptitude test (*Eignungsprüfung*) in the areas in which essential differences exist. This aptitude test takes place according to §36 van de Approbation Regulation for Doctors (*Approbationsordnung für Ärzte*).

### Score

<table>
<thead>
<tr>
<th>Equivalent if:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The foreign qualification leads to comparable professional activities</td>
</tr>
<tr>
<td>There are no essential differences</td>
</tr>
<tr>
<td>The equivalence of the doctor with basic medical training training has already been established</td>
</tr>
<tr>
<td>Essential differences occur if:</td>
</tr>
<tr>
<td>The professional activities of the foreign qualification diverge substantially from the requirements as to content and duration</td>
</tr>
<tr>
<td>The activities are essential to practising the profession</td>
</tr>
<tr>
<td>The applicant has not compensated for the differences with evidence</td>
</tr>
</tbody>
</table>

In case of essential differences, the applicant can choose between an adaptation period or an aptitude test.

---

215 § 18 paragraph 1, 2 Weiterbildungsordnung Ärztekammer Nordrhein/ § 18 paragraph 1, 2 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
216 § 18 paragraph 3 Weiterbildungsordnung Ärztekammer Nordrhein/ § 18 paragraph 3 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
217 § 3 paragraph 2 Bundesärztekammer – BÄK.
218 § 18 paragraph 6 Weiterbildungsordnung Ärztekammer Nordrhein/ § 18 paragraph 6 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
219 § 18 paragraph 7 Weiterbildungsordnung Ärztekammer Nordrhein/ § 18 paragraph 7 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
220 § 19 Weiterbildungsordnung Ärztekammer Nordrhein/ § 19 Weiterbildungsordnung Ärztekammer Westfalen-Lippe.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Doctor with basic medical training</th>
<th>Medical specialist</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final score: 525 points</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex II - Nurses

Netherlands - Basic Information

The profession of nurse is a regulated profession with a protected professional status. Higher or intermediate vocational training (Dutch: HBO or MBO level), as well as registration in the BIG register are required to start working as a nurse. There are currently 190,485 registered nurses. The BIG Act describes the tasks as:

‘a. het verrichten van handelingen op het gebied van observatie, begeleiding, verpleging en verzorging;
b. het ingevolge opdracht van een beroepsbeoefenaar op het gebied van de individuele gezondheidszorg verrichten van handelingen in aansluiting op diens diagnostische en therapeutische werkzaamheden.’

No distinction is currently made between the level of education of nurses, i.e. all nurses can generally perform all activities; this may change in the future. At the moment, there are different specialties. The recognition of foreign diplomas has been laid down in Chapter VI of the BIG Act (Wet BIG), which refers to the General Act on the Recognition of EU Professional Qualifications for all diplomas issued inside the EU.

---

220 Article 32 Wet op de beroepen in de individuele gezondheidszorg, Stb. 1994, 16 (BIG Act).
221 Article 4, paragraph 1 in conjunction with paragraph 2 Wet BIG (BIG Act).
222 Article 32, Wet BIG (BIG Act).
223 Article 3 in conjunction with 4 Wet BIG (BIG Act).
226 Stb. 2007,530.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Nurse</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>The maximum legal decision period is 3 months for complete applications regarding professions that qualify for automatic recognition.</td>
<td>100</td>
</tr>
<tr>
<td>2. Procedural costs</td>
<td>A price of EUR 85 is charged for an application.</td>
<td>100</td>
</tr>
<tr>
<td>3. Languages of acceptance of the required documents</td>
<td>Any diploma in the Dutch, German, English or French language is accepted.</td>
<td>100</td>
</tr>
<tr>
<td>4. Documents required for recognition</td>
<td>The explanatory note to the application form for BIG registration states that the following documents are required:</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>- The application form.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- A copy of a valid passport or other identity document that proves one’s EU nationality.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- A certified copy of the diploma.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- A curriculum vitae/CV.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- An original declaration or certified copy from the competent authority on professional practise of the country that issued the diploma. This should state</td>
<td></td>
</tr>
</tbody>
</table>

228 Article 19, paragraph 2 Algemene Wet Erkenning EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).
229 Article 1 Regeling tarieven registratie beroepsbeoefenaren Wet BIG, Stcr. 2012, 12874.
231 Ibid.
### Nurse Qualification Requirements

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>that you are fully qualified to practise the relevant profession and that no limitations of competence are in force against you. This is not required for applicants who graduated within three months of their application. Incomplete applications will not be processed. Since additional documents, such as a CV, are requested, a score of 50 points is awarded.</td>
<td></td>
</tr>
<tr>
<td>5. Number of counters visited during the recognition process</td>
<td>100</td>
</tr>
<tr>
<td>1 counter</td>
<td></td>
</tr>
<tr>
<td>2 counters</td>
<td></td>
</tr>
<tr>
<td>More than 2 counters</td>
<td></td>
</tr>
<tr>
<td>The CIBG is the executive body of the Ministry of Health, Welfare and Sport which manages the BIG register. There are no other organizations involved in the recognition procedures in the Netherlands.</td>
<td></td>
</tr>
<tr>
<td>6. Central information point</td>
<td>100</td>
</tr>
<tr>
<td>With all information</td>
<td></td>
</tr>
<tr>
<td>Not central; all information available</td>
<td></td>
</tr>
<tr>
<td>No information point</td>
<td></td>
</tr>
<tr>
<td>The <a href="https://www.bigregister.nl/">https://www.bigregister.nl/</a> website contains all relevant information.</td>
<td></td>
</tr>
<tr>
<td>7. Use of electronic application procedure</td>
<td>50</td>
</tr>
<tr>
<td>Fully electronic application</td>
<td></td>
</tr>
<tr>
<td>Electronic and in hard copy</td>
<td></td>
</tr>
<tr>
<td>Completely in hard copy</td>
<td></td>
</tr>
<tr>
<td>Initial registration is digital, but the application form has to be printed and signed. The relevant documents must be sent by mail.</td>
<td></td>
</tr>
<tr>
<td>8. Assistance Centre present</td>
<td>100</td>
</tr>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Under construction</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
<tr>
<td>The <a href="https://www.ep-nuffic.nl">EP-Nuffic</a> has been appointed as support centre.</td>
<td></td>
</tr>
</tbody>
</table>

---


<table>
<thead>
<tr>
<th>Indicator</th>
<th>Nurse</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. Recognition of professional qualifications</td>
<td>Immediately After compensatory measures No recognition</td>
<td>In the Netherlands the professional qualification of nurses is supported under the system of automatic recognition, as per the Directive. In principle, recognition is immediate. However, this does not apply in all situations. As per the Decision periodic registration of the BIG Act, a BIG registration expires after a period of five years from the date of graduation of the registered person. Re-registration can only take place if the person has performed sufficient relevant activities in the previous period of five years or has successfully attended (further) training. In principle, this procedure is repeated every five years from the date of re-registration based on sufficient activities or further training. This implies that recognition is not automatic for foreign graduates with a diploma older than five years but depends on (proof of) sufficient activities performed or proof of further training.</td>
</tr>
</tbody>
</table>

Final score: 750 points

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237 Article 8, paragraph 2 Wet BIG (BIG Act).  
238 Articles 3-5 Besluit periodeieke registratie Wet BIG (Decision periodic registration BIG Act).  
Belgium - Basic Information

The profession of nurse is a regulated profession with a professional monopoly and protected professional interventions. In order to carry out the profession, professionals need to have a so-called *visum* granted by the Federal Public Service on Health. The Coordinated Law on the Exercise of the Health Professions (Dutch: Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen) describes the tasks of a nurse as:

1° (a) observing, identifying and recording the health status both on the mental, physical and social level;
(b) defining nursing problems;
(c) contributing to the medical diagnosis of the doctor and carrying out the prescribed treatment;
(d) informing and advising the patient and his family;
(e) constantly assisting, performing and helping perform actions, through which the nurse aims to preserve, improve and restore the health of healthy and sick persons and groups;
(f) providing palliative care and guidance in coping with the mourning process;
(g) independently taking urgent life saving measures and being able to act in crisis and disaster situations;
(h) analyzing the quality of the care with the objective of strengthening one’s own professional practice as a nurse.

2° the technical and nursing services for which no medical

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241 Article 45-46 Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen, 18.06.2015, 35172.16 (Coordinated Law on the Exercise of Health Professions).
243 See Article 46.
medisch voorschrift nodig is, alsook deze waarvoor wel een medisch voorschrift nodig is.

Die verstrekkingen kunnen verband houden met de diagnosestelling door de arts, de uitvoering van een door de arts voorgeschreven behandeling of met het nemen van maatregelen inzake preventieve geneeskunde;

3° de handelingen die door een arts kunnen worden toevertrouwd overeenkomstig artikel 23, § 1, tweede en derde lid.

§ 2. De verpleegkundige verstrekkingen bedoeld in paragraaf 1, 1°, 2°, en 3°, worden opgetekend in een verpleegkundig dossier.

§ 3. De Koning kan overeenkomstig de bepalingen van artikel 141, de lijst vaststellen van de in paragraaf 1 bedoelde verstrekkingen, alsook de regelen voor de uitvoering ervan en de desbetreffende bekwaamheidsvereisten.

Like in the Netherlands, different specialisms can be opted for. The recognition of foreign graduates has been laid down in Chapter 9 of the Law; the 12 February 2008 Law on the Establishment of a New General Framework for the Recognition of EC Professional Qualifications (Dutch: Wet tot instelling van een nieuw algemeen kader voor de erkenning van EG-beroepskwalificaties) shall apply by analogy to diplomas issued in an EU country. The recognition procedure is handled by three different agencies depending on the language of the file.\footnote{Visa are issued by the federal government, however.} Visa are issued by the federal government, however.

\footnote{FOD Volksgezondheid, veiligheid van de voedselketen en leefmilieu, ‘Visum voor een buitenlands diploma’, \url{http://www.health.belgium.be/nl/e-services/visum-voor-een-buitenlands-diploma} last visited on 28 September 2016.}
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Nurse</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 4 months</td>
<td>Three months, with a possible extension of one month.</td>
<td></td>
</tr>
<tr>
<td>4 to 8 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More than 8 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Procedural costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 100 euro</td>
<td>No information available; the procedure seems free of charge</td>
<td>100</td>
</tr>
<tr>
<td>100-500 euro</td>
<td>A score of 50 points is awarded as no conclusive cost information is available.</td>
<td></td>
</tr>
<tr>
<td>More than 500 euro</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Languages of acceptance of the required documents</td>
<td>All documents must be supplied in the language of the competent authority. This means that all documentation needs to be supplied completely in Dutch, French or German, including a translation from a sworn translator or a translation agency.</td>
<td>75</td>
</tr>
<tr>
<td>3+ languages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 languages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 language</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Documents required for recognition</td>
<td>The Flemish application form requires the following documents:</td>
<td></td>
</tr>
<tr>
<td>Solely the documents as per the Directive</td>
<td>A letter of motivation</td>
<td></td>
</tr>
<tr>
<td>Additional documents without significant extra costs</td>
<td>The educational programme</td>
<td></td>
</tr>
<tr>
<td>Additional documents with (potentially) significant extra costs</td>
<td>A copy of the diploma</td>
<td></td>
</tr>
<tr>
<td>A copy of a valid passport or other identity document</td>
<td>A certificate of good conduct</td>
<td></td>
</tr>
<tr>
<td>A conformity attest, confirming that the educational programme meets the requirements as set out by Directive 2005/36.</td>
<td>A curriculum vitae including work experience.</td>
<td></td>
</tr>
<tr>
<td>A ‘certificate of professional good conduct issued by the relevant professional</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


247 Ibid.
| Indicator | Nurse association*. The application form for recognition in the Wallonia-Brussels Federation states slightly different requirements: 248 A letter of motivation A certified copy of the diploma A copy of a valid passport or other identity document A certificate of good conduct A conformity attest, confirming that the educational programme meets the requirements as set out by Directive 2005/36. A certificate of professional good conduct issued by the relevant professional association/confirmation that no present sanctions are effective and the profession can be practised, i.e. there are no professional restrictions. The application form of the German Community requests: 249 A copy of the diploma The official educational programme A copy of a valid passport or other identity document A certificate of good conduct A conformity attest, confirming that the educational programme meets the requirements as set out by Directive 2005/36. A curriculum vitae including work experience. A certificate of professional good conduct issued by the relevant professional association/confirmation that no present sanctions are effective and the profession can be practised, i.e. there are no professional restrictions.


### Indicator: Nurse

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Number of counters visited during the recognition process</td>
<td>For files in Dutch: The Agency for Care and Health (Dutch: Agentschap Zorg en Gezondheid).&lt;sup&gt;250&lt;/sup&gt; For files in French Ministère de la Fédération Wallonie-Bruxelles Administration générale de l’Enseignement (AGE), Direction générale de l’Enseignement non obligatoire et de la Recherche scientifique (DGENORS), Direction de l’Agrément des Prestataires de Soins de Santé, Cellule &quot;Professions des soins de santé non-universitaires&quot;.&lt;sup&gt;251&lt;/sup&gt; For files in German: the Ministry in Eupen.&lt;sup&gt;252&lt;/sup&gt; There is a separate counter for each file language. A score of 100 points is awarded.</td>
</tr>
<tr>
<td>6. Central information point</td>
<td>Different counters and websites are available depending on the language of the file to be submitted.</td>
</tr>
<tr>
<td>7. Use of electronic application procedure</td>
<td>The procedure is available in hard copy only.&lt;sup&gt;253&lt;/sup&gt;</td>
</tr>
<tr>
<td>8. Assistance Centre present</td>
<td>The FPS Economy, SMEs, Self-Employed and Energy is the support center under Article 57b RL. 2005/36.</td>
</tr>
</tbody>
</table>

---


<sup>252</sup> See <http://www.kpvdb.be/>.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Nurse</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. Recognition of professional qualifications</td>
<td>Immediately After compensatory measures No recognition</td>
<td>In Flanders the professional qualification of nurses is supported under the system of automatic recognition. Therefore, recognition is, in principle, direct for Dutch or German diploma-holders. The person in question is required, however, to speak sufficient Dutch, German or French to be able to function in the relevant language area.</td>
</tr>
</tbody>
</table>

Final score: 675 points

254 Article 105 Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen (Coordinated Law on the Exercise of Health Professions).
255 Article 114 Gecoördineerde wet betreffende de uitoefening van de gezondheidszorgberoepen (Coordinated Law on the Exercise of Health Professions).
North Rhine-Westphalia – Basic Information
The profession of nurse is a regulated profession with a professional monopoly and protected professional interventions. In order for one to carry out the profession (in the sense of establishment as opposed to service provision) an Erlaubnis is needed. Section 2, paragraph 4 of the German Healthcare Act (German: Krankenpflegegesetz – KrPflG) deals with the recognition of qualified people with a diploma issued in an EU country.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Nurse</th>
<th>Score</th>
</tr>
</thead>
</table>
| 1. Decision period | Less than 4 months  
4 to 8 months  
More than 8 months | Three months. | 100 |
| 2. Procedural costs | Less than 100 euro  
100-500 euro  
More than 500 euro | As per Section 20 of the North Rhine-Westphalia ‘Professional Qualification Establishment Act’ (German: Berufsqualifikationsfeststellungsgesetz), this depends on the District Government. The costs for the North Rhine-Westphalia Düsseldorf region are between EUR 200 – 350. | 50 |
| 3. Languages of acceptance of the required documents | 3+ languages  
2 languages  
1 language | All documents must be supplied in German. Documents supplied in another language should include a German translation from a recognized translator. | 0 |
| 4. Documents required for | Solely the documents as per the | North Rhine-Westphalia requires inclusion of the following documents: | 50 |

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256 Section 1 Gesetz über die Berufe in der Krankenpflege, BGBl. I S. 1442 of 16 July 2003 (KrPflG), as amended.
257 Section 20c paragraph 1 KrPflAPrV.
259 Section 4, paragraph 2 Verordnung zur Durchführung des Berufsanerkennungsverfahrens und zur Regelung der Verwaltungszenarbeit nach der Richtlinie 2005/36/EG und für Drittstaatenangehörige (Berufsanerkennungsdurchführungsverordnung – BerufsanDVO NRW.
260 Section 4 BerufsanDVO NRW.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Nurse</th>
</tr>
</thead>
</table>
| recognition | Directive  
Additional documents without significant extra costs  
Additional documents with (potentially) significant extra costs  
A CV in tabular format.  
A copy of a passport or identity card.  
Any document regarding a name change.  
Proof of general training.  
A document or diploma that proves admission into the nursing profession.  
The authority may ask for a conformity attest, confirming that the educational programme meets the requirements as set out by Directive 2005/36.  
A certificate of professional good conduct issued by the relevant professional association/confirmation that no present sanctions are effective and the profession can be practised, i.e. there are no professional restrictions. |
| 5. Number of counters visited during the recognition process | 1 counter  
2 counters  
More than 2 counters  
One: Landesprüfungsamt für Medizin, Psychotherapie und Pharmazie. |
| 6. Central information point | With all information  
Not central; all information available  
No information point  
| 7. Use of electronic application procedure | Fully electronic application  
Electronic and in hard copy  
The procedure takes place in hard copy. However, professionals also have the possibility to have the Einheitlicher Ansprechpartner Nordrhein-Westfalen handle their recognition procedure. |

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261 Section 4, paragraph 3 BerufsDVO NRW.
### Indicator | Nurse | Score
--- | --- | ---
8. Assistance Centre present | Yes | 100
| Under construction |  |
| No |  |

9. Recognition of professional qualifications | Immediately | 100
| After compensatory measures |  |
| No recognition |  |

The Bundesinstitut für Berufsbildung is designated in accordance with Article 57b RL. 2005/36.

In Germany the professional qualification of nurses is supported under the system of automatic recognition. Some conditions are nevertheless set: the professional cannot have been excluded from exercising the profession, he or she cannot have been found to be unfit (health wise) to exercise the profession and he or she must have sufficient knowledge of the German language. This is not tested systematically, however.

Final score: 600 points

---


265 §2 paragraph 4 KrPfiG.

266 §2 paragraph 1 KrPfiG

267 §20 Ausbildungs- und Prüfungsverordnung für die Berufe in der Krankenpflege, BGBl. I S. 2263 (KrPfiAPrV).
Annex III - Childcare workers

**Netherlands - Basic Information**

Childcare workers can obtain recognition of their professional qualifications under the general system of Directive 2013/55/EU. The profession is regulated in the Netherlands and Germany. They do not fall under the two other categories of occupations for which automatic recognition is available. In the Netherlands, the professional qualifications of childcare staff are thus recognized within the framework of the General Act on the Recognition of EU Professional Qualifications (Dutch: Algemene Wet Erkenning EU-Beroepskwalificaties). Article 33 paragraph 2 of this Act states that, for each regulated profession, detailed rules should be laid down concerning specific issues, such as the required documents and checks related to public health or public safety. The recognition of the professional qualifications of childcare staff has been provided in the Regulation on the Recognition of EC Professional Qualifications of Childcare Staff (Dutch: Regeling Erkenning EG-Beroepskwalificaties Kinderopvangpersoneel), on the basis of Article 33 of the General Act on the Recognition of EU Professional Qualifications.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>The Minister of Education should decide on an application as soon as possible but has a maximum decision period of three month. Since childcare workers fall under the general system of the Directive and are thus not eligible for automatic recognition, the competent authorities have the option of extending the term once by one month to a total decision period of four months.</td>
<td>100</td>
</tr>
<tr>
<td>2. Procedural costs</td>
<td>The submission of a request for recognition of the qualification as a childcare employee is free of charge. The applicant should, however, bear the costs</td>
<td>100</td>
</tr>
</tbody>
</table>

---

268 Article 19, paragraph 2 Algemene Wet Erkenning EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).
### Indicator

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>100-500 euro</td>
<td>of the aptitude test.(^{270}) If an aptitude test is required, the relevant minister has to ensure that the applicant is informed about, among others, the costs of the procedure. On the basis of Article 33 paragraph 3 of the General Act on the Recognition of EU Professional Qualifications, the costs should be 'reasonable, commensurate and in proportion to the costs incurred', without exceeding the costs incurred and discouraging the submission of applications.</td>
<td></td>
</tr>
<tr>
<td>More than 500 euro</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 3. Languages of acceptance of the required documents

<table>
<thead>
<tr>
<th>Languages of acceptance</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>3+ languages</td>
<td>100</td>
</tr>
<tr>
<td>2 languages</td>
<td></td>
</tr>
<tr>
<td>1 language</td>
<td></td>
</tr>
</tbody>
</table>

Sworn translations by an interpreter or translator are required if the relevant documents are not available in Dutch, German or English.\(^{271}\) The Dutch authorities, therefore, accept documents in three languages.

### 4. Documents required for recognition

<table>
<thead>
<tr>
<th>Documents required for recognition</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solely the documents as per the Directive</td>
<td>50</td>
</tr>
<tr>
<td>Additional documents without significant extra costs</td>
<td></td>
</tr>
<tr>
<td>Additional documents with (potentially) significant extra costs</td>
<td></td>
</tr>
</tbody>
</table>

The Dutch Education Service (DUO) may request the following documents:\(^{272}\)

- Proof of nationality and, in some cases, an additional residence permit or proof of the right of permanent residence.
- A certified copy of the attestations of competence/training titles on the basis of which the applicant gained access to the profession in the Member State of origin.
- Summary of the relevant training data, such as total course length, courses taken and a description of the learning material for the subjects taken with corresponding study time spent.
- Proof of professional experience.
- For host parents: a Certificate of Good Conduct.

\(^{270}\) Article 4, paragraph 2 of the Regeling Erkenning EG-Beroepskwalificaties Kinderopvangpersoneel (Regulation on the Recognition of EC Professional Qualifications of Childcare staff).

\(^{271}\) Article 3, section f Regeling Erkenning EG-Beroepskwalificaties Kinderopvangpersoneel (Regulation on the Recognition of EC Professional Qualifications of Childcare staff).

\(^{272}\) Article 3, sections a through f Regeling Erkenning EG-Beroepskwalificaties Kinderopvangpersoneel (Regulation on the Recognition of EC Professional Qualifications of Childcare staff).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Number of counters visited during the recognition process</td>
<td>Childcare staff must submit their applications to the Dutch Education Service (DUO). The Director-General of DUO has a mandate to execute several activities regarding the recognition of professional qualifications of childcare workers on the basis of Article 8 paragraph 1 of the Regulation on the Recognition of EC Professional Qualifications of Childcare Staff.</td>
<td>100</td>
</tr>
<tr>
<td>6. Central information point</td>
<td>All information on the recognition of professional qualifications for child care staff is available from the DUO website. Additionally, professionals are able to acquire information on the website of FCB. Since all the information is available on the DUO website, a score of 100 points is awarded.</td>
<td>100</td>
</tr>
<tr>
<td>7. Use of electronic application procedure</td>
<td>The application form for the recognition of the EC-professional qualifications of child care staff shows that the application is submitted in writing by sending it to DUO. However, the procedures for the recognition of professional qualifications should also be available electronically via the central information point or via the Minister of Education, Culture and Science.</td>
<td>0</td>
</tr>
<tr>
<td>8. Assistance Centre present</td>
<td>The Department of Educational Comparison (Dutch: Afdeling Onderwijsvergelijking) at EP-Nuffic is the assistance centre as of 18 January 2016.</td>
<td>100</td>
</tr>
</tbody>
</table>

274 See [https://www.duo.nl/particulier/](https://www.duo.nl/particulier/).
275 See [https://www.fcb.nl/](https://www.fcb.nl/).
277 Article 34 c, paragraph 1 Algemene Wet Erkenning EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).
278 Article 1 Aanwijzingsbesluit Assistentiecenrum Erkenning EU-Beroepskwalificaties (Designation Decision on the Assistance Centre for the Recognition of EU Professional Qualifications).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. Recognition of professional qualifications</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>9.1</td>
<td>Immediately</td>
<td>100</td>
</tr>
<tr>
<td>9.2</td>
<td>After compensatory measures</td>
<td></td>
</tr>
<tr>
<td>9.3</td>
<td>No recognition</td>
<td></td>
</tr>
</tbody>
</table>

Childcare workers do not belong to the seven professions awarded automatic recognition under Directive 2005/36/EC. Thus they can only obtain recognition under the general system. This regime allows for the imposition of compensatory measures in case essential differences occur between the courses of the Dutch training programme and those of the programme in the Member State of origin or in case the regulated profession includes more activities in the Netherlands, which are not part of that same profession in the country of origin.\(^{279}\)

Essential differences are ‘courses the knowledge, skills and competencies of which are of essential importance to the exercise of the profession and regarding which the migrating professional's training received deviates substantially, in duration or content, from the training required in the Netherlands’.

If an aptitude test is imposed under Article 11 of the General Act on the Recognition of EU Professional Qualifications, applicants will be informed of the courses tested, the test method and the costs.\(^{280}\)

If an adaptation period is imposed under Article 11 of the General Act on the Recognition of EU Professional Qualifications, applicants will be informed of the courses to which the adaptation period pertains, its length and, if applicable, the training provided as part of this adaptation period.\(^{281}\)

Adaptation periods for childcare workers maximally last one year. Applicants

\(^{279}\) Article 11, paragraphs 1 and 2 Algemene Wet Erkenning EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).

\(^{280}\) Article 4, Regeling Erkenning EG-Beroepskwalificaties Kinderopvangpersoneel (Regulation on the Recognition of EC Professional Qualifications of Childcare staff).

\(^{281}\) Article 5, Regeling Erkenning EG-Beroepskwalificaties Kinderopvangpersoneel (Regulation on the Recognition of EC Professional Qualifications of Childcare staff).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>should contact the relevant workplace themselves with an internship request. Recognition may be refused if there is a difference of 4 levels between the required qualifications and those of the applicant.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>There seem to be no specific or additional requirements for applicants from a Member State, e.g. Belgium, where the profession is not regulated. Such applicants must also meet the provisions of the General Act on the Recognition of EU Professional Qualifications and of the Regulation on the Recognition of EC Professional Qualifications of Childcare staff.</td>
<td></td>
</tr>
</tbody>
</table>

Final score: 750 points

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282 Article 8 Algemene Wet Erkenning EU-Beroepskwalificaties (General Act on the Recognition of EU Professional Qualifications).
Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

North Rhine-Westphalia – Basic Information

Childcare employee (German: *Erzieher*) is a profession regulated at the level of the Lands (German: *Bundesländer*). As such, these professionals fall under the North Rhine-Westphalia Professional Qualification Act (German: *Berufsqualifikationsfeststellungsgesetz*). There is a difference between the German qualification of *Erzieher* and the Dutch childcare employee, in that Dutch Childcare workers are solely responsible for the care of very young children. The profession of *Erzieher*, on the other hand, is broader and covers both young children and youngsters.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>The competent authority must decide on the equivalence of the professional qualification within three months. The period starts when the full list of documents is received. This period can be extended by maximally one month for applicants with an EU qualification.</td>
<td>100</td>
</tr>
<tr>
<td>2. Procedural costs</td>
<td>The government of North Rhine-Westphalia is authorized to set the costs for the recognition procedures. The website of the District Government of Cologne does not appear to provide any information on the costs for recognition procedures of childcare workers. According to the information provided, the costs range from less than 100 euro to more than 500 euro.</td>
<td>0</td>
</tr>
</tbody>
</table>

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284 § 2 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.

285 Bundesagentur für Arbeit, ‚Kurzbeschreibung (Erzieher)‘, [https://berufenet.arbeitsagentur.de/berufenet/faces/index;BERUFENETJSESSIONID=pREPnWdbUhdBbee55i2uTObo7oenYk-bjN7aoT2seLuzRlue1cl-601395309?path=public%2Fkurzbeschreibung&dkz=9162](https://berufenet.arbeitsagentur.de/berufenet/faces/index;BERUFENETJSESSIONID=pREPnWdbUhdBbee55i2uTObo7oenYk-bjN7aoT2seLuzRlue1cl-601395309?path=public%2Fkurzbeschreibung&dkz=9162) last visited on 28 September 2016.

286 § 13 paragraph 3 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.

287 § 20 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.
### Indicator | Childcare employee | Score
---|---|---
3. Languages of acceptance of the required documents | All documents must be presented in German. Any translations must be provided by a sworn translator or interpreter. | 0
4. Documents required for recognition | The following documents are requested as part of the application for recognition:  | 50
| | | |
| | Document that lists the training received and the skills performed in tabular form. | |
| | Identity document | |
| | Diploma | |
| | Proof of work experience as far as conducive to the decision on recognition | |
| | Proof of permission to practise the profession in the Member State where the qualification was obtained in case the profession is regulated in both the state where the training was received and North Rhine-Westphalia | |
| | Declaration whether and with which authority an application for the determination of equivalence has been filed | |
5. Number of counters visited during the recognition process | 1 counter, dependent on the Member State in which professionals obtained their diploma. Dutch and Belgian diplomas are processed by the District Government of Cologne. | 100

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289 §12 paragraph 2 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.

290 §12 paragraph 1 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Central information point</td>
<td>Applicants can gather information through various channels. Information about professional practise, for instance, can be obtained through anerkennung-in-deutschland.de, as well as via the websites of the relevant District Governments, i.e. the District Government of Cologne for applicants from Belgium and the Netherlands.</td>
<td>50</td>
</tr>
<tr>
<td>7. Use of electronic application procedure</td>
<td>Applicants can fill out the application form and submit is to the District Government of Cologne. However, there is also a possibility to have the whole recognition procedure take place via the Einheitlicher Ansprechpartner Nordrhein-Westfalen.</td>
<td>50</td>
</tr>
<tr>
<td>8. Assistance Centre present</td>
<td>The Bundesinstitut für Berufsbildung, through its portal Anerkennung in Deutschland, is the support centre as per Article 57b of Directive 2005/36/EC.</td>
<td>100</td>
</tr>
<tr>
<td>9. Recognition of professional qualifications</td>
<td>Equivalence is found to exist when the foreign training programme leads to comparable professional skills, the profession is regulated in the country of training, the applicant has the right to practise the profession in that country and no essential differences exist.</td>
<td>100</td>
</tr>
</tbody>
</table>

---


295 §9 paragraph 1 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Childcare employee</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Essential differences are found to exist when the foreign diploma pertains to knowledge and skills which, either in content or duration, differ substantially from the knowledge and skills required in North Rhine-Westphalia, when the relevant knowledge and skills form an essential part of the profession and the applicant is unable to compensate for these differences in any way. Essential differences can be compensated for by means of an adaptation period of maximally 3 years or an aptitude test. Unless stated otherwise in the relevant provisions, the applicant has the choice between the two types of compensatory measures. The details of the compensatory measures for Erzieher are outlined in the Anerkennungsverordnung beruflicher Befähigungsnachweise Erzieherin oder Erzieher, Heilerziehungspflegerin oder Heilerziehungspfleger, Heilpädagogin oder Heilpädagoge NRW – AVOBEHH NRW. No supplementary provisions seem to have been created for professionals with a qualification from a Member State in which the profession is not regulated. It is clear, however, that §9 paragraph 1 No. 2 and other related provisions do not apply to these professionals. Concretely, this means that the procedure is identical to the one described under point 9, whereby the professionals, in this case, do not have to provide proof that they are allowed to practise the profession in the Member State in which the qualification was obtained.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Final score: 550 points</td>
<td></td>
</tr>
</tbody>
</table>

296 §9 paragraph 2 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.
297 §11 paragraphs 1 & 3 Berufsqualifikationsfeststellungsgesetz NRW – BQFG NRW.
Annex IV – Electricians

Belgium - Basic Information

In Belgium the independent performance of the activities of an electrician is a regulated profession. The following activities are seen as being part of the professional monopoly (with the exception of activities that are only supplementary and small, along with other specified activities).

‘Onder elektrotechnische activiteiten moet worden verstaan het herstellen van elektrische toestellen en het plaatsen en herstellen van alle elektrische installaties voor stroomvoorziening, voor verlichting, voor lichtreclame, voor verwarming, voor andere klimaatregeling dan deze voorzien in artikel 25, voor domotica, voor communicatie, voor signalisatie, voor opname en weergave van beelden of geluiden en voor beveiliging tegen overspanning, brand of diefstal.’

Electrical engineering activities are meant to include the repair of electrical appliances and the placement and repair of all electrical installations for power supply, lighting, illuminated advertising, heating, climate control other than set out in Article 25, home automation, signalling, recording and playing sounds or images and the protection against power surges, fire or theft.

In order to practise the profession of electrician independently, applicants must prove their aptitude. This can be done at one of the entrepreneurial counters, which handle the formalities.

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298 Article 3 in conjunction with 1 Koninklijk besluit betreffende de beroepsbekwaamheid voor de uitoefening van zelfstandige activiteiten van het bouwvak en van de elektrotechniek, alsook van de algemene aanneming, B.S. 2007, 9286 (Royal Decree on the proficiency for the exercising of independent activities in construction and electrical engineering, as well as general contracting).

299 Article 4 Koninklijk besluit betreffende de beroepsbekwaamheid voor de uitoefening van zelfstandige activiteiten van het bouwvak en van de elektrotechniek, alsook van de algemene aanneming (Royal Decree on the proficiency for the exercising of independent activities in construction and electrical engineering, as well as general contracting).

300 Article 28(2) Koninklijk besluit betreffende de beroepsbekwaamheid voor de uitoefening van zelfstandige activiteiten van het bouwvak en van de elektrotechniek, alsook van de algemene aanneming (Royal Decree on the proficiency for the exercising of independent activities in construction and electrical engineering, as well as general contracting).

301 Article 28(1) Koninklijk besluit betreffende de beroepsbekwaamheid voor de uitoefening van zelfstandige activiteiten van het bouwvak en van de elektrotechniek, alsook van de algemene aanneming (Royal Decree on the proficiency for the exercising of independent activities in construction and electrical engineering, as well as general contracting).
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Electrician</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Decision period</td>
<td>Three months with the option of a one-month extension.</td>
<td>100</td>
</tr>
<tr>
<td>2. Procedural costs</td>
<td>Unclear; there are many different entrepreneurs’ counters that can set their own fees for their services.</td>
<td>50</td>
</tr>
<tr>
<td>3. Languages of acceptance of the required documents</td>
<td>Again, this depends on the entrepreneurial counter. Xerius accepts the documents in German, English, French and Dutch.</td>
<td>100</td>
</tr>
<tr>
<td>4. Documents required for recognition</td>
<td>It is unclear which documents exactly are required; in principle, the only requirement is the presentation of either a certificate of professional experience or a diploma.</td>
<td>100</td>
</tr>
</tbody>
</table>

---


<table>
<thead>
<tr>
<th>Indicator</th>
<th>Electrician</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of counters visited during the recognition process</td>
<td>1 counter</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>2 counters</td>
<td></td>
</tr>
<tr>
<td></td>
<td>More than 2 counters</td>
<td></td>
</tr>
<tr>
<td>Central information point</td>
<td>With all information</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Not central; all information available</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No information point</td>
<td></td>
</tr>
<tr>
<td>Use of electronic application procedure</td>
<td>Fully electronic application</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>Electronic and in hard copy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Completely in hard copy</td>
<td></td>
</tr>
<tr>
<td>Assistance Centre present</td>
<td>Yes</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Under construction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Recognition of professional qualifications</td>
<td>Immediately</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>After compensatory measures</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No recognition</td>
<td></td>
</tr>
</tbody>
</table>

308 Article 6(1) in conjunction with (2) Koninklijk besluit betreffende de beroepsbekwaamheid voor de uitoefening van zelfstandige activiteiten van het bouwvak en van de elektrotechniek, alsook van de algemene aanneming (Royal Decree on the proficiency for the exercising of independent activities in construction and electrical engineering, as well as general contracting).
## Indicators of Recognition of Professional Qualifications

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Electrician</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The general system of recognition can be invoked if such experience is lacking. (^{309})</td>
<td></td>
</tr>
</tbody>
</table>

**Final score: 700 points**

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\(^{309}\) Article 6(1)(3) Koninklijk besluit betreffende de beroepsbekwaamheid voor de uitoefening van zelfstandige activiteiten van het bouwvak en van de elektrotechniek, alsook van de algemene aanneming (Royal Decree on the proficiency for the exercising of independent activities in construction and electrical engineering, as well as general contracting).
Germany - Basic Information

Germany classifies electricians as Gewerbebetriebe, i.e. professions with a professional monopoly. This implies that only electricians (German: Elektrotechniker) are allowed to perform the ‘characteristic and essential activities’ belonging to this profession. These activities are negatively defined: Non-essential activities are those activities that can be learnt over a time period of three months or activities that require longer study but only occur occasionally in the profession. The skills required of an electrician are listed in the Elektrotechnikermeisterverordnung.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Electrician</th>
<th>Score</th>
</tr>
</thead>
</table>
| 1. Decision period | Less than 4 months  
4 to 8 months  
More than 8 months | Three months with the option of an extension for a ‘reasonable’ time.  
Since no maximum term is given, the lowest score is awarded. | 0 |
| 2. Procedural costs | Less than 100 euro  
100-500 euro  
More than 500 euro | This depends on the Handwerkskammer where the application was submitted. A recognition procedure costs EUR 50 in Aachen. | 100 |
| 3. Languages of acceptance of the required documents | 3+ languages  
2 languages | Diplomas and other documents, such as certificates of professional experience, should be submitted in German. | 0 |

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310 Point 25 Anlage A Gesetz zur Ordnung des Handwerks (Handwerksordnung), BGBl. I S. 3074; 2006 I S. 2095.
311 §1, paragraph 2 Handwerksordnung.
312 §1, paragraph 2, sub 1-2 Handwerksordnung.
313 BGBl. I S. 2331.
314 Section 6, paragraph 3 of the Anerkennungsgesetz Nordrhein-Westfalen, GV. NRW. 2013, 17/271.
### Indicator: Electrician

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Electrician</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 language</td>
<td>Documents submitted in another language must include a German translation by a recognized translator.</td>
<td></td>
</tr>
<tr>
<td>4. Documents required for recognition</td>
<td>Solely the documents as per the Directive. Additional documents without significant extra costs. Additional documents with (potentially) significant extra costs. The following documents are required: A CV in tabular format. A certified copy of a passport or identity card or the original Original or certified copy of the diploma or Proof of professional practice. Since additional documents, such as a CV, are requested, 50 points are awarded here.</td>
<td>50</td>
</tr>
<tr>
<td>5. Number of counters visited during the recognition process</td>
<td>1 counter 2 counters More than 2 counters 1 in principle; applicants are served by one of the Handwerkskammern.</td>
<td>100</td>
</tr>
<tr>
<td>6. Central information point</td>
<td>With all information Not central; all information available No information point Basic information can be found on the general website of the Federal Government: <a href="http://www.anerkennung-in-deutschland.de">www.anerkennung-in-deutschland.de</a> Additional information, however, has to be searched for on the website of the relevant Land.</td>
<td>50</td>
</tr>
</tbody>
</table>

---

316 Section 5, paragraph 2 of the Anerkennungsgesetz Nordrhein-Westfalen.

317 Westdeutscher Handwerkskammertag, ‘Bewertung ausländischer Berufsabschlüsse durch die Handwerkskammer’, https://www.whkt.de/beratung/anerkennung/bewertung-auslaendischer-berufsabschluss-de-die-handwerkskammer/?key=0&cHash=b3e89438f0e991c85d7f934b7ad7a18e last visited on 28 September 2016.

318 See Westdeutscher Handwerkskammertag, ‘Bewertung ausländischer Berufsabschlüsse durch die Handwerkskammer’, https://www.whkt.de/beratung/anerkennung/bewertung-auslaendischer-berufsabschluss-de-die-handwerkskammer/?key=0&cHash=b3e89438f0e991c85d7f934b7ad7a18e last visited on 28 September 2016.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Electrician</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Use of electronic application procedure</td>
<td>Fully electronic application  Electronic and in hard copy  Completely in hard copy</td>
<td>The procedure is available in hard copy only. It is, however, possible to have the Einheitlicher Ansprechpartner Nordrhein-Westfalen handle the entire recognition procedure.  [321]</td>
</tr>
<tr>
<td>8. Assistance Centre present</td>
<td>Yes  Under construction  No</td>
<td>The Bundesinstitut für Berufsbildung is designated in accordance with Article 57b RL. 2005/36.</td>
</tr>
<tr>
<td>9. Recognition of professional qualifications</td>
<td>Immediately  After compensatory measures  No recognition</td>
<td>The profession of electrician falls under the system of recognition of professional experience as laid down in Article 17ff Directive 2005/36: A German Handwerkskammer will primarily base itself on the professional experience as an electrician presented by the applicant when granting permission to perform the reserved actions. If the requirements of professional experience are not met, it is possible to opt for the general system of recognition, where the requirements from the Elektrotechnikermeisterverordnung will be compared to the knowledge and skills apparent from a foreign diploma.  [322]</td>
</tr>
</tbody>
</table>

Final score: 550 points

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321 Westdeutscher Handwerkskammertag, ’Bewertung ausländischer Berufsabschlüsse durch die Handwerkskammer’, https://www.whkt.de/beratung/anerkennung/bewertung-auslaendischer-berufsabschluesse-durch-die-handwerkskammer/?key=0&cHash=b3e89438f0e991c85d7f934b7ad7a18e last visited on 28 September 2016.


323 Westdeutscher Handwerkskammertag, ’Bewertung ausländischer Berufsabschlüsse durch die Handwerkskammer’, https://www.whkt.de/beratung/anerkennung/bewertung-auslaendischer-berufsabschluesse-durch-die-handwerkskammer/?key=0&cHash=b3e89438f0e991c85d7f934b7ad7a18e last visited on 28 September 2016.
3.3 Cross-border cooperation: A study of INTERREG programmes in the Dutch border regions

Dr. Mariska van der Giessen

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1. Motivation and Background

2015 marked the 25th anniversary of the EU INTERREG programme. This was celebrated in several places in European and cross-borders circles, for example during the annual Open Days in Brussels. The INTERREG A programme has been part of European Territorial Cooperation (ETC) under the European Fund for Regional Development (EFRD) since 2007. This grant programme for cross-border cooperation has been in place since 1990 and has entered its fifth subsidy round. The INTERREG A programme aims to remove borders, in the sense of barriers, between countries and to economically reinforce the border regions by facilitating and stimulating cross-border cooperation. This can be seen in a very broad context since the initiatives and projects financed by INTERREG A cover a wide spectrum, ranging from socio-cultural initiatives to technological and innovative projects. Approximately EUR 6 billion was divided across 60 programmes during the previous programming period (2007-2013), thereby financing around 6,000 projects on innovation, labour mobility, education, work and health across Europe. Given the importance of cross-border cooperation, the budget was raised to EUR 6.6 billion for this programming period (2014-2020).

Figure 1 shows the growth and development of the INTERREG programme. INTERREG was initially founded as a Community initiative for cross-border cooperation within EFRD. During later programming periods, INTERREG was also used for stimulating transnational and interregional cooperation through the INTERREG B and C programmes. This resulted in a total volume of EUR 10.1 billion for all INTERREG programmes, i.e. A, B and C, in the period 2014-2020.

324 Committee of the Regions (2015) Open days 2015-Local Events. European Cooperation Day Events
327 The period 2014-2020 includes a total of 60 cross-border INTERREG V A programme regions located on 38 EU internal borders with a total budget of EUR 6.6 billion in EU means. In addition, 12 IPA programmes for “cross-border co-operation between candidate countries, potential candidate countries and EU Member States” are in place, as well as 16 ENI Cross-Border programme regions offering programmes for EU and non-EU border regions, 15 INTERREG B programmes, the INTERREG Europe programme and network programmes such as Urbact III, Interact III en Espon. (Cf. European Commission, DG Regio (2014) IPA Cross-border Co-operation Programmes http://ec.europa.eu/regional_policy/en/funding/IPA/cross-border/ European Commission, DG Regio (2014) Regional development co-operation programmes outside the EU http://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/outside-the-eu/)
2. Research Objective

The previous grant eligibility period (2007-2013) was marked by much discussion about the need for simplification of the general European Cohesion Policy on all policy levels cooperating within the European subsidy programmes. Prior to the current programming period, the five European Structural and Investment (ESI) Funds\footnote{The five ESI Funds are: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).} were aligned to a much greater extent, by clustering, among others, the EU regulations pertaining to these funds and thus adapting the ‘rules of play’. The rules of the five ESI Funds are clearly connected to the Europe 2020 strategy.\footnote{The Europe 2020 strategy concerns ‘generating smart, sustainable and inclusive growth in the EU, improve coordination, ensure consistent implementation and make access to ESI Funds as straightforward as possible for those who may benefit from them.’} In addition, the renewal of the policy framework should help to ensure closer cooperation and coordination between the ESI Funds. It should also lead to better comparability of the programmes. The common provisions and rules for the ESI Funds can be found in Regulation (EU) 1303/2013. There are also fund-specific regulations in addition to this Regulation. The ERDF structural fund, under which the INTERREG programme resides, is governed by Regulation (EU) No 1299/2013 for the programming period 2014-2020.\footnote{Cf. European Commission (2015) European Structural and Investment Funds 2014-2020: Official Texts and Commentaries, p. 8 / Regulation (EU) No 1303/2013 of the European Parliament and Council of 17 December 2013 / Regulation (EU) No 1299/2013 of the European Parliament and Council of 17 December 2013}
The restructuring of the European Cohesion Policy also extended to the INTERREG V A programme, so that its three main objectives, i.e. concentration, simplification and concrete result-orientation, also became central to the INTERREG V A programme.

This study starts with a comparison of the progress of INTERREG V A in the three programme regions on the Dutch border, using 1 August 2016 as its measurement date. It reviews the practical implementation of INTERREG and the daily activities as part of INTERREG on the local and regional level. This study focuses on the most striking, practical differences in daily procedures between the previous INTERREG IV A and the current INTERREG V A programme. Until the end of the INTERREG IV A period in 2013, each new INTERREG A programme received a growing number of complaints from the field about the increased bureaucracy involved in its implementation. Fingers would often automatically point at 'Brussels', and the programmes would gain the reputation of being "administratively burdensome", "difficult to work with" or "procedurally cumbersome". This study aims to examine whether pointing the finger of blame at 'Brussels' is in order for the INTERREG V A programme, especially since the European Commission has been engaged in simplifying programmes such as INTERREG for years. The second section of this study briefly examines whether the regulations of INTERREG V A have actually been simplified and whether this has facilitated the implementation of cross-border projects compared to the preceding programme. The final section reviews the actual image of the INTERREG V A programme. Are the negative responses, still mainly carried over from the INTERREG IV A programming period, justified?

In summary, the following research questions will be addressed:

1. What is the state of affairs of the INTERREG V A programme in the programme regions on the Dutch border?
2. What are the main implementation differences between the INTERREG V A programme and the previous programming period?
3. What might cause the negative image of the INTERREG programme?

3. Definition of the research area
This study covers all Dutch-German, Dutch-German-Belgian and Dutch-Belgian border regions, using the geographical units of the INTERREG A programme regions as provided in the manual to the 2016 cross-border impact assessment:

the German-Dutch INTERREG V A programme region of the Ems-Dollart Region, the EUREGIO, the Rhine-Waal Euregio and the Rhine-Meuse-North Euregio, the German-Dutch-Belgian programme region of the Meuse-Rhine Euregio and the INTERREG V A Flemish-Dutch programme region.

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332 Giessen, van der (2014) Coping with Complexity. Cross-border cooperation between The Netherlands and Germany
334 ITEM (2016) Het instrument grenseffecten beoordeling (The instrument of the cross-border impact assessment)
4. Indicators

The study is part of ITEM’s 2016 Cross-border Impact Assessment. A cross-border impact assessment aims to demonstrate how (changes in) regional, national or European regulations impact certain professional fields, geographical regions or situations in border regions. This study can be considered an ex-post study focusing on the regulatory changes imposed on the INTERREG programme, specifically between INTERREG IV A and INTERREG V A, from the European, but also the regional and national level. A cross-border impact assessment departs from the assumption that regional, national or European regulations may either promote or impede cross-border cooperation.\textsuperscript{335}

The following indicators are used to this end:

Table 1: Objectives- Benchmarks- INTERREG Dossier Indicators

<table>
<thead>
<tr>
<th>Principles/Objectives</th>
<th>Good practice/benchmark</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principles:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Euregional partnerships that support cross-border projects with the help of the INTERREG A programme.</td>
<td>The functioning of regional INTERREG V A programmes.</td>
<td>Development of Euregional governance structures</td>
</tr>
<tr>
<td>Objective EFRD: Reinforcing economic, social and territorial cohesion by addressing the primary regional imbalances within the Union.\textsuperscript{336}</td>
<td>Research Objectives: 1. Rendering visible the positive and negative changes to the INTERREG V A programme compared to INTERREG IV A. 2. Comparing the programmes on the Dutch border.</td>
<td>Depletion/reservation of means INTERREG V A (as per 01/08/2016)</td>
</tr>
<tr>
<td>Objective of cross-border cooperation: To face the common challenges which have been jointly identified and to exploit the unused potential for growth in the border regions, thereby simultaneously improving the cooperation process, geared towards the overall harmonious development of the Union.\textsuperscript{337}</td>
<td></td>
<td>Number of INTERREG V A projects approved (as per 01/08/2016)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Interest in INTERREG V as compared to INTERREG IV</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average time from first meeting to approval</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cooperation between the programme partners (compared to previously)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Procedures for project applications</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Procedures for project implementation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Concrete procedural changes compared to INTERREG IV A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Concrete regulatory changes compared to the INTERREG IV A programme</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Image of the INTERREG V A programme</td>
</tr>
</tbody>
</table>

\textsuperscript{335} ITEM (2016) Het instrument grenseffecten beoordeling (The instrument of the cross-border impact assessment)


\textsuperscript{337} Regulation(EU) No 1299/2013 of the European Parliament and the Council of 17 December 2013 (5)
5. Method and Approach
This stocktaking and comparative study uses a qualitative research method.

Qualitative interviews with a previously compiled questionnaire will be conducted for each programme region. The interviewees will receive the questionnaire prior to the interview, which will take place in person or by telephone.

The participating partners will be questioned on programme level, e.g. members of the INTERREG project management, members of the supervisory board and the management authorities, as well as on project level, i.e. the INTERREG project coordinators. The participating partners are selected to include a minimum of two interviewees per programme region.

6. Embedding of current research and opportunities for future research
Of all cooperating levels of management within INTERREG A, this stocktaking study mainly investigates the local/regional level. The academic literature considers the European cooperation in the ESI Funds, and particularly the INTERREG A programme, a system of multi-level governance (MLG). Future studies might give a voice to all representatives of the four vertically and horizontally, cooperating levels of government and policy making (local, regional/provincial, national and European). The findings of such a study can then be fed back in terms of the relevance of the theoretical model applied.

This study disregards comparative basic data on the different INTERREG V A programme regions, such as size (in km², inhabitants), history of the Euregional organisations or forms of government. Rather, it compares all three programme regions mentioned, situated on the Dutch border, as to their daily practice and their progress in implementation. The analysis provides a clear explanation of certain aspects of the administrative and organizational forms of the programs which impact, for example, the decision and settlement procedures of projects.

The analysis and comparison of the different regions and the comparison with the previous INTERREG IV A programme will be made on the basis of the responses from the interviews and comparison of the programme documents of the three different programmes. The analysis cannot be considered a full explanation for the observed changes within the INTERREG V A programme regions compared to the INTERREG IV A programme, nor does it constitute a full comparison of the progress of the various programs. This study gives an indication of the state of affairs in the various programme regions and shows the major changes in the implementation compared with INTERREG IV A.

This comparative, stocktaking study can mark the start of a larger and a more comprehensive research project. This could, for example, include a comparison of other INTERREG A programme regions on the European internal borders, using the programme regions on the Dutch border as a frame of reference.
7. Research Design

Between August and October 2016, in-depth interviews were conducted with participants in the three different INTERREG V A programs on the Dutch border (see also Table 2). The interviews had an average duration of 2 hours and were held on the basis of a pre-composed questionnaire, designed for this study. The participants received the interview questions at least one week prior to the interview, allowing them to prepare.

Initially, the idea was to make a distinction between interview partners on programme level and partners on project level and to pose different questions to each group. In practice, however, this distinction was only maintainable for the German-Dutch programme region, as it is separated into sub-programme regions with a central management on programme level. The other two programme regions on the Dutch border do not use this format, however, effectively removing the distinction between decisions made on programme and project level. Despite the distinction between interview partners on project and programme level in the German-Dutch programme region, here too overlap occurred in the information obtained, mainly because the programme managers were also able to answer the questions about the project level. Conversely, this was not the case: the questions about the general progress of the programme were not posed to the project coordinators. Rather, these interviews focused on the daily activities of coordinating and initiating cross-border projects.

The analysis section of this study is based on the results of the interviews, supported by statements from the programme documents of the various programmes where necessary.

Table 2 lists the persons interviewed in each region. Some programme managers also supervise projects, giving them a double role within a programme (see second column). The names of the interviewed persons are known to the author. Many of the interviewees preferred to remain anonymous. For this reason, the analysis below refers to the encrypted interviews.

Table 2: Interviews conducted between August and October 2016

<table>
<thead>
<tr>
<th>Programme region</th>
<th>Level</th>
<th>Date</th>
<th>Encryption</th>
</tr>
</thead>
<tbody>
<tr>
<td>German-Dutch programme region</td>
<td>Programme Level</td>
<td>30/08/2016</td>
<td>DNLInterview1</td>
</tr>
<tr>
<td>German-Dutch programme region</td>
<td>Project Level</td>
<td>30/08/2016</td>
<td>DNLInterview2</td>
</tr>
<tr>
<td>German-Dutch programme region</td>
<td>Programme and project level</td>
<td>01/09/2016</td>
<td>DNLInterview3</td>
</tr>
<tr>
<td>German-Dutch programme region</td>
<td>Programme and project level</td>
<td>06/09/2016</td>
<td>DNLInterview4</td>
</tr>
</tbody>
</table>
8. Results and Analysis

8.1 Development of Euregional governance structures

The programme regions, within which INTERREG A is effective, have grown across the different programme periods due to the extension of the regions in which INTERREG A subsidies can be granted. In addition, the INTERREG A regions throughout Europe were merged step by step.

Since the start of INTERREG III A in 2000, for instance, the three German-Dutch programme regions, the EUREGIO, the Rhine-Waal Euregio and the Rhine-Meuse-North Euregio, have been working together in a common programme region. Under INTERREG IV A (2007-13), this region was extended even further as the Ems-Dollart Region was added.338 Under INTERREG V A, the region still cooperates in the joint German-Dutch INTERREG V A programme, with a common INTERREG Secretariat that supports a joint Supervisory Committee regarding programme approvals and progress. Since these four once independently operating programme regions now collaborate within a larger programme region, this joint programme region now has four regional sub-programme regions. While their objectives and basis are uniform, there are, however, different working methods in these sub-programme regions, e.g. with regard to the application period for projects.339

The INTERREG programme’s Meuse-Rhine Euregio has not merged with any other INTERREG region through the programme periods.

INTERREG’s Flemish-Dutch programme region has changed in the course of the programme periods, as has the German-Dutch programme region. Under INTERREG II, this border region was still divided in two programme regions: the Central Benelux region and the Scheldemond Euregio. Under INTERREG III A, it officially became one single, joint programme region with two regional steering groups for the approval of projects and two regional secretariats. Under INTERREG IV A, both regions were completely united, without any sub-programmes in place any more. The

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338 Cf. Giessen, van der (2014) Coping with Complexity. Cross-border cooperation between The Netherlands and Germany
339 Cf. DNLinterview4
INTERREG V A programme region is now managed by a Joint Secretariat on the Flemish-Dutch border, independently of the (former) Euregios. The Central Benelux Euregio no longer exists at all. The Scheldemond Euregio has survived.  

As explained above, the German-Dutch programme region INTERREG V A is a common programme region with four different regional sub-programmes, each of which is managed by a regional programme management. While located in the different Euregios, they operate even more independently of the Euregios under INTERREG V A than under INTERREG IV A. The separation between Euregios and regional programme management allows the Euroregios themselves to become lead partners or partners in INTERREG projects, for instance, but not exclusively, in the so-called framework projects. Framework projects are projects with a Euregio as lead partner. They allow for the realization of smaller sub-projects through simplified approval procedures. The four regional programme regions in the German-Dutch INTERREG V A programme use different names for these project constructions, such as Dachprojekte (Umbrella Projects) in the Ems-Dollart Region or Rahmenprojekte/Kaderprojecten (Framework Projects) in the EUREGIO, Rhine-Waal Euregio. But Euregios may act as lead partners in other INTERREG projects too. This is currently not the case in all three INTERREG A programme regions, however. In the Flanders-Netherlands border region, the Scheldemond Euregio does not take this position, for example. Since it is not a legal entity, it cannot submit applications to INTERREG in its own right. In the INTERREG V A programme area of the Meuse-Rhine Euregio, the Euregio Meuse-Rhine Foundation will submit a People to People Framework Project for the implementation of small scale sub-projects.  

8.2 Programme progress INTERREG V A

Projects submitted by the requesting parties as part of INTERREG V A must always fit the priorities set by the programme partners, the so-called Priority Axes (PA). The priorities set by the programmes on the Dutch border for the period of INTERREG V A are related to the European frameworks of the Europe 2020 strategy, which promotes smart, sustainable and inclusive growth. The Province of Limburg summarized the ambition of Europe 2020, as underpinned by the prioritizing of the three INTERREG V A programmes, as follows:

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340 InterviewNLVlaan8
341 DNLinterview2
342 The Scheldemond Euregio is a collaboration between provincial governments aimed at bringing them together in their daily operations. While this type of cooperation still exists in the former Central Benelux Euregio, it has no longer been formally laid down in a delineated Euregio region. (InterviewNLVlaan8)
344 The information in this paragraph is largely based on a comparison of the approved project lists. Requests from the different programme secretariats and found on www.deutschland-niederland.eu, www.grensregio.eu and www.interregemr.eu./InterviewNLVlaan8/EMRinterview6
The cooperation programmes are submitted to and approved by the European Commission prior to their implementation. They zoom in on the characteristics of the region in which the programme will be implemented, causing slight differences in the identification of the priorities. The classification of the priorities and priority axes must fit the above-mentioned EU 2020 strategy formulated at European level. As a consequence, the focus for the period 2014-2020 lies on the three main pillars: smart, sustainable and inclusive growth.

The German-Dutch programme has two priorities: Priority 1: ‘Reinforcement of research, technological development and innovation’ and Priority 2: ‘Social-cultural and territorial cohesion’. Before the start, an indicative division of the programme budget was made: around 61.1% was reserved for Priority 1 projects and 32.9% for Priority 2 projects.

INTERREG V A in the Meuse-Rhine Euregio has four Priority Axes (PA), with the following descriptions and indicative percentage distributions of the ERDF/INTERREG contribution:

PA 1 'Innovation 2020' (around 34.4%);
PA 2 'Economy 2020' (around 20.8%);
PA 3 'Social inclusion and training' (around 20.23%) and
PA 4 'Territorial development' (around 18.5%).

The Flanders-Netherlands programme also has four priority axes with an indicative percentage distribution of the ERDF/INTERREG budget of:

PA 1 Smart Growth (Innovation)' (40%);
PA 2 'Sustainable growth (energy)' (22%);
PA 3 'Sustainable growth (environment and resources)' (22%) and
PA 4 'Inclusive growth (labour mobility)' (10%).

Since the different programmes were approved by the European Commission at different speeds and since the different programme partners required more or less time to establish common subsidy guidelines among themselves, the programmes started approving the projects at different times.

The programme for the German-Dutch region was the first to be approved, which could be the reason that it had approved the largest number of projects, comparatively, at the measurement date of 1 August 2016. In total, 65 projects were approved in this programme region. Another 20 projects were still in the pipeline with a real chance of approval at the time of measurement. It must be noted, however, that this is never more than an indication as new projects are added every month. Projects ‘in the pipeline’ are projects that have been in contact with at least one of the project coordinators of the German-Dutch programme region for a longer period of time and are considered likely, by these project coordinators, to receive actual approval because they comply with the subsidy guidelines and because positive signals have been received from the co-financing parties. According to the programme management of the German-Dutch programme, EUR 124 million of the total budget of around EUR 222 million has already been committed.

351 Cf. DNLinterview1/ DNLinterview4
a total committed budget size of EUR 251 million, representing a percentage of 65.2 % of committed EU resources.\textsuperscript{352}

It can be said that the level of commitment of the German-Dutch region’s budget does not diverge much from the previous INTERREG programming period two years from the start. INTERREG IV A only had more difficulty with the payment of funds to the projects, leading to slight payment delays in comparison with the current programming period.\textsuperscript{353}

As far as the German-Dutch programme region is concerned, several interviews clearly stressed that the delayed start of the approval of projects within the framework of the German-Dutch INTERREG V A programme was not due to the new European rules on the granting of subsidies. Rather, it can be traced back to the longer alignment procedures existing between the programme partners involved at the beginning of a new programming period.\textsuperscript{354}

The Dutch-German-Belgian programme region of the Meuse-Rhine Euregio has reserved a total EU budget of EUR 96 million for the duration of INTERREG V A, which will be supplemented by co-financing to a total programme budget of around EUR 140 million. On the measurement date of 1 August 2016, 14 projects were approved in this programme region, with total committed funds of EUR 59 million, EUR 29 million of which are EU resources. This means that around 42% of the entire programme budget has been committed. Estimates by programme management suggest that another 14 project applications are currently under preparation and could obtain approval within half a year.\textsuperscript{355} The reason for the delays in the approval of the projects in this region mainly lies in the cooperation of the programme partners and ‘(th)e structure of and rules surrounding the programme (...) [which had] not sufficiently taken shape yet.’\textsuperscript{356} According to one of the respondents from this programme region, it was mainly the Member States who were at the basis of the difficult cooperation between the programme partners.\textsuperscript{357}

The Flemish-Dutch border region has reserved around EUR 153 million in INTERREG funds. With the approval of 30 projects, almost 55% of the resources have been committed already. Nine projects with a high probability of approval within six months are currently under preparation.\textsuperscript{358} The interviews in this region showed that the Regulations of the European Commission regarding INTERREG V A have, on balance, alleviated the programme, compared to the Regulations on the INTERREG IV A programme.\textsuperscript{359} The table below is a summary of the data provided during the interviews and taken from the programme documents of the various programmes.

\begin{itemize}
\item \textsuperscript{352} Cf. Programmadocument Duits-Nederlands programma, p. 53
\item \textsuperscript{353} Cf. DNLinterview1/ DNLinterview4
\item \textsuperscript{354} Cf. DNLinterview1
\item \textsuperscript{355} EMRinterview6
\item \textsuperscript{356} EMRinterview5/ EMRinterview6
\item \textsuperscript{357} EMRinterview5
\item \textsuperscript{358} InterviewNLVlaan8
\item \textsuperscript{359} InterviewNLVlaan7/ InterviewNLVlaan8
\end{itemize}
Table 3: Summary overview of programme claims (measurement date: 1 August 2016)³⁶⁰

<table>
<thead>
<tr>
<th>INTERREG programme region</th>
<th>Number of approved projects</th>
<th>Total programme budget</th>
<th>Total budget of EU resources</th>
<th>Total budget committed</th>
<th>EU budget committed</th>
<th>Percentage committed programme budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>German-Dutch programme region</td>
<td>65</td>
<td>EUR 444 million</td>
<td>EUR 222 million</td>
<td>EUR 251 million</td>
<td>EUR 124 million</td>
<td>65.20%</td>
</tr>
<tr>
<td>Dutch-Belgian-German programme region EMR</td>
<td>14</td>
<td>EUR 140 million</td>
<td>EUR 96 million</td>
<td>EUR 59 million</td>
<td>EUR 29 million</td>
<td>42%</td>
</tr>
<tr>
<td>Flemish-Dutch programme region</td>
<td>30</td>
<td>EUR 305 million</td>
<td>EUR 153 million</td>
<td>EUR 167 million</td>
<td>EUR 80 million</td>
<td>54.84%</td>
</tr>
</tbody>
</table>

8.3 Content Analysis

The research indicators mentioned in table 1 “average time from first meeting to approval”; "cooperation of the programme partners (compared to previously)”; "procedures for project applications"; and "procedures for project implementation", will be reviewed in more detail in this part of the analysis. Comparative feedback will be provided wherever possible, including the previous programming period, INTERREG IV A, thus enabling a comparison between the current programmes on the one hand and a comparison with the previous programming period on the other. Analysis section 8.3.2, “New structures and practices INTERREG V A”, will include the comparison with the previous programming period and the further discussion and development of the indicators "concrete change of procedures in comparison with INTERREG IV A" and "concrete change of regulations in comparison with INTERREG IV A".

8.3.1 Comparison of the INTERREG V A programme structures between the different regions

In contrast with the other regions, the German-Dutch INTERREG programme region has four regional sub-programme regions, which differentiate between decisions on programme and project level. Programme decisions are taken in the common Supervisory Committee that manages the entire programme region and to which all programme partners belong. Project decisions and approvals are taken within the four regional steering groups, in which representatives of the programme partners have a seat by regional area.

The Meuse-Rhine Euregio and the Flemish-Dutch border region do not make this distinction. In these programmes, decisions concerning the projects/ project applications and the programme are taken by the Supervisory Committee (SC), and no extra (regional) steering groups are in place.³⁶¹

The role of the SC on both the level of project decisions and that of programme decisions in the Flemish-Dutch border region becomes clear from the characterization below that the SC started

³⁶⁰ All three programme regions allot 6% of the total programme budget to Technical Support. This Table counts Technical Support as one of the projects and the amount reserved for Technical Support has been included in the calculation, see also footnotes 25, 26 and 27.
³⁶¹ Cf. DNLInterview1/ EMRInterview5/ InterviewNLVlaan7/ InterviewNLVlaan8
the preparation of the new INTERREG V A programme in the Flemish-Dutch border region in 2011. This shows that the SC operates at a programme level. The SC also operates on project level, as the "application guide” clearly states: ‘Deze leidraad is opgesteld voor projectaanmeldingen die groen licht hebben gekregen van het Comité van Toezicht en uitgewerkt kunnen worden tot een complete aanvraag’. (This guide is drawn up for project applications which have been given the green light by the Supervisory Committee to be developed into complete applications).

The role of the SC in INTERREG’s Meuse-Rhine Euregio programme is comparable to that in the Netherlands-Flanders border region, where it is tasked with the supervision of management and implementation of the programme.

Despite its non-exhaustive character, the description below provides a brief outline of the different approval procedures of projects in the various programme regions:

Whereas the German-Dutch programme region offers the possibility to submit projects at any time during the programme, the Flemish-Dutch programme launches calls for projects, whereby the SC decides on the date, form and content. The Dutch-German-Belgian border region also works with generic calls for project proposals, indicating when they can be submitted and which specific conditions have to be fulfilled. 

The Dutch-Flemish border regions and the Meuse-Rhine Euregio do offer personal consultations prior to the call for project applications. This is also the procedure for the applications, which can be submitted at any time, in the German-Dutch border region.

All three programme regions make use of a digital system for the submission of applications. The various programme and project partners have access to the applications and the corresponding status of the application. The extent to which the programme partners can enter the digital systems or access the data varies per programme, nor are the digital programmes uniform. Some programme regions have been working with a digital system for a longer time, e.g. the German-Dutch programme, others are using it for the first time during the INTERREG V A period. The Dutch-Belgian-German programme region only started using the electronic management system after the first INTERREG V A projects had been approved. The Flemish-Dutch INTERREG region works with a system called E-loket (E-counter), the Dutch-German INTERREG programme uses

365 Cf. EMRinterview5/ InterviewNLVlaan7
366 Cf. DNLinterview4
InterDB and Meuse-Rhine INTERREG programme uses the eMS system. The systems are partly based on the structure and content of the general digital system for project applications made available by INTERACT. Since the system provided by INTERACT is quite general, the programme regions on the Dutch border have developed their own programmes, incorporating elements of the INTERACT system.\textsuperscript{367}

In the Flemish-Dutch region applications are initially assessed by the Joint Secretariat for Flanders-Netherlands, located in Antwerp, which also issues a reasoned opinion. Subsequently, the programme partners make a reasoned decision.\textsuperscript{368} This programme region uses a two-stage procedure. The project applicant must register the project proposal by uploading a project outline to the digital E-loket (E-counter) system. Subsequently, the Supervisory Committee (SC) determines whether the registration can be elaborated into a full-fledged application. An official body, comprised of the same parties as the SC, advises the SC during this initial assessment, where high officials give feedback from their own specialist departments. After a positive decision, applicants can further develop their application, after which the Joint Secretariat again checks it against the subsidy criteria of the programme. The SC ultimately decides on the approval. A total application duration of approximately 1 year should be taken into account.\textsuperscript{369}

The Management Authority plays a central role in the approval procedure of the INTERREG V A Meuse-Rhine programme region, supported by the Joint Secretariat. Ultimately, the SC decides on project approvals in this programme region too.\textsuperscript{370} Here too, it is difficult to estimate the average time required for a project application to obtain approval. The programme document of the Dutch-Belgian-German programme sets a time path of up to 6 months for approval, i.e. from the time of submission of the project outline to the submission of a request for approval of the application. This does not include the time for the elaboration of a project outline, which takes several months.\textsuperscript{371}

In the German-Dutch border region, the SC does not decide on all projects, but focuses mainly on procedures and the progress of the programme itself. The Common INTERREG Secretariat, which connects the four regional sub-programme regions and can be seen as the organizer for the SC, has little to do with most of the projects and the decisions concerning them. Instead, the Common INTERREG Secretariat and the common SC focus their activities on the supervision of the

\textsuperscript{367} Cf. DNInterview1
\textsuperscript{369} Cf. InterviewNLVlaan7/ InterviewNLVlaan8
overall progress of the programme, the coordination and communication between the regional programmes and, among others, also on the communication with the European Commission. 372

Nevertheless, the German Dutch programme region also has variations in the approval procedures between the four regional programmes. There are sub-programme regions, such as the regional management of the Rhine-Meuse-North Euregio, which test each project idea for regional support as one of the first steps in the application procedure: The project outlines have to be presented to a body of mayors who represent the members of the Rhine-Meuse-North Euregio organization to see whether the project idea might have impact on the region. Only in the next steps do they check whether all grant requirements have been met and whether the relevant project plan might qualify for (national) co-financing. Other programmes offer yet other routes to approval: the programme management of the Rhine-Waal Euregio, for instance, has project coordinators prepare project applications to such detail that both content and technicalities meet the programme requirements. This is achieved through discussions with the Lead Partner, discussion of applications during Technical Consultations (Technisch Overleg) and the adjustment of projects that don’t meet the grant requirements and the requirements of the intended national and/or provincial co-financiers. Only in the next step is the elaborated project presented to potential national and/or provincial co-financiers and decision makers of the regional steering group, where the Euregio itself and its member municipalities share one of the seats. 373

It is difficult to indicate an average application time because the approval procedures differ in the German-Dutch INTERREG programme region. According to the interviewees, an average time of 1 year should be taken into account from the first interview to the approval of the project by the regional steering group, but wide disparities exist, ranging from shorter application procedures of 6 months to much longer ones. How long the actual approval procedure will take depends on many factors related to both the working methods of the regional programme management and the substantive aspects of the project applications, such as meeting the grant requirements, the conversations with potential partners and co-financiers, etc. 374

In all regions, the project applicants really need not interfere in the internal procedures of approval of the various programmes. They are supported by a regional programme management in the German-Dutch border region or by the (Common) Secretariats elsewhere. Overall, the projects submitted must meet the grant requirements and comply with the wishes of the national and/ provincial co-financiers in order to be approved. All programs strive for the shortest possible route to approval.

A comparison in the German-Dutch programme region shows that the testing of the applications has not become significantly simpler under the INTERREG V A programme than it was under the INTERREG IV A programme. The substance of the applications has become clearer. For example,

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372 Cf. DNLinterview1
373 Cf. DNLinterview1/ DNLinterview4
374 Cf. DNLinterview1/ DNLinterview2/ DNLinterview3/ DNLinterview4
the estimation and planning of the costs has been facilitated in the project applications through the introduction of the overhead costs and the classification of staff costs into five different groups of hourly rates. Applicants can do the grading of staff to be deployed on the project themselves without having to submit, for example, their pay slips any longer, as was the case during the INTERREG IV A programming period. 375

Because the German-Dutch programme works with two priorities and with Strategic Initiatives (framework projects), an additional approval step, in the form of Innovation Consultations, was built into the approval procedure for these strategic initiatives and for Priority 1 project applications, i.e. projects that lead to an increase in the cross-border innovation power of the programme region. These Innovation Consultations take place across all four sub-programmes. The participants are all programme partners, while positive or negative recommendations can be made and suggestions for changes or modifications offered. 376

Based on the replies obtained during the interviews and the information extracted from the various programme documents, it may be concluded that the procedures prior to the approval of project proposals clearly differ between the three programme regions. The preparation of projects and even the decision making takes place on different levels in the various programme regions.

8.3.2 New structures and practices in INTERREG V A

This section of the analysis reviews the practical implementation of the changes in the three programme regions between INTERREG IV A and INTERREG V A. Since the details of the working methods of the programmes differ, only the most striking differences between the programme regions that were mentioned in the interviews are explained here. Where the previous part of the analysis mainly used project approvals to show the different structures of the programmes, this part of the analysis focuses on changes in relation to project progress, project accounting, project reporting and project reviewing. During the interviews, the partners were asked to name the most significant simplifications within the current programming period based on their own professional experience. The simplifications made by the EU can be observed in the EU regulations for the programming period 2014-2020 and in documents about the simplification of the programming period 2014-2020 as compared to the previous period. 377 Most of this analysis will not quote the official wording from the EU regulations but will focus on the daily procedure of the Dutch INTERREG V A programmes.

Examination of the list of the 65 projects already approved in the German-Dutch INTERREG V A programme region shows that many of the project carriers also realized projects under INTERREG IV A and III A, and possibly even under INTERREG II. However, one can also find project lead

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375 Cf. DNLinterview1/ DNLinterview3/ DNLinterview4
376 Cf. DNLinterview2
partners who have assumed this role for the first time. These new lead partners do often have prior INTERREG experience, however, gained as a project partner or participant in multiple projects during previous programmes. The INTERREG V A programming period also attracts new project partners. This shows that the number of organizations, companies and institutions that participate in the programme is growing. Experienced partners and project carriers often include inexperienced parties in their project applications.378

The interviews conducted in the German-Dutch programme region made it clear that the procedures for the implementation and administration of projects have in part become easier compared to the previous period. All respondents from this programme region confirmed unanimously that the rules of the EU had not become more complex for the German-Dutch programme. On the contrary, the intended simplification of subsidy programmes has indeed taken place.379

One of the interviewees describes his general impression as follows:

'During INTERREG IV A I knew each accountant and all financial and administrative staff of the projects. INTERREG V A allows me to focus on the content of the projects again.'380

All four respondents in the German-Dutch programme region mentioned the simpler procedures for settlement, payment and financial monitoring of the projects. During INTERREG IV A, the projects were required to submit so-called "means requests" to a regional programme management, which were first checked by internal accountants and then subjected to another internal audit and a second, external audit. This was a lot of work, above all, as it required much communication to and fro, caused, among others, by the need to correct any errors made during all three audits, and a substantially longer monitoring procedure, which often led to payment delays. INTERREG V A saw the implementation of a new system: Project Lead Partners apply for reimbursement of their costs directly. These costs are checked through an internal First Level Control (FLC), which can be performed in-house at all regional programmes. The sub-programmes perform FLCs on each other, so that, for example, the FLC of the EUREGIO programme region audits the projects of the Rhine-Waal Euregio. Project partners have to allot 1% of their total budget to the costs of submission of their application to the FLC. On the other hand, the costs for accounting, which had to be budgeted in during INTERREG IV A, have disappeared.381

Not only the preparation of the means request and its audit has changed, but also the content of these requests. For example, whereas INTERREG IV A required all staff costs to be monitored by means of payslips, prior grading of staff remunerated on project basis and keeping a record of the

378 Cf. DNLInterview1/ DNLInterview2/ DNLInterview4/ List of approved projects through the Joint INTERREG Secretariat (non-public)
379 Cf. DNLInterview1/ DNLInterview2/ DNLInterview4
380 DNLInterview4
381 Cf. DNLInterview1/ DNLInterview3/ DNLInterview4
hours worked by means of proof are sufficient under INTERREG V A.\footnote{INTERREG V A uses five different tariff groups for staff costs. The projected staff are put in the different tariff groups already in the application, see INTERREG Deutschland-Nederland (2015) Förderbestimmungen des INTERREG V A-Programms Deutschland-Nederland, p. 6 en 7 (INTERREG Germany-Netherlands (2015) Regulations of the INTERREG V A Programme Germany-Netherlands)} Invisible expenses, such as overhead costs, also had to be proven under INTERREG IV A. INTERREG V A adds an overhead percentage to the staff costs. This percentage can be seen as a kind of flat rate, so that not every type of cost should be entered separately but can be added at once to the hours worked.\footnote{See also Regulation (EU) No 1303/2013 of the European Parliament and the Council of 17 December 2013, Article 68, p. 57} The German-Dutch programme uses two different percentages of overhead costs: Priority 1 projects can include 25% overhead costs and Priority 2 projects 15% (see above for an explanation of the programme priorities).\footnote{Cf. INTERREG Deutschland-Nederland (2015) Förderbestimmungen des INTERREG V A-Programms Deutschland-Nederland, p. 8 (INTERREG Germany-Netherlands (2015) Regulations of the INTERREG V A Programme Germany-Netherlands)/ DNLInterview4/ DNLInterview2}

The declaration procedure has also changed: whereas INTERREG IV A still required the submission of original documentary evidence and means requests by mail, INTERREG V A uses a digital monitoring system, in which the projects’ progress reports can also be entered. These progress reports should be submitted every six instead of three months under INTERREG V A.\footnote{Cf. DNLInterview4}

It also became clear that INTERREG V A requires a division of project expenditures into fewer cost categories than INTERREG IV A. Also, internal changes between costs categories no longer require approval from the regional steering groups. INTERREG V A has established that the cost calculation for a project plan should be considered a mere estimate and that there will always be deviations in the course of the implementation of a project. Cost calculations should preferably be kept by the project lead partner as part of the notes or of the progress report regarding the implementation of the project. It became clear from the interviews that this is considered great progress, in that it gives lead partners more freedom to take project decisions independently. The downside to this is that lead partners also bear greater responsibility, partly because they cannot have all decisions approved by programme management. This could even mean that a lead partner is less focused on the content of a project in INTERREG V A than in INTERREG IV A. A greater responsibility rests on the shoulders of the lead partner regarding the administrative and financial structure and any changes to it. The lead partner also has to monitor the realisation of the project results more than before.\footnote{Cf. DNLInterview1/ DNLInterview4/ DNLInterview3/ DNLInterview2}

The above examples of changes in project implementation demonstrate that the everyday administrative processes of the current INTERREG V A programme in the German-Dutch region have actually become simpler.
The Dutch-German-Belgian INTERREG V A programme region had approved 14 projects on 1 August 2016, thus having committed around 42% of the entire budget (see also Table 3). As such, this programme region is slightly behind the other programmes in terms of financial commitment. As indicated above, the slow start of this programme was due mainly to the coordination between the programme partners and not to the revised European regulations. The interviewees from this region also mentioned different points regarding the settlement of projects which have made the work method of the programme easier compared to the INTERREG IV A programme. They agree that the regulations of the European Commission have not made the rules for the implementation of the programme stricter but rather more lenient. They confirmed that, ‘in principle, the general & specific ETS-Regulations (Vo) (...) [offer] more room for administrative simplification, e.g. via fixed sums for expenses.’ It became clear that the potential, offered by the European Commission, to simplify the programmes was not fully realized. This could be due to the fact that the Member States play an even stronger role in this programme than was previously the case. The question whether the interviewees could identify parts of the regulations of the European Commission that caused any burdening of or delay in the current programme received an unambiguous reply: ‘No, it is rather about making the transition to practice and meeting the demands of the Member States regarding the implementation of the Regulations.’ It is claimed that the Member States too often tend to take their own position as the measure of all things, rather than cross-border cooperation. According to one of the respondents from this programme region, the position of the project partners should become the starting point more often in the future, and the context of the border region should be considered more instead of promoting national and regional interests. This may include the return of more and smaller INTERREG programme regions, where sub-programme working methods can be maintained if necessary. This would put the border regions at the heart again.

Prior to the current programming period, a restructuring took place, in which the Management Authority of the Stichting Euregio Maas-Rijn (Euregio Meuse-Rhine Foundation) was transferred to the Province of Limburg (NL). This transfer constitutes a significant change in the working methods of the INTERREG programme in this region, and it will have to be reviewed in the course of the current programme which procedures work best.

In addition to these aspects at the programme level, the same simplifications as referred to in the section above about the German-Dutch region were reported at the project level. Especially the change of being allowed to calculate the overhead costs in proportion to the staff costs and no longer having to break them down alleviates the work. The fact that all documentation, i.e.

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387 Cf. EMRinterview
388 EMRinterview
389 EMRinterview
390 EMRinterview
391 EMRinterview
applications, reports and official communication, must be made available in three languages, however, remains an aggravating aspect of this programme.\textsuperscript{392}

The Flemish-Dutch region has also undergone changes in the monitoring and management of the implementation due to the transition from INTERREG IV A to INTERREG V A. These were announced as follows in the Public Version of the INTERREG-Flanders Netherlands Collaboration Programme:

‘De beheers- en controleregelingen (...), borduren deels voort op deze in voorgaande Interreg-programma’s. Nieuwe elementen of accenten komen voort uit leerpunten uit de voorgaande programma-periode, aanbevelingen uit systeemaudits, een bestuurlijke wens tot administratieve vereenvoudiging, harmonisatie waarrond in Interact-verband en met naburige programma’s is overlegd en vanzelfsprekend de nieuwe verordeningen.’\textsuperscript{393}

(The management and monitoring arrangements (...) partly build on those of previous INTERREG programmes. Any new elements or accents are derived from lessons learnt from the previous programming period, recommendations from system audits, the managerial desire for administrative simplification, harmonisation agreed upon through Interact and with neighbouring programmes and, of course, the new Regulations.)

The interviewees in this region identify the above aspects of project implementation as the striking changes in working daily within and with cross-border INTERREG projects in this programming period. They also gave examples such as working with flat rates for expenses. Simplifications such as reduced burden of proof and standard hour rates for calculating staff expenditures are also seen as positive. In addition, this INTERREG A programme, supported by the relevant European regulations, allows all projects, regardless of the level of the total planned budget, to claim preparation costs of about EUR 30,000 without having to prove the costs incurred separately during the preparation period.\textsuperscript{394}

It is noteworthy that the interviewees in the Flemish-Dutch region raised an issue that was not addressed in the interviews elsewhere, i.e. the requirements regarding publicity. The relevant EU Regulation stipulates these requirements in a very detailed manner.\textsuperscript{395} This programme region has rewritten these European directives to create a workable guide for the region.\textsuperscript{396} Indicating the support received from INTERREG resp. Europe was already a requirement in the previous

\textsuperscript{392} EMRinterview\textsuperscript{5}
\textsuperscript{394} InterviewNLVlaan8
programming period, but the descriptors were much less detailed.\footnote{397 See Regulation (EC) No 1083/2006 of the Council of 11 July 2006, Article 69, p.34} According to the participating partner, the controls on publicity lead to much irritation and extra work, and barely result in more or better communication. The current rules concerning logo size, for example, even generate an adverse effect: beneficiaries actually communicate less about their project.\footnote{398 InterviewNLVlaan8}

Another point of focus in the interviews in this programme region was the issue of state aid, which can be defined as follows:

‘De Europese Unie streeft naar onvervalste mededinging in de interne markt (...). Wanneer publieke autoriteiten voordelen toekennen aan bepaalde ondernemingen, die concurrenzen in de markt, kan de mededinging worden verstoord. Dergelijke voordelen worden staatssteun genoemd.’\footnote{399 Ministerie van Buitenlandse Zaken (2016) (Dutch Ministry of Foreign Affairs) http://www.minbuza.nl/ecer/dossiers/staatsteun/staatsteun.html}

(*The European Union is committed to achieving undistorted competition in the internal market (...). When public authorities grant benefits to certain undertakings that compete in the market, competition will become distorted. Such benefits are referred to as state aid.*)

The rules regarding state aid are more nuanced during this programming period. This can be seen in Regulation 1303/2013, which states:

‘Financial instruments should be designed and implemented so as to promote substantial participation by private sector investors and financial institutions on an appropriate risk-sharing basis. To be sufficiently attractive to the private sector, it is essential that financial instruments are designed and implemented in a flexible manner. Managing authorities should therefore decide on the most appropriate forms for implementing financial instruments in order to address the specific needs of the target regions, in accordance with the objectives of the relevant programme, the results of the ex ante assessment and applicable State aid rules.’\footnote{400 Regulation(EU) No. 1303/2013 of the European Parliament and the Council of 17 December 2013, Art. 36, p. 6}

Thus, with regard to state aid, the European Commission created more opportunities for subsidization through Interreg.\footnote{401 InterviewNLVlaan8}

\section*{8.4 Contact between INTERREG V A programme regions}

Most of the programme partners on the Dutch border know each other. Some programme partners are part of two programme regions, because two programmes are being implemented within the same region, for example, within the German Land of North-Rhine Westphalia. The three programmes that include the Dutch border regions are often staffed by people who worked...
for INTERREG A during previous programming periods, sometimes in different positions. In addition, regular consultations between the programme regions form an opportunity for the programme managers to meet.

Furthermore, some of the programme regions are members of Europe-wide networks such as the Association for European Border Regions (AEBR) and INTERACT. For instance, 95 out of an estimated 163 cross-border regions are members of the AEBR. The main task of the AEBR, which was founded in 1971 long before the implementation of the INTERREG programme in 1989/90, is the representation of the interests of European border regions at national and European level. In addition, the AEBR aims to initiate, support and coordinate cooperation across Europe by sharing information and formulating common interests and potential solutions to problems. The annual, often multi-day conferences assemble representatives of the member regions of the AEBR. The programme partners from the Dutch cross-border regions are very regular participants in these annual conferences.

The programmes also form part of the INTERACT network. The INTERACT network consists of networks concerned with INTERREG. INTERACT is a help desk to support the programmes in their daily activities and as to their working methods and to connect them mutually, for example by encouraging the exchange of experiences or by providing information about the possibilities of INTERREG. The objectives of INTERACT are threefold: 1. Improving the management capabilities of the INTERREG programmes; 2. Improving INTERREG capacities with regard to the recording and the communication of project results and 3. Enhancing the implementation of new cooperation methods. Staff from the German-Dutch and Flemish-Dutch programme regions are regularly approached from the INTERACT network with questions about the structure of the procedures in this programme region. The reason is that the German-Dutch region is far ahead of the other programmes in Europe regarding the commitment of funds (see above), the coordination of regulations and the exceptional involvement of the German and Dutch partners in the programme. Representatives from the Flemish-Dutch region also enjoy participating in the INTERACT network and the events and workshops it offers. Around two thirds of the people working at the Joint Secretariat in Antwerp participate in the INTERACT network. An important aspect of the network is the opportunity it provides to learn from the different elements of other programmes and to improve one's own programme or working method, in part thanks to this mutual communication.

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402 www.aebr.eu
403 With the INTERACT network also being an INTERREG project in its own right, in which all 28 Member States, Norway and Switzerland participate as members (cf. www.interact.eu)
404 Over 100 INTERREG programmes are members of the INTERACT network, also including the INTERREG B and C programmes.
405 Cf. www.interact.eu
406 Cf. DNL Interview1
Another important aspect of the INTERACT network are the interpretive discussions of the European regulations. It is interesting for programmes to explain their own interpretation or method of enforcement to other programmes, so that, all across Europe, these programmes are aware of the possibilities and are aligned as much as possible, wherever possible. Since it is difficult, in practice, to obtain a direct explanation from the European Commission regarding the interpretation of a certain aspect of the Regulation, the programmes can spar together and, where necessary, jointly formulate a question to present to the European Commission. Discussions have made clear that this often leads to a quicker answer. Overall, the interviewees were satisfied with the work of INTERACT: the organization responds quickly to changes and supports the implementation of new regulations when necessary. 407

8.5 The Image of the INTERREG V A programme

The final research indicator in Table 1 of this document is the image of the INTERREG A programme. As this indicator is not immediately quantifiable, all interviewed persons were asked to assess the programme.

The various interviews generally showed that INTERREG A has the image of being bureaucratically and administratively burdensome. 408 Although the transition of INTERREG IV A to V A has resulted in procedural simplification, which can be traced back to the simplified legislation of the European Commission’s regulations, the image of INTERREG V A does not yet appear to have improved much. One of the partners suggested that the image of the previous INTERREG IV A programme is transferred to the INTERREG V A programme. 409

This stocktaking study has made it apparent that the programme regions operate in different ways within the same framework. In some programme regions, partners jointly pursue the goal of promoting cross-border cooperation. In other regions, the partners on both sides of the border engage in cross-border cooperation with different interests. The diverging interests in these programme regions can be the cause of more difficult cooperation compared to areas where the partners have been collaborating towards approximately the same objective for years. The "final consumers", i.e. the organizations carrying out the projects, are often unaware that certain procedures and requirements within one INTERREG A programme region do not automatically apply to the other INTERREG A region as well. This may cause negative experiences in one programme region to give another INTERREG A programme a negative image too.

The interviews also made clear that European subsidy programmes are generally much more burdensome in terms of administration and monitoring systems than national or provincial subsidies. 410 The INTERREG A programmes usually do much to improve the programme’s image.

407 Cf. DNL interview1/ InterviewNLVlaan8
408 It should be noted that this study does not provide an exact definition of the term ‘bureaucratic’ as it is not immediately quantifiable and no comparison takes place with, for instance, another European programme. The responses to this question merely concern a personal assessment of the interviewees.
409 Cf. DNL interview3
410 InterviewDNL8
As a consequence, info sheets and websites exist with detailed information, and regional meetings are held to communicate the simplifications of the European regulations that govern the programme. The interviewees admit that it remains difficult to actually change the image.\textsuperscript{411}

The interviews did not fully reveal which aspects of the programme exactly cause the bureaucratically and administratively burdensome image. Perhaps it is caused by the interplay and cumulation of various aspects: the extensive approval and coordination procedures, the co-financing interviews, the interviews and presentations for the various fora on the way to approval, as well as the time allotted for these (see above for the duration of project-application procedures).

The interview partners do not fully agree to the statement that cross-border cooperation in their region would be a given fact even without INTERREG A. Opinions diverged from:

‘cross-border cooperation would also have taken place in our region without INTERREG. INTERREG is only an instrument, not a condition for cooperation.’\textsuperscript{412}

to:

‘[If INTERREG were to disappear,] there will be some ‘memory effect’ [on the short term]. The networks will probably survive initially but will be diluted after a while. Cohesion is stronger within a country, due to regular contacts, seminars and consultations. There is less of this across the border, and if INTERREG were no longer there as a trigger, it might water down our network, which would be a step back.’\textsuperscript{413}

This does not alter the fact that, despite the obstacles, rules, lengthy procedures etc., almost all interviewees share a fundamentally positive attitude towards cross-border cooperation. Especially the interviewees in the German-Dutch and Flemish-Dutch programme regions were convinced that INTERREG A actually stimulates cross-border cooperation. One of the partners explained this very simply:

‘Public institutions have an introverted task; they only look toward their own circles within their own country. Genuine cross-border cooperation between public and semi-public authorities will not take place without a programme such as INTERREG A. The situation is different at universities; they have contacts throughout Europe. However, things are different for educational institutions. Here, INTERREG stimulates cross-border cooperation.’\textsuperscript{414}

\textsuperscript{411} Cf. DNLinterview1
\textsuperscript{412} DNLnterview3
\textsuperscript{413} InterviewNLVlaan8
\textsuperscript{414} DNLinterview4
9. Summary and Conclusion

This comparative stocktaking study gives a first impression of the INTERREG V A programme in the programme region between Germany and the Netherlands, the Meuse-Rhine Euregio, i.e. a German-Belgian-Dutch programme, and the border region between Flanders and the Netherlands. The study focuses firstly on comparing the progress of the various programme regions and secondly on comparing the approval and implementation procedures of the INTERREG projects. The main focus of the research lies on the most significant differences in implementation between the current and the previous programming period in the various programme regions. Finally, it addresses the image of INTERREG in the programme regions. Since the European Commission has been striving for the simplification of programmes such as INTERREG A, establishing whether the regulations of INTERREG V A have indeed become simpler is key.

The results of the study show that the INTERREG V A programme regions of Germany-Netherlands and Flanders-Netherlands are ahead of schedule, given that around 50% or more of the total budget has already been committed 2.5 years after the start of the programme. The Meuse-Rhine Euregio is slightly behind by comparison. As the interviews made clear, this had nothing to do with any extra bureaucratic burden caused by European legislation. Almost all of the interviewees confirm that the European regulations for the implementation of INTERREG V A have indeed become simpler. The programme regions themselves have also attempted to achieve the simplification, so that the final beneficiaries of the programme, i.e. the project carriers and partners, bear a lesser administrative burden and increase their decision-making power in the projects. This increased decision-making power sometimes also implies greater responsibility for the project partners. This can go hand in hand with a higher own risk since lead partners carry more responsibility for the achievement of the project’s targets than in earlier programming periods. Moreover, the approval of mid-project changes to the cost structure no longer lies with the responsible programme management in all cases but increasingly with the lead partner. In short, project implementation, overall, is more result-oriented than before.

Ultimately, it can be established that the INTERREG V A programme has clearly been simplified, both through the relevant EU regulations and by their actual implementation in the regions. This shows, among others, the way in which the programme is managed in the various programme regions, the way in which new project applications can be submitted and the way in which projects are carried out, supervised, monitored and settled. This does not mean, however, that all programme regions are achieving the maximum result from this simplified regulatory environment. There is still much ground to be gained both at regional, provincial and national level.

In general, the INTERREG programme still suffers from a negative image in terms of the bureaucratic burden of its implementation. The interviewees identified several potential causes for this: perhaps the experiences from programme regions where the implementation of INTERREG has been relatively difficult are generalized and transferred to all programme regions. Or perhaps past experiences with INTERREG III A and INTERREG IV A have a negative effect on the
perception of the new programme. The interviewees also pointed out that other European subsidy programmes are probably not less cumbersome than INTERREG. This also raises the question of the subsidy programmes at national, regional or local level to which the European INTERREG programme is being compared. European subsidy procedures can generally incur a reputation of being bureaucratic in comparison with mostly regional or local grant applications, where decision-making procedures are often shorter as fewer bodies are involved at fewer different levels of government, not to mention the absence of any cross-border bodies or administrative tiers.

The interviews also made clear that the structure of INTERREG A gains a reputation of being complex and not very transparent when many and many different programme partners have to make joint decisions and procedures vary slightly across the different programme regions. On a positive note, however, it is exactly this joint management and decision making by programme partners on different sides of the border that makes the INTERREG A programme unique, as the interviewees confirmed. As such, the structure and organisation of the programme itself constitute a cross-border impulse in their own right.
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3.4 Social security: illness and disability

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‘Nederland als één groot grensgebied [...] Zeven van de twaalf provincies grenzen aan het buitenland en twee miljoen Nederlandse ingezetenen wonen in Nederlandse grensgemeenten. Juist in de grensgebieden worden burgers, maatschappelijke organisaties, instellingen en overheden bij grensoverschrijdende contacten op het terrein van bijvoorbeeld wonen, werken, onderwijs en zorg, geconfronteerd met barrières die worden opgeworpen door cultuurverschillen en door verschillen in nationale wet- en regelgeving. Het Europa zonder binnengrenzen en met een vrij verkeer van personen, diensten en kapitaal is in veel opzichten vaak een papieren realiteit. Tegelijkertijd liggen er juist in de grensgebieden bijzondere ontwikkelingskansen.’

(The Netherlands as one great border area [...] Seven of its twelve provinces share a border with a foreign country and two million of its citizens live in Dutch border municipalities. It is exactly in these border areas that citizens, societal organisations, institutions and governments are confronted with barriers caused by cultural differences and differences in national legislations and regulations in areas such as residence, work, education and care. A Europe without internal borders and free movement of people, services and capital is in many ways a paper reality. Simultaneously, it is exactly in these border areas that special development opportunities arise.)

1. Introduction

Any person working in the Netherlands who becomes ill or disabled there falls under the Dutch regulations regarding illness (article 7:629, Dutch Civil Code) and disability (Work and Income according to Labour Capacity Act (Dutch: WIA416)). This also applies to frontier workers residing in another EU Member State. These employees and their employers will have to conform to the Dutch regulations, which are increasingly, and more so than in other Member States, integrating concepts such as privatisation, activation and reintegration. Since social security is a national competence and will remain so for the time being, Member States are allowed to design and alter their own system of social security.

This report focuses on two social security risks: short-term and long-term incapacity for work, i.e. illness and disability. The reason for this choice is that the Dutch systems put in place to support these two social security risks have been fundamentally restructured over the past two decades, and, additionally, they differ significantly from the systems in other Member States. Moreover, there are but few European regulations available to provide any clarity in case of cross-border illness or disability.

The Dutch government shifted the responsibility for income provision in case of illness to the private parties, i.e. employers and employees. This privatisation of the Dutch Ziektewet (Sickness

415 Raad voor het openbaar bestuur (Rob), Besturen over grenzen, Adviesrapport over het bestuurlijk functioneren van grensoverschrijdende samenwerkingsverbanden, mei 2008, p.7. (Council for Public Administration, Administration across borders, Advisory Report on the administrative functioning of cross-border partnerships)


417 The continued payment of wages obligation has been extended step by step in 1994, 1996 and 2004; the Wet WIA (Work and Income according to Labour Capacity Act) took effect in December 2005.
Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

Benefits Act) has led to the current obligation to continue the payment of wages for a maximum of 104 weeks and is based on the provisions of Article 7:629 of the Dutch Civil Code. Connected to this obligation for continued payment of wages are many other regulations to stimulate both employers and employees to keep sick employees in the labour process or to have them return to it as soon as possible. One of the most famous regulations is the Wet verbetering poortwachter (Gatekeeper Act) of 2002, which tied active coaching of sick employees to a strict time path. Contrary to other Member States, the Dutch Ziektewet (Sickness Benefits Act), as a regulation subject to public law, now only serves as a safety mechanism, given that most employees fall under the obligation for continued payment of wages governed by labour law.

As far as long-term disability is concerned, which usually starts after the obligatory 104 weeks of continued payment of wages, a strong tendency towards activation can be observed, including, for example, the hiring of private re-integration companies for the execution of the WIA (Work and Income according to Labour Capacity Act). The WIA (Work and Income according to Labour Capacity Act) is also supported by other regulations.

The EC Regulations 883/2004 and 987/2009 play an important role in situations of cross-border employment. These European regulations are aimed at the coordination of national systems of social security without striving for harmonisation. Contrary to the Dutch regulations, these coordinating regulations contain but few stipulations on income provision for employees who are ill or reintegrating from a situation of disability.

This contrast between the Dutch regulations, which are many, strict, complex and primarily nationally oriented, and the European regulations, which are very few and unspecific, can produce bottlenecks or gaps in cross-border employment for both EU workers and their employers. The lack of a transparent foreign policy on the part of the Dutch government and its implementing body UWV makes it difficult to establish which rules exactly govern cross-border situations of illness or disability where the Dutch regulations apply in combination with a foreign component, such as living abroad or having an employment contract under foreign law.

This report hypothesises that the Dutch regulations regarding illness and disability (may) hinder the free movement of labour, (may) lead to legal uncertainty and (may) endanger social cohesion in Europe.

A PhD thesis on this subject was defended recently, entitled *Activering en privatisering in de Nederlandse ziekte- en arbeidsongeschiktheidsregeling in grensoverschrijdende situaties*.

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2. Research Objectives, Definitions, Themes and Indicators

2.1 Effects: today or in the future; Objective: ex-post or ex-ante
While this cross-border impact assessment contains both ex-post and ex-ante effects, the ex-post analysis will be the more extensive of the two.

The ex-post assessment focuses on the bottlenecks and gaps that can be directly observed from a thorough study of the Dutch regulations regarding illness and disability.

The ex-ante assessment can be performed using the recommendations from the above PhD thesis.

2.2 Effects: on which geographical area? Definition of the border region
This study uses a broad definition of the term border area: the national border shared by the Netherlands and other Member States. A cross-border situation can pertain to the daily commuting of cross-border workers between their country of residence Belgium, or Germany, and their country of employment, the Netherlands. It can, however, also include Polish or Spanish citizens who work in the Netherlands but return to their country of origin after a short or long period of disability. In other words, the definition of border is geographical in nature and linked to the national border. In the Euregional situation, this might constitute an impediment to cross-border traffic and, as a result, to a common, cross-border labour market.

2.3 Cross-border effects on? What are the themes of the research, its principles, benchmarks and indicators?

2.3.1 Disability Dossier: short-term and long-term. Which focus?

1. European Integration.

The free movement of people (Article 45, Paragraph 1 TFEU) gives workers the opportunity to seek employment in another Member State, while any discrimination on the grounds of nationality is forbidden (Article 45, Paragraph 2 TFEU). The social security rights of mobile EU workers are anchored in and supported through coordination regulations (Articles 46 and 48 TFEU). These regulations, i.e. basic regulation 883/2004 and implementation regulation 987/2009, guarantee EU citizens the validity of social security rights and duties across national borders. Workers who are entitled to Dutch illness or disability benefits can, in other words, also claim those benefits if they reside abroad.

The coordination regulations reassert the principle of equal treatment:


420 TFEU: Treaty on the Functioning of the European Union.
- ‘It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned.’: Recital 5 of EC Regulation 883/2004.

- ‘The general principle of equal treatment is of particular importance for workers who do not reside in the Member State of their employment, including frontier workers.’ Recital 8 of EC Regulation 883/2004.


- Waiving of residence requirement unless justified and provided by the Regulation: Article 7 and recital 16 EC Regulation 883/2004.

Dutch legislation should also be respected in certain cross-border situations, based on the allocation rules set out in the coordination regulations. They determine which national social security system will prevail in a cross-border employment situation involving multiple Member States. If the coordination regulations designate Dutch social security legislation as the applicable law, the entire Dutch social security legislation shall be applicable for this reason. However, it is not always possible to apply Dutch laws and policies completely unaltered in a cross-border situation. In addition, the Dutch policy regarding illness, i.e. in the first 104 weeks, and disability or invalidity, i.e. after 104 weeks, diverges significantly from common practice in other Member States and is only supported by the Regulations to a very limited extent.

As mentioned earlier, illness and disability in the Netherlands are always paired with strong activation and reintegration stimuli for both the employer and the sick cross-border worker. A thorough analysis (cf. PhD thesis Montebovi, June 2016) indicates that, firstly, the Dutch rules are not always known nor applicable in cross-border situations; secondly, a transparent foreign policy is lacking; and, thirdly, this causes legal uncertainty for both employer and employee. This may hinder both parties in the implementation of the extensive Dutch legislation and regulations, and it might make them less inclined to do business if the Dutch social security legislation is (meant to be) applicable.

2. Cross-border socio-economic development/sustainable development

The effects of the Dutch illness and disability regulations on sustainable cross-border development are difficult to measure from a legal perspective. Nevertheless, studies from 2015 have shown that current cross-border commuting is only one-tenth of what it could be. The Netherlands is at the heart of Europe when it comes to labour migration since the migration flows

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421 On grounds of the Paletta I ruling (C-45/90), the obligation for continued payment of wages under labour law qualifies as a social security obligation in cross-border situations.

between Belgium, Germany, Luxembourg and France and the Netherlands constitute approximately 40% of all EU labour migration.\(^{423}\)

The Europe 2020 strategy, successor to the Lisbon strategy, stresses that ‘the EU must become a smart, sustainable and inclusive economy in a fast-changing world.’\(^{424}\) This means that the EU and the EU countries must cooperate to achieve more employment, higher productivity and greater social cohesion.\(^{425}\)

Several EC documents stress the economic aspect of cooperation, nevertheless often also referring to the necessity of a ‘package aimed at stimulating labour mobility and combating fraud through better coordination of the social security systems, a revision of the posting directive and an improved EURES’.\(^{426}\)

Despite the difficulty of determining the socio-economic consequences of the Dutch illness and disability regulations, several points of attention can be identified. The problem in the relation between Dutch employers and their EU employees residing abroad is not so much the continued payment of wages but any reintegration that might take place in the employee's country of residence after a period of illness. In this case, the Dutch rules may clash with foreign rules and policy, which has not been aimed at reintegration as prominently as in the Netherlands.

The relation between a foreign employer and its employee who has to be insured under Dutch social security legislation may become strained from the first day of illness. The main bottleneck is the familiarity of the foreign employer with Dutch policy and the responsibility of the employer for continued payment of wages during the illness and reintegration process. The employer can no longer count on any support, such as information about rights and obligations, from the Dutch government, as it has increasingly shifted the responsibility for income provision in case of illness to the employer since 1994. Not only will the foreign employer be astonished at the long period of continued payment of wages, unique to the EU, but also at the rights and obligations associated.

In both cases, with a Dutch and a foreign employer, it appears that the application of the Dutch illness and disability regulations can be experienced as an obstacle. The costs and responsibilities involved substantially outweigh those of the cases where no Dutch legislation is applicable or where it does not apply across the border. The period of continued payment of wages or the period of disability, as regulated by the Work and Income according to Labour Capacity Act (WIA), and the relevant responsibilities could negatively influence the choice for a cross-border employment relationship in times of economic crisis or fierce competition. A cross-border


\(^{424}\) See ec.europa.eu/europe2020/

\(^{425}\) See ec.europa.eu and also European Council, Conclusions, 1 and 2 March 2012, EUCO4/12, Brussels, 2 March 2012, p.2.

\(^{426}\) See, among others, EC Work Programme 2015, A New Start, 16 December 2014, p. 3 and Annex 1; see also State of the Union by J. Barroso (EC President) on 12 September 2012, p. 5-6.)
situation governed by Dutch social security legislation is not necessarily attractive in such a scenario.

3. **Cross-border governance structures**

This theme touches upon cohesion in Europe and how this is influenced by the Dutch illness and disability regulations. If the Dutch regulations influence cross-border workers and their employers, this has an immediate effect on social cohesion in Europe.

Research has shown that the Dutch regulations on illness and disability contain little to no transparent policy for application in cross-border situations. The Dutch government assumes that the Dutch regulations can be implemented abroad in a similar manner as in the Netherlands.

Given the complex and unique character of these Dutch regulations, it is useful to study the influence of these regulations with their many privatisation and reintegration elements on social cohesion in the EU. Montebovi’s dissertation (June 2016) also identifies the importance of social cohesion and concludes that it is not (always) attractive to have to apply the Dutch social security legislation in cross-border situations of illness and/or disability. Both employers, employees and foreign bodies will be confronted with legal loopholes, unclear policies, flawed rules and a strongly nationally oriented Dutch policy.

As a result, employers might find it administratively, procedurally and financially more attractive to hire employees who reside and work in the Netherlands than employees who reside abroad. The legal consequences of the latter situation weigh more heavily and are difficult to estimate. In special cases where the employers are not based in the Netherlands either, their poor knowledge of the strict Dutch illness and disability legislation forms an extra burden. Such employers cannot fall back on any Dutch government body for support during the period of continued payment of wages. As a result of the privatisation of the Dutch Ziektewet (Sickness Benefits Act), income provision has been fully left to private parties, i.e. employers and employees, both of whom have rights and obligations during the period of illness, the disregard of which is penalized through financial sanctions.

Among others, social cohesion in the EU Member States rests on:

- **Loyal cooperation:** Article 4 TEU\(^{428}\)
- **Closer cooperation between Member States:** Article 20 TEU (VEU); recitals 2, 8, 9 of Regulation (EC) 987/2009, Chapter II of Regulation (EC) 987/2009
- **EC focus on social cohesion\(^{429}\)**

\(^{427}\) See the introduction and conclusion of S. Montebovi, *Activering en privatisering in de Nederlandse ziekte- en arbeidsongeschiktheidregeling in grensoverschrijdende situaties* (diss. Tilburg), Apeldoorn/ Antwerpen: Maklu 2016 (Activation and privatisation in the Dutch illness and disability system in cross-border situations.).

\(^{428}\) TEU: Treaty on the European Union.
The cooperation between the government bodies and sometimes between entrepreneurs from the Netherlands and its neighbours Belgium and Germany appears to be more profound than that between the Netherlands and other Member States with employees who are socially insured in the Netherlands. The main reason is that there is more cross-border commuting between these neighbouring countries than between the Netherlands and other countries. As a consequence, the implementing bodies and other relevant entities, such as doctors, are better informed on mutual legislation and policies, which obviously benefits the cross-border worker. Making use of existing networks turns out to be essential. While telephone or digital contact is important, regular meetings, even once or twice a year, absolutely add value. Such talks about national legislative developments or policy changes in Belgium, the Netherlands or Germany have a strong ex-ante effect and prevent the development of expensive, long-term dossiers that require ex-post processing.

Nevertheless, differences remain noticeable, for example in medical checks between Germany and Belgium. While German medical reports can cause language problems, their content is much closer to the Dutch requirements in that they are elaborate and include the possibility of reintegration. The Belgian (Flemish) medical reports, on the other hand, offer Dutch employers or the implementing body UWV insufficient information to assess the reintegration possibilities. In such cases, a second opinion can provide the desired alignment with the Dutch regulations.

Dutch law dictates that activation and reintegration measures be initiated swiftly and pervasively. In cross-border situations, however, this isn't always done or can't always be done in the same way as in the Netherlands. This different application of Dutch rules abroad not only hits employers but also employees, who are more often left to fend for themselves. They are sometimes even shunned by the relevant bodies who prefer focusing on their ‘own citizens’ and their reintegration into the labour process rather than on sick employees with social insurance in the Netherlands who also have to or want to reintegrate into the foreign labour process if they reside there.

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429 See, among others, Communication from the Commission to the European Parliament and the Council, Strengthening the Social Dimension of the Economic and Monetary Union, 2 October 2013, COM(2013) 690 final, p.3-4; Herman van Rompuy, accepting the Charlemagne Prize, May 2014.
2.3.2 Dossier on disability: what are the principles, objectives and benchmarks for achieving and measuring a positive situation in border regions

Table: Principles, benchmarks and indicators

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<th>Principles</th>
<th>Benchmark</th>
<th>Indicator/Method</th>
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<tr>
<td>European integration</td>
<td>• Obligation to continue the payment of wages for the employer for a maximum of 104 weeks in case of illness</td>
<td>• Measuring issues concerning the continued payment of wages: how often do problems occur? How often do they occur with large/small/foreign employers? Solution for the employee? Contact point?</td>
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<td>Free movement of persons (article 45 TFEU; recital 3 EC Regulation 883/2004; recital 13 EC Regulation 987/2009)</td>
<td>• Reintegration obligation of employees and employers during the period of illness (first 104 weeks)</td>
<td>• To what extent can a sick employee with continued payment of wages fulfil his/her reintegration obligation in practice if reintegration occurs in the country of residence instead of the country of work (Netherlands) and the country of residence is not (very) familiar with reintegration in case of illness?</td>
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<tr>
<td>Equal treatment (EC Regulation 883/2004: recital 5 and 8, article 4 and 7)</td>
<td>• Reintegration obligation for employees and employers/UWV Employee Insurance Agency during the period of disability (after 104 weeks)</td>
<td>• What policy does the UWV Employee Insurance Agency maintain when assessing reintegration efforts abroad? Why is this not a transparent policy?</td>
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<td>• In cases of illness and disability: focus on the responsibility of the employer and employee instead of the government.</td>
<td>• The leading principle behind reintegration abroad remains that the UWV Employee Insurance Agency offers conditions identical to the national situation. For this reason, the admission requirement of Article 65 WIA (Work and Income according to Labour Capacity Act) is dropped for persons last insured abroad with a relatively small disability insurance, e.g. WIA in combination with foreign disability benefits; the ‘mandatory’ reintegration report when applying for WIA benefits has turned out not to be a hard requirement after all.</td>
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<td>• The tailor-made approach having a central role in the WIA (Work and Income according to Labour Capacity Act) appears to be applied more in cross-border situations than in national situations. However, this approach also leads to legal uncertainty because it is not clear for the WIA entitled person which means for reintegration can be applied, how they are assessed and which penalties may possibly be imposed. Furthermore, the assessment appears to (potentially) depend on the</td>
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### Principles

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<th>Benchmark</th>
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<tr>
<td>personal views of the UWV reintegration expert.</td>
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<td>• Information point for the support of foreign employers: back at UWV Employee Insurance Agency?</td>
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<td>Reintegration and activation in case of illness and disability have been further developed in the Netherlands than in other Member States.</td>
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<td>The consequences of illness and disability must be clear to the cross-border worker. In addition, situations in which the employee is not insured are to be avoided.</td>
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<td>The complexity and mandatory nature of reintegration under Dutch law may not form an impediment to a cross-border labour market.</td>
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<td>Does the deployment of policy means such as activation and reintegration in situations of illness and disability lead to more and sustainable labour?</td>
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<tr>
<td>The Europe 2020 strategy also focuses on increasing labour productivity. Can a direct link with the Dutch targets be measured?</td>
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| When will the Regulation incorporate more reintegration provisions? The coordination of the activation measures of the different Member States is a ‘burning issue’.  

430 This reintegration obligation according to Dutch law may be too heavy a burden for both employer and employee and may thus be qualified as an impediment to a cross-border employment relationship. Dutch law dictates that reintegration activities must start as soon as possible; this includes the cross-border workers in Germany or Belgium. The German and Belgian authorities cannot or will not always cooperate on those activities as they don’t correspond with their own legislation and approach.  

Practice shows, however, that relevant bodies do not accept each other’s medical reports and often even start their own medical examinations. This is in breach of coordination legislation (Art.27, paragraph 8 and Art.87, paragraph 2 Regulation (EC) 987/2009), as well as strenuous for the relevant employees, their employers and health insurance companies. To what extent are Euregional partners, i.e. employment services, health insurance providers, physicians, health and safety services, employers’ associations and trade unions, able to answer queries swiftly and competently? |                  |

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3. Does the measure promote or impede European integration and what does that mean for the citizens of the border regions?

It is difficult to measure the extent to which the Dutch illness and disability regulations promote or impede European integration. Nevertheless, it could be tentatively stated that the Dutch rules impede rather than promote integration, in that they shift many financial, administrative and procedural responsibilities to individual employers and employees.

Whereas Dutch employers may be expected to know the Dutch rules, their effects in a cross-border setting are not necessarily predictable. Employers often don’t know whether and how integration can be achieved abroad and which policy the UWV uses for monitoring reintegration efforts already made.

For foreign employers, it is even more difficult to be fully and correctly at current with the rights and obligations ensuing from the Dutch illness and disability regulations. Due to this, employers often have to rely on paid support information and administrative services, without which they would be insufficiently familiar with the rules or, in any case, their consequences. It often requires a case of actual illness for them to realise how heavy the burden of mandatory continued payment of wages and the other relevant obligations weighs on them.
Employers will not be inclined to enter into similar employment relationships in the future if they find the Dutch obligations regarding illness and disability too strenuous in a cross-border setting. Even employers who previously were not bound by the Dutch social security legislation but are at least partially aware of the extensive obligations involved will think twice before entering into a cross-border employment relationship.

Citizens of the border region who reside in another Member State may be considered a less attractive alternative in times of crisis or excess than employees who reside in the Netherlands. Employers faced with the choice between an employee who works and resides in the Netherlands and an employee who resides abroad will, with some exceptions, be more inclined towards entering into a ‘national’ employment relationship than a relationship with a cross-border worker. In this sense, it can be claimed that the measure, i.e. the Dutch illness and disability system, impedes rather than promotes cohesion and that indirect discrimination is lurking around the corner.

Hard data or transparent measurements on missed opportunities cannot be obtained, however.

4. Does the measure promote or impede the sustainable economic development and business climate of the border region?

It is difficult to measure the influence of both Dutch regulations on sustainable economic development and the business climate. Social security, and more specifically illness and disability, are only one part of an employer’s entire range of obligations and opportunities. In line with the above sections on the free movement of labour and indirect discrimination, one could claim that these two Dutch regulations constitute an impediment. Such a statement would be too general, however, and would ignore other aspects of cross-border employment such as taxation, accessibility, land, buildings, diplomas, other social security legislation, etc.

It should be pointed out that the Coordination Regulations 883/2004 and 987/2004 devote limited attention to reintegration as part of social security, only mentioning it in two places: Articles 27 and 87 of Regulation (EC) 987/2009. This contrasts sharply with the elaborate regulations on the topic in the Netherlands. In addition, the Regulation does not distinguish between reintegration benefits in cash and benefits in kind. The Dutch legislation does make that distinction. The reintegration effort and benefits in kind play an important role besides the sickness benefits, i.e. the cash benefit based on the obligation for continued payment of wages of Article 7:269 Civil Code and the cash benefit based on the Work and Income according to Labour Capacity Act (Dutch: Wet WIA). The Regulation has been unclear about this so far and remains overly focused on technical solutions for existing benefits in cash without taking into account the benefits in kind.\(^{431}\) Since sustainable economic development is high on the European agenda, we expect to see more coordination regulations regarding cross-border reintegration from the European legislator.

5. Does the measure promote or impede Euregional cohesion and Euregional governance structures?

Dutch social security is largely determined by the Dutch government’s measures of privatising, on the one hand, the Sickness Benefits Act (Ziektewet), thus shifting the responsibility for the period of continued payment of wages to employers and employees, and of turning reintegration during the WIA period, i.e. when the Work and Income according to Labour Capacity Act is effective, into its spearhead on the other hand. The question is whether this focus benefits Euregional cohesion and its governance structures.

The effect on regional cohesion is difficult to establish. How much cohesion is achieved or missed out on due to the strict and elaborate Dutch regulations on illness and disability? Here too, both regulations only constitute a part of the entire social security position and the total package of measures and costs for employers. Multiple aspects are important to cross-border cohesion, so the influence of these two regulations cannot be seen as separate from the entire social security package. It does seem to be the case, however, that the attractiveness of Dutch regulations in a cross-border employment setting is influenced negatively if they are perceived as ‘difficult, expensive, complex, unclear’, etc.

The following can be said of the Euregional governance structures: Cooperation with the other EU Member States strongly depends on communication and available information. There is something to be gained here. The Dutch government could reinstate the UWV as the contact point for employers. In addition, the Dutch government should inform the foreign bodies timely and fully on imminent legislative and policy changes. This can be done through network meetings, in addition to the digital and telephone contacts ensuing from concrete dossiers. Moreover, even if there are networks in place, the feasibility of achieving alignment on legislation that is complex or divergent remains an issue. For this reason, it is not only a point of attention for the Dutch government to continue to provide sufficient networking opportunities and support but also to provide legislation which fits the European cross-border pillar of free movement of labour and the notion of Euregional cohesion.

Another question is whether there are currently more networks or better government support, given that Dutch reintegration legislation is continuously becoming more elaborate and the responsibilities of employers and employees keep growing. This appears not to be the case. The Minister of Social Affairs did pledge, however, to repeal the intended cessation of funding of the Bureaus of Belgian/German Affairs432 after much unrest and resistance in 2014 and to guarantee their funding until 2018; he also indicated that the (Eu)regional counters are essential.433

The fact that the coordination regulations regarding reintegration are very limited, comprising only Articles 27 and 87 of Regulation 987/2009, begs the question whether current Dutch reintegration legislation should stimulate more smaller-scale cooperation with those countries with which it has the most mutual cross-border traffic. Does current Dutch legislation present a

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432 Both Bureaus are part of the Dutch Social Insurance Bank SVB; see www.svb.nl.
433 Kamerstukken II 2013-2014, 26 448, nr.510 (Dutch Parliamentary Papers II); see also Montebovi (diss.Tilburg) p.364.
larger or new challenge to the Benelux countries? Does having (too) few bilateral or multilateral agreements present a problem to cross-border workers and their employers now that Dutch legislation has become so elaborate, specific and strict?

The waiting period of 104 weeks before receiving disability benefits, which is a direct result of the 104 weeks of continued payment of wages, sometimes causes a gap in the income of relevant employees: employees who worked in several Member States before becoming disabled will receive pro-rata benefits from all Member States involved from the moment the disability starts in those States. If the Dutch portion of the benefits is relatively large, the relevant employees will temporarily be facing a relatively large income gap, induced by the Work and Income according to Labour Capacity Act (Dutch: WIA), as they will not receive this part of their benefits until after two years, i.e. the 104-week waiting period. This bottleneck of different waiting periods inside the EU also has the attention of the European Commission but remains unsolved for the time being.

6. Conclusions and recommendations from a Euregional perspective

6.1 Substantive conclusions: effects of the sickness and incapacity regulation

The study ‘Arbeidsmarkt zonder Grenzen’ (Labour Market without Borders) by the Netherlands Environmental Assessment Agency (PBL) and Statistics Netherlands (CBS) shows that the borders between the Netherlands and its neighbouring countries impede the labour market in the border areas. The approximately 100,000 cross-border commuters travelling between the Netherlands, Belgium and Germany are only a fraction (5%) of what could be possible. Multiple factors stand in the way of more and better cross-border traffic. Social security is one of them. This cross-border impact assessment has chosen to study the effects of two Dutch social security regulations.

The Dutch regulations on illness, based on Article 7:629 Civil Code, and disability, based on the Work and Income according to Labour Capacity Act (Dutch: Wet WIA), have been substantially altered in the last decade. This was done from a philosophy of incentive, striving to activate employees towards a (partial) return to the labour process, even in case of illness. The Dutch government acted from market ideology, thus assigning important roles to private parties, i.e. employers, employees and reintegration companies. This type of reintegration thinking does not exist in other Member States yet. The coordination regulations also provide only limited support for reintegration.

As a consequence, difficult situations may arise for both employers, employees and authorities involved in cross-border situations of illness or disability under Dutch social security legislation. Dutch legislation strongly diverges from what is considered customary or familiar in other Member States, making it more difficult to observe in cross-border situations than in situations of national law. Sometimes employers and employees will strive for and succeed in finding a solution in accordance with Dutch legislation and the UWV Employee Insurance Agency’s policy.

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Sometimes employers and employees are not on the same side, however, with uncertainty about the legislation and policy leading to conflicts. Reliable figures on these situations are not available.

The main bottlenecks are listed below:

- Insufficient knowledge of and understanding for the obligation for continued payment of wages of maximally 104 weeks.
- Insufficient knowledge of and understanding for the reintegration obligation of employers and employees during the period of illness, i.e. the first 104 weeks, in cross-border settings.
- Insufficient knowledge of and understanding for the reintegration obligation of employers and employees during the period of disability, i.e. after 104 weeks, in cross-border settings.
- Foreign medical reports are not immediately usable for the application of Dutch legislation. Note that physicians in Germany are more focused on reintegration opportunities than their Belgian counterparts, however.
- The UWV Employee Insurance Agency departs from the principle that the Dutch rules should be applied identically both at home and abroad. This proves to be impossible all the time, however, and the principle is not always applied consistently by the UWV Employee Insurance Agency itself either. In certain situations, for example, the UWV Employee Insurance Agency forgoes its right to receiving a reintegration report, which is a legal requirement. Relevant policy rules are absent and the UWV Employee Insurance Agency does not provide openness on its approach, even after enquiry.
- This customisation on the part of the UWV Employee Insurance Agency leads to legal uncertainty for sick employees and their employers.
- Vigilance is in order to ensure that the free movement of labour is respected; employment subsidies, for instance, or reintegration measures should not depend on the place of residence of the employee.
- Lack of a European reintegration policy
- Lack of a European labour-market policy: no longer give precedence to the ‘national’ citizens but focus on ‘all’ persons in the national labour market instead.
6.2 Conclusions regarding the cross-border impact assessment and the further development of the instrument

The ex-post assessment, which has identified effects and bottlenecks, also leaves room for an ex-ante assessment, in which recommendations are made.

The principal solutions are:

- Introduction of a cross-border impact assessment.\(^{435}\) Legislative proposals should be tested in advance on their Europe-proofness.

- Reduction of the maximum continued payment of wages of 104 weeks\(^{436}\)

- More attention for bilateral or multilateral agreements. Cross-border traffic between neighbouring countries sometimes benefits from supplementary agreements to the coordination regulations, which are too general and limited to cover reintegration.

- Continue to facilitate existing networks between governmental bodies. The importance of this should not be underestimated. This allows neighbouring countries to further familiarise themselves with each other's mutual legislations, it allows for any changes planned and implemented to be explained in a timely fashion, as well as for seeking personal contact on concrete dossiers.

- Better information provision. Both the government and the UWV Employee Insurance Agency should provide more and clearer information on the Dutch rules, policies and the regular legislative and policy changes. Perhaps the UWV Employee Insurance Agency could again play an important role as the contact point for employers, including during the period of continued payment of wages. Providing good education beforehand can prevent much legal uncertainty afterwards.

\(^{435}\) The plea for cross-border impact assessments recurs with some regularity. Both frontier-worker committees (2001 and 2008) also advocated the introduction of cross-border worker assessments and certain politicians are also convinced of their necessity. See also the dissertation of Montebovi 2016, p.408-409.

\(^{436}\) This reduction is currently on the political agenda. In 2015, the Minister of Social Affairs and Employment commanded several studies into the feasibility and desirability of a reduction of the continued payment of wages. This has not yet led to any concrete legislative proposals. See the dissertation of Montebovi 2016, p.404-406.
3.5 The Qualifying Foreign Tax Obligation of Article 7.8 Dutch Income Tax Act and EU Law

Dr. Hans Arts

Jasper Korving, L.L.M.

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4. Conclusion ......................................................................................................................................... 203
1. Introduction
On 1 January 2015, the optional scheme of article 2.5 Wet Inkomstenbelasting 2001 (hereinafter Dutch Income Tax Act 2001), was replaced by the new system of the qualifying foreign taxpayer. Under article 7.8, Dutch Income Tax Act 2001, qualifying foreign taxpayers are entitled to the same deductions and tax credits as domestic taxpayers.

The optional scheme was replaced because it was deemed to be incompatible with EU law. In this dossier we will elaborate on the extent to which the new rule concerning the qualifying foreign tax obligation is in line with EU law.

The system is quite relevant in the Dutch border region. Globally speaking, it entails that taxpayers who do not reside in the Netherlands but enjoy over 90% of their worldwide income in the Netherlands are treated as residents of the Netherlands for tax purposes. It should be noted in this context that introducing a threshold is in principle always arbitrary. It is thinkable that most cases involving the qualifying foreign tax liability system will occur in border regions. After all, the further away people live from the Netherlands, the less likely they will be to accept a position there. Although this system also applies to taxpayers residing outside the border regions, it is reasonable to assume their numbers will be limited. The sheer number of potentially affected taxpayers alone would justify a thorough report within this broad field of research.

Concrete figures are unavailable given the recent entry into effect of the current system. For this reason, this study almost exclusively focuses on the legal consequences and discussion points of the system.

2. The legal arrangement

2.1 Period before the QFTO: Schumacker Doctrine
As a general rule, according to standard international tax law, the country of residence of the taxpayer must provide for the personal deductions. Under EU law, and specifically the ECJ’s Schumacker decision, a Member State is obliged to allow foreign taxpayers who enjoy all or virtually all (90%) of their income in the Netherlands the same personal deductions as domestic taxpayers. The underlying reasoning is that such taxpayers have insufficient taxable base in their states of residence, thus leading to a shift in the provision for these deductions to the state of employment. Subsequent ECJ case law has expanded this to other deductions beyond the immediate personal scope. This includes, for example, the extension of the Dutch mortgage interest deduction to foreign taxpayers earning virtually their entire income in the Netherlands.

2.2 Period before the QFTO: Optional scheme for domestic taxpayer status

2.2.1 Article 2.5 Dutch Income Tax Act

With the Schumacker decision in mind, the Netherlands introduced the option for domestic taxpayer status. This optional scheme allowed foreign taxpayers to receive virtually identical treatment as domestic taxpayers until the end of 2014. While it also allowed them access to the same fiscal facilities as domestic taxpayers, they formally remained foreign taxpayers. The scheme was more inclusive, however, than what the Schumacker decision (and similar jurisprudence) demanded of the Netherlands. The Netherlands also allowed foreign taxpayers who earned less than all or virtually all of their family income, i.e. at least 90% by Dutch standards, in the Netherlands to opt for treatment as a domestic taxpayer.

The optional scheme did include a significant anti-abuse clause, in the form of the ‘clawback’ provision under article 2.5 (3) Dutch Income Tax Act 2001. This set out that foreign taxpayers who no longer opted for domestic taxpayer status had to compensate for all the benefits, other than personal deductions, enjoyed over the previous eight years as a result of their opt in, which they would not have enjoyed as regular foreign taxpayers.

2.2.2 Discussions about the optional scheme

The clawback provision sparked a lot of discussion, mainly in Schumacker situations after the Renneberg decision. In this case, the ECJ ruled that a foreign taxpayer who fulfilled the Schumacker criterion should be able to deduct his or her mortgage interest in the Netherlands. A situation is thinkable where foreign taxpayers who live in the EU initially opted in on domestic taxpayer status in the Netherlands and, as a result, could now claim mortgage interest deduction, even though they were actually entitled to do so all along under EU law, as the Renneberg decision asserted. Should these foreign taxpayers now decide to opt out again and directly invoke the Renneberg decision instead, this would lead to a mandatory restitution of the enjoyed mortgage interest deductions of the previous eight years, even if they could have claimed automatic granting of mortgage interest deduction for those previous eight years, provided they met the Schumacker criterion during those years. This discussion led the State Secretary to approve that foreign taxpayers in initial opting in and later deciding to opt out because they met the Schumacker criterion would not have the clawback provision applied to them. For non-Schumacker cases, the optional scheme may still prove interesting for its mortgage interest deductibility.
In its Gielen ruling, the ECJ subsequently explicitly addressed the position of the optional scheme in EU law.\textsuperscript{443} This case concerned a foreign tax subject who led an enterprise in both his country of residence Germany and in the Netherlands, and who made a claim to the application of the self-employed tax deduction of article 3.76 Dutch Income Tax Act 2001. Self-employed tax deduction is available to entrepreneurs who meet the hours criterion. The taxpayer did not meet the hours criterion when taking into account only the hours of managing the part of the enterprise in the Netherlands. Had all the hours spent on managing the foreign part of the enterprise been included, the taxpayer would have fulfilled the hours criterion. The ECJ first and foremost ruled that the hours spent on managing the foreign part of the enterprise had to be included in the assessment of whether the hours criterion had been met. Not including these hours constituted an infringement on the freedom of establishment given that domestic taxpayers who also performed parts of their entrepreneurial activities abroad were allowed to include these hours towards meeting the hours criterion. Subsequently, the Netherlands took the position that this infringement was justifiable since foreign taxpayers could opt for domestic taxpayer status. However, the ECJ ruled that the Netherlands could not hide behind the option for domestic taxpayer status. When primary EU law already obliges the Netherlands to include foreign hours towards the hours criterion, this benefit cannot be withheld by claiming that taxpayers would have been entitled to it had they chosen the optional scheme. The ECJ did not accept this justification as it effectively forced taxpayers to use the optional scheme. The optional scheme was thus unable to lift the impeding nature of the self-employed tax deduction.

Since foreign taxpayers in Schumacker situations automatically qualify for domestic treatment and the optional scheme could not justify the established infringement, the optional scheme was henceforth only relevant to foreign taxpayers in non-Schumacker situations and in non-EU situations, provided that a tax treaty is in place with the country of residence. It was initially actually the intention of the legislator to extend the system to non-Schumacker situations. After all, even cases in which foreign taxpayers only earned 70% of their family income in the Netherlands could lead to full use of the Dutch fiscal facilities in the state of residence. In that sense, the Netherlands was more generous at the introduction of the optional scheme than primary EU law, and particularly the Schumacker doctrine, required.

### 2.3 Introduction of the ‘qualifying foreign taxpayer’

#### 2.3.1 Introduction

On 1 January 2015, the optional scheme of article 2.5, Dutch Income Tax Act 2001, was replaced by a new 90% system. With this system, the Dutch government is trying to move closer to EU law and the Schumacker doctrine specifically. The personal scope is more restrictive than the optional scheme, and it eliminates a number of options from the latter scheme that could have constituted a violation of EU law.\textsuperscript{444} This means that henceforth, only foreign tax subjects who earn at least 90% of their income in the Netherlands are eligible for personal deductions. These persons are

\textsuperscript{443} ECJ 18 March 2010, Case C-440/08 (Gielen), NTFR 2010/795, Jur. 2010, p. I-2323.

\textsuperscript{444} Kamerstukken II, 2013-2014, 33 752, nr. 3, under point 6 (Dutch Parliamentary Papers II).
designated as qualifying foreign tax subjects under article 7.8(6) of the Dutch Income Tax Act 2001. With this change, the optional element of the present scheme is also eliminated, effectively putting the Netherlands in compliance with the ECJ’s Schumacker criterion in its strictest form.

Besides the fact that only foreign taxpayers who meet the 90% criterion still qualify for the personal deductions available to domestic taxpayers, the scheme also has an important consequence for the determination of the taxable basis of qualifying foreign taxpayers. The system for qualifying foreign taxpayers only taxes income from the Netherlands, as with any other foreign taxpayers; articles 7.1 et seq. Dutch Income Tax Act 2001 are thus decisive. As a consequence, the tax progression clause ceases to exist, as do the preventive rules from the Uitvoeringsbesluit Inkomstenbelasting 2001 (implementing decision Income Tax 2001), i.e. the clawback provision and the specific settlement provision known as the ‘inhaalregeling’. The optional element from the old scheme also disappeared: henceforth foreign taxpayers simply either qualify or don’t qualify for the system. It will subsequently be determined whether additional regulations are required for migrating domestic taxpayers who were not taxpayers before or will no longer be taxpayers after their migration.

2.3.2 Definition

The status of qualifying foreign taxpayer is subject to a number of cumulative criteria under article 7.8 (6), Dutch Income Tax Act 2001:

1. The taxpayer is a tax-paying resident of an EU Member State, another State that is a party to the EEA, Switzerland or the BES Islands

2. 90% or more of the taxpayer’s income is subject to wage and/or income tax in the Netherlands.

3. A declaration of the tax authority of the country of residence is presented with an overview of the income declared in the country of residence. Based on this declaration, the Dutch tax authority can assess whether at least 90% of the world income of the foreign taxpayer is earned in the Netherlands.

2.3.3 Personal scope of application

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

The legislator motivated this limitation referring to EU law, specifically the free movement of labour (article 45 TFEU) and the freedom of establishment (article 49 TFEU). On grounds of the
above, there is no obligation to offer foreign taxpayers living outside the EU the same fiscal benefits as domestic taxpayers.\textsuperscript{445}

In this respect, the legislator has broken with its long-standing policy, given that in 2001, when the Dutch Income Tax Act came into force, the legislator still expressed its desire not to limit the optional scheme to residents of EU Member States. In that context, the legislator reasoned that the inability to use such a scheme would cause serious financial disadvantage to a large number of persons from typical (r)emigration countries such as Australia, Israel and Morocco who largely enjoy a Dutch income.\textsuperscript{446} These foreign taxpayers in (r)emigration countries, presently around 3200 persons, are excluded from the current system. The legislator estimates that these foreign taxpayers thus forfeit average benefits of EUR 940 formerly obtained from opting in.\textsuperscript{447}

\subsection*{2.3.4 Income threshold}

The income threshold of article 7.8 Dutch Income Tax Act 2001, implies that foreign taxpayers whose income is, by Dutch standards, entirely or virtually entirely, i.e. 90\% in the Dutch view, subject to wage or income tax in the Netherlands receive identical tax benefits as domestic taxpayers. Note that this system is of mandatory nature. While the old system still offered foreign taxpayers the option of applying this scheme, regardless of the size of their Dutch income, article 7.8 Dutch Income Tax Act 2001, applies to all foreign taxpayers who qualify.

In addition, article 7.8 (8), Dutch Income Tax Act 2001, contains a provision of delegation, under which taxpayers who reside in the EU, EEA, Switzerland or the BES Islands and whose income is not subject to wage or income tax in the Netherlands for more than 90\% can, under certain conditions, be designated as qualifying foreign taxpayers nevertheless. This provision of delegation has been included to enable a swift and adequate response to developments in ECJ jurisprudence, e.g. its ruling in the matter of the Commission v. Estonia.\textsuperscript{448} This case involved a resident of Finland with small and approximately equal pension incomes from both Finland and Estonia. Due to the small size of her income, she was not taxable in her state of residence, Finland, so that her financial standing and her personal and family situation could not be factored in there. The ECJ ruled that, under such circumstances, the refusal of the state of employment to treat the non-resident person as equal to a resident constitutes an unjustifiable infringement on the free movement of labour. As a result of the ruling in Commission v. Estonia, the literature has taken the point of view that no fixed percentage can be used for the assessment whether the Schumacker criterion has been fulfilled.\textsuperscript{449} We concur with this point of view.

\textsuperscript{445} Such an obligation may exist under treaties between the EU and other powers, see for example the ECJ ruling 28 February 2013 nr. C-425/11, Jur. 2013, n.n.g (Ettwein) in the relationship with Switzerland.

\textsuperscript{446} Kamerstukken II 1998/99, 26 727, nr. 3, p. 79-80 (Dutch Parliamentary Papers II).

\textsuperscript{447} Kamerstukken II 2013/14, 33 752, nr. 11, p. 74 (Dutch Parliamentary Papers II).

\textsuperscript{448} ECJ 10 May 2012, Case C-39/10 (Commission v. Estonia), NTFR 2012/1371.

\textsuperscript{449} See, among others, F.P.G. Pötgens, ‘Nadere precisering Schumacker-criteria’, NTFR-B 2012/36 (Further Precision of the Schumacker criteria) and H. de Vries, ‘Keuzeregeling art. 2.5 Wet IB 2001 – stand van zaken en hoe nu verder?’, WFR 2013/972 (Optional scheme Section 2.5 Dutch Income Tax Act 2001 – state of affairs and how to proceed?).
The Commission v. Estonia ruling concurs with the position of the legislator at the introduction of the Dutch Income Tax Act 2001:

‘Gelet op de rechtspraak van het Hof van Justitie van de EU waarin is aangegeven dat het in beginstel aan de woonstaat is om rekening te houden met de persoonlijke en gezinssituatie van belastingplichtigen, maar dat bij onvoldoende inkomsten uit die woonstaat ook de werkstaat met die situatie rekening moet houden, verdient een arbitraire grens van 75 of 90% van het wereldinkomen niet de voorkeur.’

(Based on the case law developed by the Court of Justice of the EU, which provides that it is generally the duty of the state of residence to take into account the personal and family situation of taxpayers but that, in case of insufficient income from that state of residence, the state of employment also has to take that situation into account, an arbitrary threshold of 75 or 90% of the world income is not preferable.)

The fact that article 7.8 Dutch Income Tax Act 2001, does include an income threshold expressed as a percentage is remarkable in light of the above. The inclusion of article 7.8 Dutch Income Tax Act 2001, thus marks the reintroduction of a system with an arbitrary threshold. The legislator uses the justification that it follows from Schumacker that equal treatment need only be offered to taxpayers who live in an EU Member State, earn all or virtually all of their income in another Member State and enjoy insufficient income in their state of residence for that state to be able to take into account their personal and family situation. From the Gschwind ruling it follows that ‘all or virtually all’ can be interpreted as ‘at least 90%’, according to the legislator. This legal foundation reasons that, according to Schumacker, the comparability of residents and non-residents in the state of employment depends on the actual situation in the state of employment of the non-resident. This reasoning justifies an income threshold that relates to the actual situation. From the fact that the Court ruled out discrimination in the Gschwind case, the legislator has concluded that an income threshold of 90%, as was used in the German system disputed in this case, is indeed compatible with EU law.

The legislator postulates that both The Commission v. Estonia and Wallentin are highly casuistic, so that no general principles can be derived from them and Gschwind still remains leading. We, on the other hand, view The Commission v. Estonia as a confirmation of that which the legislator argued at the introduction of the Dutch Income Tax Act 2001. Another case that might be of influence on the provision of delegation is X.

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454 Kamerstukken I 2013/14, 33 752, G, p. 23 (Dutch Parliamentary Papers I).
455 Case C-283/15.
Spain enjoying no income in their state of residence but enjoying income from companies based in the Netherlands (60%) and in Switzerland (40%) should be able to claim proportional personal deductions, such as mortgage interest deduction, in the Netherlands as their state of employment. According to the Advocate-General (AG) it would be paradoxical if a tax subject with only one work state could make a claim under the Schumacker doctrine, while a tax subject who made use of the freedom of movement and worked in two countries could not. If the ECJ were to follow the AG’s reasoning, this would mean that the Dutch system for qualifying foreign tax liability would have to be adjusted, because in that case foreign tax subjects who earned less than 90% of their world income in the Netherlands would likewise have to be eligible for personal deductions in the appropriate proportion to their income.

The position of the legislator that general principles, such as an income threshold, can be distilled from certain older rulings of the Court whereas other, more recent case law on the same issues could not constitute a useful framework for legislation in our opinion mainly seems to be a consequence of the political choice to limit the scope of application of article 7.8 Dutch Income Tax Act 2001. Both the Schumacker (1995) and the Gschwind ruling (1999) were issued well before the introduction of the Dutch Income Tax Act 2001. Based on these same rulings, the legislator has now changed its position on how the requirements under EU law can best be fulfilled in Dutch income tax law. The legislator does not provide the reasons for this turnaround.

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

### 2.3.5 Other conditions

#### 2.3.5.1 Partners of ‘qualifying foreign tax subjects’

In conformity with the second letter of amendment, partners of qualifying foreign tax subjects can also be designated as qualifying foreign tax subjects themselves. In such cases, partners are entitled to the same facilities as the person designated as a qualifying foreign tax subject on regular grounds. The requirements are that (i) the partner also lives in one of the countries listed above and (ii) at least 90% of the aggregate income of both partners is subject to wage or income tax in the Netherlands. This extension to the partners does not affect any discussions that might arise on the awarding of and the amount of tax credits for emigrating and immigrating domestic tax subjects.

In principle, emigrating and immigrating domestic taxpayers who have a partner for part of the calendar year can no longer apply the optional scheme for partnership during the entire calendar year (2.17 (7) Dutch Income Tax Act 2001). Exceptions are made for emigrating or immigrating domestic taxpayers who are qualifying foreign taxpayers during the other period of that same
year. Note that, also in this case, 90% of the aggregate income of both partners must be subject to wage or income tax in the Netherlands and both partners must reside in an EU/EEA Member State, Switzerland or the BES Islands for the entire year. Although the overall system seems reasonable, it is not possible to opt for partnership in cross-border situations where the taxpayer can be designated as a qualifying foreign taxpayer for one part of the year and is not taxable for the other part of the year. Given that allocation to one’s partner would have been possible had the migrating tax subject been domestically taxable at any time that year, the difference in treatment within the year of migration might constitute an infringement on EU law.

2.3.5.2 Mortgage interest deduction and personal deduction

The qualifying foreign taxpayer system also imposes the rules for calculating the basis of the different tax boxes, departing from the rules applicable to regular foreign tax subjects. When a certain qualified source of income can be included in the basis of the foreign tax subject, the size of that qualified source has to be determined using the provisions for domestic tax subjects.

In addition to that, article 7.8 (1) Dutch Income Tax Act 2001, stipulates that the taxable Dutch income of qualifying foreign tax subjects generated from work and own home shall be supplemented with the taxable income from one’s own home minus the expenses towards income provision and the personal deduction if said income is negative. Effectively, this means that qualifying foreign taxpayers can deduct their mortgage interest, expenses towards income provision and personal deductions from their income from work and own home from a Dutch source. As such, this is a different arrangement from that of regular foreign taxpayers. Similar systems have been included for the Dutch income from substantial interests (article 7.8 (2) Dutch Income Tax Act 2001) and the Dutch income from savings and investments (article 7.8 (3) Dutch Income Tax Act 2001). As a result, the personal deduction can also be subtracted from the income in those boxes. The mortgage interest is naturally only deductible from the income from work and own home.

Qualifying foreign tax subjects can deduct 100% of the negative taxable income from their own home, the expenses towards income provision and their personal deduction, even if less than 100% of their income is taxable in the Netherlands. Although the personal deduction was initially only generally referred to, the second letter of amendment explicitly added that expenses incurred for monumental buildings should be deductible. Insofar as the amount of these deductions depends on income (see for example article 6.39 (1) Dutch Income Tax Act 2001), the income as calculated according to the rules for Dutch domestic taxpayers will serve as the measure to determine this amount. By seeking alignment with the calculation already in place for domestic taxpayers, any unjustified valuation differences between domestic and qualifying foreign tax subjects are avoided. The system thus seems sufficiently neutrally formulated from an EU-legal perspective. The personal deduction is subject to the regular order of allocation to boxes set out in article 6.2 Dutch Income Tax Act 2001.
Regarding the application of the rules on Dutch income from savings and investments, it is stipulated that the tax-free threshold and the debt threshold that apply to domestic taxpayers also apply to qualifying foreign tax subjects.

Article 7.8 (4) Dutch Income Tax Act 2001, prevents deductions from being granted both in the country of residence and in the Netherlands as country of employment. Under the optional scheme, the personal deductions were not granted to the foreign taxpayers who opted in only insofar as they were already being effected with their partner. Under the current system, the circle has expanded to include the qualifying foreign taxpayers themselves. Thus, when the negative income from their own home, the expenses towards income provision or the personal deductions of qualifying foreign taxpayers have already been taken into account by their state of residence, they cannot lower the Dutch tax basis of the qualifying foreign tax subject. In such cases, the notion of partnership is interpreted according to Dutch standards. This also seems in accordance with EU law and general international tax law. After all, were the Netherlands, as state of employment, also to grant a deduction in such situations, double deduction would occur, both in the country of residence and the country of employment. In such situations, the main rule applies that the state of residence provides the personal deductions if this is manifestly possible. It is noteworthy, moreover, that the fall-back provision to avoid double deductions does not explicitly focus on the tax credits and the tax-free threshold. The explanatory memorandum does note that it is the intention to include them. The relevant literature suggests that the provision should be supplemented in this area. Extension of the provision has not taken place in the parliamentary process, however.

3. European Integration
The influence of the system on European integration still awaits thorough investigation. However, this requires substantiating figures, which are unavailable at present. For this reason, the influence of the system on European integration remains unknown.

Nevertheless, it is thought to have a negative impact on European integration as the imposition of a hard, arbitrary threshold of 90% by the Dutch legislator might be in breach of EU law. The reader is referred to paragraph 2.3.4. for more relevant information.

4. Conclusion
This contribution has demonstrated that the scope of application of the qualifying foreign tax subject under article 7.8 Dutch Income Tax Act 2001, is more limited than the previous optional scheme under article 2.5 Dutch Income Tax Act 2001, because the personal scope of application under article 7.8 Dutch Income Tax Act 2001, is restricted to residents of the EU and EEA countries, the BES Islands, and Switzerland. In addition, article 7.8 Dutch Income Tax Act 2001, is only applicable when all or virtually all of the income of the foreign taxpayer is subject to taxation in the Netherlands. This condition contradicts the legislative history of article 2.5 Dutch Income

456 See, among others, F.P.G. Pötgens, ‘Van een kiezende naar een kwalificerende buitenlandse belastingplichtige’, WFR 2013/1348 (From an opting to a qualifying foreign tax subject).
Tax Act 2001, because at the time of the introduction of the Dutch Income Tax Act 2001 the legislator indicated that this type of arbitrary percentage threshold was not preferable. Further, this hard threshold, set at 90% of the world income, could arguably be in violation of ECJ case law, specifically the matters Commission v. Estonia, Wallentin, and the conclusion in the still pending procedure X (Spanish football broker).

In support of these changes, the legislator has argued that it wanted to align the new system with EU law. This has succeeded as far as the personal scope of application is concerned, although we would have preferred a continuation of the broad personal scope of application. Concerning the income threshold, for which the legislator has fallen back on the Schumacker and Gschwind decisions, we find it remarkable that the legislator now adheres to a clearly different interpretation of these decisions than at the introduction of the Dutch Income Tax Act of 2001. Also in light of the new EU jurisprudence, we request a reconsideration of this condition.

Dr. Miriam Kullmann, LL.M.

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1. Introduction

Cross-border posting of workers is a phenomenon that appears to be increasingly popular.


This contribution focuses on the proposed revision of the Directive on the Posting of Workers Directive and the potential ensuing legal changes for the Netherlands. More specifically, the report addresses the possible consequences on Dutch labour law of the proposal to amend the Posting of Workers Directive. A study of German, Belgian and Luxembourg labour law and the possible consequences of the proposed directive on these legal systems is beyond the scope of this document.

The absence of empirical data makes it difficult or even impossible to predict the extent to which the proposed changes will carry specific consequences for the border regions. Data from the European Commission shows that 87,817 posted employees were active in the Netherlands in 2014. These data are skewed, however, as they are based on the number of A1 certificates. Firstly, not all Member States are able to provide the requested information. Secondly, posting has a different meaning in Directive 96/71/EC (hereinafter: Posting of Workers Directive) and Regulation (EU) No. 883/2004. Thirdly, not all changes in the country of employment are communicated. All these factors affect the available data.\textsuperscript{460} In addition, the Netherlands still doesn’t have a notification obligation for cross-border service providers, and government plans suggest that this will not be in place before 1 January 2018.\textsuperscript{461} It is impossible to make any more concrete statements about the effects on the border region until there is clarity on the number of businesses, i.e. segments, service providers and posted employees willing to cross the border to temporarily provide services in the Netherlands.\textsuperscript{462}


\textsuperscript{461} Kamerstukken II (Dutch Parliamentary Papers II) 2015/16, 34 408, No 6, p. 4.

\textsuperscript{462} See the Terms of Employment Posted Workers in the EU Act (WAGWEU) and the planned introduction of the notification obligation as of 2018.
2. Research Objectives, Definitions, Themes and Indicators

2.1 Ex ante

This study focuses on signalling any positive and negative effects of the proposed revision of the Posting of Workers Directive. As a result, the main topic of this report is assessing the potential consequences of the Directive for Dutch labour law. This is speculative because it is not as yet certain whether, and if so, when the revision will be adopted by the EU legislator. Moreover, it is still unclear whether the proposal will be adopted in amended form by the EU legislator.

Since this is an ex-ante legal study into a change that has not taken effect yet, it is not possible to assess whether the Dutch legislator has sufficiently taken into account the potential interests of its border regions. It can be relevant, however, to notify the Dutch legislator if the border region is disproportionately affected.

2.2 Effects on Dutch labour law

The section below outlines the potential consequences of the proposed revision on Dutch labour law. It successively discusses the Posting of Workers Directive and the proposed amendments to it (see paragraph 2.2.1).

2.2.1 The Posting of Workers Directive

EU law includes two legally distinguishable forms of mobility of workers. Based on the free movement of labour, Union workers have the right to move from one Member State to another to work or seek employment there, and they are protected against discrimination on grounds of nationality (Art. 45 TFEU). Cross-border workers fall under the free movement of labour. Another option is to use cross-border posting, as laid down in the Posting of Workers Directive 96/71/EC, which is based on the free movement of services (Art. 56 TFEU). Cross-border posting of workers is based on the principle of equal treatment or non-discrimination of the employer; employees only have a derived right. Moreover, entrepreneurs who post from a country with lower levels of taxes, social security, pensions and wage costs enjoy a lasting benefit.

The principle of posting is that businesses provide employees on another Member State’s territory as part of transnational service provision. There are three types of posting: (1) subcontracting (mainly in construction), (2) intra-group posting and (3) secondment in the sense of temporary agency work (Art. 1, paragraph 3, a through c). For the Posting of Workers Directive to be applicable, an employment contract must be in place between the service provider and the employee for the duration of the posting. In addition, the posting should take place ‘for a limited period’ and in a Member State ‘other than the State in which [this employee] normally works’.

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(Art. 2 (1)). A third possible (mixed) form is temporary agency work, which falls under both the free movement of labour and the Posting of Workers Directive.464

The substantial difference in (wage) costs and living standards between old and new Member States plays a significant role in cross-border labour mobility. In March 2015 labour costs varied between EUR 3.80 and EUR 40.30 per hour.465 In line with this, the monthly legal minimum wage diverges vastly as well: in July 2015, employees in Bulgaria were entitled to EUR 194; their counterparts in Luxembourg to EUR 1,923. Such differences may explain the attractiveness of temporarily working in a high-wage country, thus using the existing comparative advantages.

The amount of protection under labour law in the country of temporary employment differs according to the aforementioned EU legal basis on which employment in another Member State takes place.

For Union workers who, for instance, moved from Portugal to the Netherlands and entered into an employment contract with an employer based there, the Netherlands can be designated as the country in which the work usually takes place. As a result, Dutch labour law can be designated as the objectively applicable law. Employment contracts between Union workers and Netherlands-based employers are, contrary to posting, entirely governed by the Rome I Regulation.466 Nevertheless, both parties' choice of law can reveal that the employment relationship is governed by another law. This choice concerns the objectively applicable law but not the mandatory provisions that cannot be derogated from by agreement, as stipulated in the law which would have been applicable by default, i.e. without any choice of law (Art. 8 (1) Rome I Regulation7). In addition, overriding mandatory rules may require the application of another law (Art. 9 Rome I Regulation).

Posted workers are only partially protected by the mandatory rules applicable in the country of temporary employment. The extent of that protection is limited to a hard core of employment conditions (Posting of Workers Directive, Art. 3 (1) a through g).467 These employment conditions are generally qualified as rules of priority under Art. 9 of the Rome I Regulation.468 This implies that this hard core, as effective in the country of temporary employment, must be guaranteed for the duration of the posting regardless of the law applicable to the employment relationship. It is up to the receiving country to monitor the compliance with this hard core. In addition, the Rome I Regulation assumes that the applicable law does not change if the work temporarily takes place in

464 ECJ 10 February 2011, Case C-307/09 t/m C-309/09, ECLI:EU:C:2011:64 (Vicoplus), Vicoplus.
466 M. Kullmann, ‘Tijdelijke grensoverschrijdende detachering en gewoonlijk werkland: over de verhouding tussen de Rome I-Verordening en de Detacheringsrichtlijn en de rol van de Handhavingsrichtlijn’, NIPR 2015, afl. 2, p. 207. Despite the presence of a country of habitual employment, a connection can be sought to the country with which a closer bond exists: ECJ 12 September 2013, Case C-64/12, ECLI:EU:C:2013:551 (Schlecker/Boedeker), JAR 2013/250 (Jurisprudence on Labour Law), annotated by F.G. Laagland.
467 That this is about minimal and simultaneously maximal protection follows from: ECJ 18 December 2007, Case C-341/05, ECLI:EU:C:2007:809 (Laval).
468 Kullmann 2015, p. 207.
another country (cf. Art. 8 (2). Work is considered to be temporary if employees are expected to resume work in their country of origin after completion of their tasks abroad, even if they conclude a new employment contract with the original employer or an employer belonging to the same group of companies (cf. recital 36 of the Preamble to the Rome I Regulation. The Posting of Workers Directive not only requires a posting that is limited in time, but also the presence of a country of ‘habitual’ employment to which the posted worker will return after completion of the posting. Whether workers have actually returned can only be established after their return. In the Rome I Regulation, unlike in the Posting of Workers Directive, the mere expectation that the worker will return suffices (cf. recital 36 of the Preamble). The Posting of Workers Directive is not applicable if workers are only hired to be posted in another Member State. When it comes to posting, the country of ‘habitual’ employment must not be the same as the country of temporary employment. This is, however, possible for the free movement of labour.

Posted agency workers can enjoy more protection than posted employees. Section 3 (9) of the Posting of Workers Directive allows Member States to determine that service-providing employment agencies guarantee to their workers the same ‘terms and conditions which apply to temporary workers in the Member State where the work is carried out’. Agency workers may thus receive a higher level of protection than ‘regular’ posted workers. Ensuing from the Vicoplus case, employment agencies can be designated as service providers in the sense of the Posting of Workers Directive, but their employees can (also) fall under the rules regarding the free movement of workers.469 Agency workers active in the Netherlands have a right to working conditions at least equal to those applicable to workers employed in the same or equivalent positions at the undertaking where the posting takes place (Art. 8 (1) Waadi). If a collective labour agreement applies to the hirer, it is possible to derogate from said sections of articles (see for example Art. 6 (1) b of the Collective Labour Agreement for the construction industry).

The proposal for the revision of the Posting of Workers Directive470

On 8 March 2016, the Commission announced its intention to amend the Posting of Workers Directive 96/71/EC on three important points: This proposal ensues from, among others, a joint letter from Belgium, Germany, France, Luxembourg, the Netherlands, Austria and Sweden. The European Commission itself also aims to create a deeper and fairer internal market. 11 Member States, including Poland, Bulgaria, Romania, Estonia and Denmark issued a yellow card on this proposal, claiming that it constituted ultra vires and was thus not in line with the subsidiarity principle. On 20 July 2016, the European Commission announced that it would ignore the yellow card.471

The three proposed amendments pertain to the following:

469 Vicoplus, paragraph 46.
(a) Duration of the posting of 24 months

Primarily, the proposal aims to offer more clarity as to the duration of the posting. If the expected or actual duration of the posting exceeds 24 months, the Member State in which the worker has been posted will be considered the worker's country of habitual employment (new Art. 2bis). To prevent 'replacement constructions', the proposal stipulates that the replacement of a posted worker in the same location and for identical work is included in the total duration of the posting of employees, provided that those employees are being posted for a minimum of six months.

This provision will be new to the Netherlands. Its introduction would imply that the term 'limited period', as used in the Posting of Workers Directive, would be set at 24 months, in alignment with the European coordination rules on social security. Two scenarios are distinguishable: the expected (ex-ante) and the actual (ex-post) duration. It follows from the preamble to the proposed amendment that the host country immediately, i.e. from the first day, becomes the country of habitual employment if exceeding of the 24-month period is clear from the onset of the posting. If the posting turns out to exceed 24 months at a later stage, the host country will become the country of habitual employment from the first day after this 24-month period. An interesting point which deserves closer investigation is what this means for the assumption of the Rome I Regulation that posted workers will return to their countries of habitual employment after the posting. Article 4, paragraph 3, section d of the Enforcement Directive stipulates that workers shall return to the Member State from which they were posted or where they are supposed to resume work after finishing their activities or after providing the service for which they were posted. This return needs to be either an actual return or an intention to return.

Sometimes the duration of a service provision is not clear from the onset, or it is established halfway that it will require more time. This might lead to an exceeding of the 24-month posting period and a change in the employee’s country of habitual employment. Employees who used to work in Germany might suddenly find themselves habitually employed in the Netherlands. In this case, employees change protection regimes, moving from initial protection under German labour law to protection under Dutch labour law, with all its consequences. This might be advantageous in certain cases but unfavourable in others. A case in point might be dismissal law in the Netherlands, Belgium, Germany and Luxembourg. In principle, the hard core of Art. 3 (1) sections a-g of the Posting of Workers Directive of the temporary host country is applicable during the posting, under the condition that the host country’s rules are more beneficial to the posted worker. If not, the law of the country of habitual employment remains applicable.

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472 Van Hoek & Houwerzijl already established previously that the implementation, application and enforcement of the Posting of Workers Directive has its shortcomings in practice. A. van Hoek & M. Houwerzijl, Comparative Study on the Legal Aspects of the Posting of Workers in the Framework of the Provision of Services in the European Union 2011. This study was used during the creation of the Enforcement Directive, aimed at improving the enforcement of the Posting of Workers Directive (Art. 1 (1).


474 Kullmann 2015, p. 214.
In order to establish to what extent posting companies adhere to this rule, the Inspection of Social Affairs and Employment (SZW) has to perform audits and impose administrative fines in cases of non-compliance. This amendment might create more legal certainty for companies and posted workers on which law is applicable to their employment relationship. Much will depend on the enforcement of this provision. As far as the applicability of the proposed 24-months regulation is concerned, the six-month threshold might elicit bypass constructions, whereby postings, and consequently the duration of service provision, will become limited to six months. Note that the duration of service provision need not be equal to the duration of the posting.475

(b) Term ‘remuneration’ to replace ‘minimum wages’

Secondly, the proposal addresses one of the most disputed definitions: ‘minimum wages’ is being replaced with ‘remuneration’. This broadens the concept of wage: the provisions on remuneration that apply to local workers and ensue from the law or collective labour agreements declared generally binding shall be applied to posted workers as well. Nevertheless, Member States do have to publicise all components of the remuneration on one website. This publication obligation already ensues from Art. 5 of the Enforcement Directive. The Netherlands should have complied with this provision of the Enforcement Directive as per 18 June 2016 but has not done so yet.

In line with this, Member States are able to oblige companies only to work with subcontracting companies that grant their workers certain remuneration conditions which the contracting party also has to grant. It is interesting that, according to the explanatory notes, these conditions can also be incorporated in collective labour agreements that have not been declared generally binding.

In the Netherlands, this amendment will mainly affect collective labour agreements that have been declared generally binding. Practice has shown that posted workers end up in a lower salary grade than comparable reference persons holding regular jobs in the Netherlands. If posted workers were to actually benefit in terms of remuneration, this might make them less attractive for the service recipient in the Netherlands as they would be more expensive, potentially taking away a comparative advantage.

(c) Equal terms for posted and regular agency workers

Thirdly and in line with Art. 5 of the Directive on temporary agency work, it is decided that the same conditions shall apply to posted agency workers as to domestic employment agencies, turning Art. 3 (9) of the Posting of Workers Directive into a legal obligation. In the Netherlands, this provision is already effective and the proposed amendment will not have any consequences, apart from potentially increasing the awareness of this obligation among cross-border service providers and their employees (see above).

475 Kullmann 2015, p. 211.
3.7 Flexibilization of the Old Age Pension Commencement Date Act

Prof. Anouk Bollen-Vandenboorn
Dr. Marjon Weerepas
Bastiaan Didden, LL.M.

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Preliminary remark: this Dossier is organised differently from the other Dossiers due to the fact that the legislative proposal on the Flexibilization of the General Old-Age Pension commencement date is still under preparation. Its plenary treatment is on the agenda for early November 2016. Nevertheless, the importance and potential effect of the Act for cross-border workers can be established based on this legislative proposal.
1. **Background to the legislative proposal for the Flexibilization of the Old-Age Pension Commencement Date Act**

In mid-February 2016, member of the Lower House of Parliament Norbert Klein submitted a legislative proposal to amend the General Old-Age Pensions Act and Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old-Age Pensions Act earlier or later than the statutory retirement date, in part or in whole. This legislative proposal, also known as the ‘Wet flexibilisering ingangsdatum AOW’ (Flexibilization of the Old-Age Pension Commencement Date Act) opens the option to allow the statutory pension to begin up to five years earlier or later than the date on which the pension-entitled person reaches the statutory retirement age. According to the submitter, the proposal addresses the need of people to shape the transition between work and pension themselves.

2. **Potential effects of the proposal on cross-border workers**

In response to the legislative proposal, ITEM has written a letter to the Standing Committee for Social Affairs and Employment, to draw attention to the position of workers who have built up both a Dutch AOW old-age pension and a foreign statutory pension. This group of workers, which includes migrant workers and cross-border workers, may benefit from the option of a flexible commencement date of the AOW old-age pension.

The position of cross-border workers in particular will be discussed below. This group of workers is confronted with different statutory retirement ages in the Netherlands, Belgium and Germany. As shown in the overview below, the Dutch AOW old-age pension has a later commencement date than the statutory old-age pensions in Belgium and Germany.

<table>
<thead>
<tr>
<th>Country</th>
<th>Current statutory retirement age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>65 years + 6 months</td>
</tr>
<tr>
<td>Belgium</td>
<td>65 years</td>
</tr>
<tr>
<td>Germany</td>
<td>65 years + 5 months</td>
</tr>
</tbody>
</table>

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476 *Kamerstukken II 2015/16, 34414, nr. 2 (Voorstel van wet van het lid Klein tot wijziging van de Algemene Ouderdomswet en de Participatiewet in verband met de introductie van de mogelijkheid het AOW-ouderdomspensioen geheel of gedeeltelijk eerder of later te laten ingaan (Wet flexibilisering ingangsdatum AOW)). (Legislative proposal by Member of Parliament Norbert Klein to amend the General Old Age Pensions Act and Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old Age Pensions Act earlier or later than the statutory retirement date, in part or in whole (Flexibilization of the Old-Age Pension Commencement Date Act).)

477 *Kamerstukken II 2015/16, 34414, nr. 6, p. 1 (Memorie van Toelichting zoals gewijzigd naar aanleiding van het advies van de Afdeling Advisering van de Raad van State) (Explanatory Memorandum as amended in response to the Advisory Department of the Council of State).

478 The relevant passages and findings of this letter sent to the Standing Committee for Social Affairs and Employment have been included in this report.
This implies that cross-border workers who built up a statutory pension in both the Netherlands and one of the other two neighbouring countries will have to wait a bit longer for their AOW benefits when they start receiving their foreign statutory pension. This may affect their income. The legislative proposal Flexibilization of the Old-Age Pension Commencement Date Act offers cross-border workers the option of aligning the commencement date of their Dutch AOW pension with the commencement date of their foreign statutory pension. Contrary to the current situation, this would allow cross-border workers to claim the benefits of their accumulated statutory pensions on the same commencement date.

Given the manner in which the Netherlands, Belgium and Germany have individually decided to raise their respective statutory retirement ages, this alignment issue will persist for cross-border workers in the future, as can be seen from the overview of future statutory retirement ages below.479

<table>
<thead>
<tr>
<th>Country</th>
<th>66 years</th>
<th>67 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>2018</td>
<td>2021</td>
</tr>
<tr>
<td>Belgium</td>
<td>2025</td>
<td>2030</td>
</tr>
<tr>
<td>Germany</td>
<td>2024</td>
<td>2031</td>
</tr>
</tbody>
</table>

479 The term ‘alignment issue’ has been derived from Kamerstukken II 2011/12, 33046, 6, p. 17 (nota naar aanleiding van het verslag) (note on the report). This so-called ‘alignment issue’, causing potential loss of income for cross-border workers, was discussed during the parliamentary scrutiny of the Wet verhoging pensioenleeftijd, extra verhoging AOW en flexibilisering ingangsdatum AOW (Increased Pension Age, Additional Increase of the General Old-Age Pension (AOW) and Flexibilization of the Old-Age Pension Commencement Date Act).
The following calculation example, derived from the amended explanatory memorandum to the legislative proposal, further illustrates these alignment issues. 480

**Initial situation**

*(in accordance with the example and calculation method of the explanatory memorandum)*

- **Gross amounts**
  - Standard AOW old-age pension for singles (100% accrual rate) excluding AOW income support and including holiday pay at age 66: €14,257.50
  - AOW old-age pension, early retirement by one year, i.e. AOW pension after gross reduction (of 7.2%): €13,232.00

**Possible situation of a cross-border worker**

- **Gross amounts**
  - Resident of the Netherlands who spent 30 years of his active life in Belgium, equalling 40% AOW pension accrual: €5,703.00
  - AOW old-age pension, early retirement by one year, i.e. AOW pension after gross reduction (of 7.2%): €5,293

**Current situation at age 65**

- Situation at age 65 (presently) -> only a right to statutory pension accrued in Belgium -> annual gross amount: €14,400

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480 Kamerstukken II 2015/16, 34414, nr. 6, p. 3-4 (Memorie van Toelichting zoals gewijzigd naar aanleiding van het advies van de Afdeling Advisering van de Raad van State) (Explanatory Memorandum as amended in response to the Advisory Department of the Council of State).

481 Explanation of the calculation of the Belgian statutory pension:
- Normal income in the Netherlands according to the Netherlands Bureau for Economic Policy Analysis (CPB) = EUR 36,000 (assuming this as the wages during the career years in Belgium).
The legislative proposal Flexibilization of the Old-Age Pension Commencement Date Act offers cross-border workers the option of aligning the commencement date of their Dutch AOW pension with the commencement date of their foreign statutory pension. Contrary to the current situation, this would allow cross-border workers to claim the benefits of their accumulated statutory pensions on the same commencement date.

As a result, they would no longer have to wait for the moment their accrued AOW old-age pension becomes payable. This implies that the cross-border worker in the calculation example below would receive both a Belgian statutory pension benefit and a Dutch AOW pension at age 65. Compared to the current situation, this would constitute an improvement in the cross-border worker’s income position on the commencement date of the statutory pension.

**Possible future situation at age 65**

<table>
<thead>
<tr>
<th>Availability of accrued statutory pensions from both Belgium and the Netherlands at age 65</th>
</tr>
</thead>
<tbody>
<tr>
<td>-&gt; Netherlands: 40% AOW accrual (of EUR 14,257.50) and taking into account a gross reduction of 7.2%</td>
</tr>
<tr>
<td>-&gt; Belgium: statutory pension</td>
</tr>
<tr>
<td>Total amount of statutory pension receivable in the year of turning 65 (excluding compensation AOW premium)</td>
</tr>
</tbody>
</table>

To assess the concrete effects of the legislative proposal, it is important to take into account the various factors that might influence the income position of cross-border workers after retirement. The variables used in the simple calculation example above may be different, after all: cross-border workers may be married instead of single and may have worked for either a longer or shorter period in Belgium and/or Germany than assumed in the example. Additionally, there is the possibility of cross-border workers having accrued an additional pension through a supplementary pension plan. Various practical scenarios are therefore imaginable.

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- Calculation of accrued statutory pension rights per career year in Belgium, not taking into account the so-called revaluation coefficient and, assuming the person to be single, multiplied by 60%, based on the following applicable formula: (career year’s wages / 45) * (60%)

3. Cross-border impact assessment

With the legislative proposal on the agenda of the Dutch Lower House of Parliament for plenary scrutiny in early November 2016, ITEM has found that the legislative proposal, the explanatory memorandum, nor the extensive treatment by the Standing Committee for Social Affairs and Employment have paid any attention to the potential effects of the legislative proposal on cross-border workers, despite the fact that two motions from 2009 and 2012 pointed out the importance of devoting lasting attention to cross-border issues. The so-called Thirty-Members’ Debate in 2015 also stressed the importance of performing cross-border impact assessments, i.e. mapping the effects on border regions during the legislative process, while several political parties used the debate to express their wish to do so. It remains striking, nonetheless, that the letter sent by ITEM has not led the Standing Committee for Social Affairs and Employment to pay attention to the positive effects that the legislative proposal has for cross-border workers.

4. Conclusion

Naturally, ITEM is very positive about performing a cross-border impact assessment in order to gain early insight into the concrete consequences of legislation and regulations. Had such an assessment taken place in the case of the Flexibilization of the Old-Age Pension Commencement Date Act, the legislator could have established that the legislative proposal on the flexibilization of the old-age pension commencement date might have positive effects for cross-border workers who have accrued both a Dutch AOW pension and a foreign statutory pension.

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482 As regards inclusion in the agenda, see: Long-term agenda including the week 43 voting list; 2016-10-19. Accessible via <https://zoek.officielebekendmakingen.nl/>.
483 Kamerstukken II 2011/12, 33000 IXB, nr. 21 (Motie Bashir). This motion refers to, among others, the Weekers motion (Kamerstukken II 2009/10, 26834, nr. 26 (Motie Weekers)), proposed and adopted in 2009 regarding the importance of devoting attention to cross-border workers’ issues.
485 In spite of the response by the Standing Committee for Social Affairs and Employment to the letter sent by ITEM, which states that: “De commissie heeft besloten dat de leden uw brief desgewenst kunnen betrekken bij de behandeling van het voorstel van wet van het lid Klein tot wijziging van de Algemene Ouderdomswet en de Participatiewet in verband met de introductie van de mogelijkheid tot het AOW-ouderdomspensioen geheel of gedeeltelijk eerder of later te laten ingaan (Wet flexibilisering ingangsdatum AOW) (34414).” (The Committee has decided that its members are free to involve your letter in the treatment of the legislative proposal by member Klein to amend the General Old Age Pensions Act and the Participation Act in connection with the introduction of the option to begin payment of the pension under the General Old-Age Pensions Act earlier or later than the statutory retirement date, in part or in whole (Flexibilization of the Old-age Pension Commencement Date Act) (34414)).

Martin Unfried

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Introduction

Euregions and other Euregional cross-border organizations have been pointing out for years that a functioning cross-border labour market is an important prerequisite for the economic strength and the HR policy of border regions. An important factor in this context, discussed as a problem on the EU, national and Euregional level in recent years, is the lack of cooperation between national services in the field of employment services. The Euregio Meuse-Rhine, for example, finds in its 2020 strategy document that, when it comes to national employment services, the cross-border labour market is still hampered by the fragmentation of the available information on vacancies and available purchasing potential, as well as, among other things, by the lack of integrated employment services. Similar findings led to the establishment of the European network EURES within the EU more than two decades ago, but not until recently did the desire for intensive cross-border cooperation become legally anchored too. As a consequence, cross-border employment services for job seekers, for instance, and cross-border services for employers are not voluntary options for national public employment services but a mandatory task. To enforce this, a special EURES Regulation has been in place since 2016 (2016/589 Regulation (EU)). This Regulation explicitly states that the growing interdependence of the labour markets requires reinforced cooperation between public employment services, including those in the border regions. This study investigates the impact of the approach of the Dutch National Employment Service UWV on cooperation regarding cross-border employment service provision. Chapter 1 provides the research questions and definitions, as well as the method utilised. Chapter 2 describes the special research topic, namely two ongoing projects regarding the structural reinforcement of cross-border employment service provision on the border of the Dutch province of Limburg. Chapter 3 uses these concrete projects to assess the impact of the current staffing capacities and current mediation practices at UWV on cross-border service provision and cooperation. Chapter 4 discusses the effects of the current implementation of the EURES network by UWV in order to meet the requirements of reinforced cross-border employment services. Chapter 5 asks the question to which extent UWV has created the technical conditions for recording the data of foreign job seekers and the job offerings of foreign employers. Chapter 6 investigates whether UWV has adequate means for the further training of job seekers with a view to the special requirements made of frontier workers and to the role of other financial instruments, such as a new sectoral plan, in this process. Chapter 7 summarizes the results and conclusions.

487 European Employment Service, Europees netwerk van de diensten voor arbeidsvoorziening. (European Employment Service, European network of employment services.)
488 This text uses the term ‘public employment service’ for organizations such as the Dutch UWV, the German Bundesagentur für Arbeit or the Flemish VDAB. The term originated in the new EURES 2016/589 Regulation (EU)
1. Research Questions, Definitions, Method

1.1 Research questions and the border region examined

This impact assessment examines the effects of the task and the resources of the Dutch employment service UWV. To what extent is the UWV currently able to cooperate more closely with the German and Belgian partners of the public employment services, in accordance with the requirement of the new EURES Regulation? This is not an ex-post investigation into the effects of a piece of legislation, but an inquiry into the existing and future effects of the institutional approach of a body on its defined task immediately after the entry into force of a new EU regulation. To what extent have current services already been adapted to service provision to job seekers and employers in the neighbouring countries, and which institutional barriers exist to cross-border employment service provision and cooperation with such service providers in the neighbouring countries? In that sense, this research topic differs from the other topics of this cross-border impact assessment. This topic investigates the extent to which a national body has been given the appropriate task and the appropriate means to achieve the aim of the new EURES regulation, namely ‘closer cooperation’ between cross-border employment services. The backdrop to the research question is a debate that mainly takes place at the level of the Dutch border provinces and municipalities. To what extent can the UWV, in its current form, deliver on enhanced collaboration in its association with the national partners, i.e. the municipalities and their employment services, and its cooperation with the German and Belgian partners? To which extent, moreover, does the current organisation of the EURES activities as separate from the UWV’s regular work fit the new challenges?

Two pilot projects between UWV, Bundesagentur and other actors in Limburg and NRW were examined and coached in order to achieve a more precise limitation of the research area. These projects are aimed at structurally strengthening cross-border cooperation according to the new EURES Regulation. In the first place, the analysis of these projects produces statements on the possibilities of the UWV vis-a-vis the actors involved in the relevant labour market regions. The projects are also discussed from the point of view of the entire UWV. The physical research area of the cross-border projects extends to the labour market regions in the province of Limburg in the Netherlands, i.e. North Limburg, Central Limburg and South Limburg. In the German Land of North Rhine-Westphalia, the area includes the German National Employment Service districts of Aachen-Düren, Mönchengladbach and Krefeld.

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490 The abbreviation UWV stands for ‘Uitvoeringsinstituut Werknemersverzekeringen’ (Institute for Employee Benefit Schemes.) According to its own description, the UWV is responsible for the effective implementation of the national employee insurance scheme, and it offers services concerning the labour market and labour market data (see www.uwv.nl).
Table 1: the labour market regions in the Dutch province of Limburg (Classification since 2013)

The Netherlands distinguishes 35 labour market regions, in which municipalities and the UWV provide services to job seekers and employers. The task division depends on the agreements between municipalities and the UWV.\textsuperscript{491} The current classification dates back to the year 2012 and was laid down in the framework of the so-called SUWI Act on the structure of the Implementation Organisation for Work and Income (Structuur van de Uitvoeringsorganisatie Werk en Inkomen (SUWI)).\textsuperscript{492} The actors of the UWV in Limburg collaborate across the border with their colleagues from the national employment services of Krefeld, Mönchengladbach and Aachen-Düren. As a result, the physical research area comprises parts of two Euregions: one part in the Euregion Meuse-Rhine and another in the Euregion Rhine-Meuse-North.

\textsuperscript{491} A complete map can be found on the UWV website under http://www.uwv.nl/zakelijk/Images/35arbeidsmarktregios.pdf.
\textsuperscript{492} The Dutch law on the ‘Structure of the Implementation Organisation for Work and Income’ (SUWI Act), effective as per 2 October, http://wetten.overheid.nl/BWBR0013060/2016-08-01.
1.2 Definitions

The key term 'employment services', as used in this study, is meant to signify the provision of services, in the sense of active mediation between between job seekers and employers with the aim to fill in vacancies. In the new EURES Regulation, however, the term ‘employment services’ is meant to refer to the service provider as well, namely ‘a legal entity acting lawfully in a Member State, which delivers performance for workers seeking employment and for employers seeking to recruit employees’. In this sense, employment services could include commercial providers, in addition to public institutions. Since this study disregards commercial providers, the concept 'public employment services' is used here to narrow down ‘employment services’. This category includes, for example, the Dutch UWV, the German Bundesagentur für Arbeit and the Belgian VDAB. In accordance with the Regulation, Public Employment Services are 'establishments of the Member States, which, as part of competent Ministries, public bodies or bodies governed by public law, are charged with implementing active policies on the labour market and offer high-quality employment services in the general interest'.

1.3 Methods

The study is based on the analysis of the legal background of especially the new EURES Regulation and official documents of the UWV (e.g. the SUWI Act), EURES and other sources. The main sources, however, are the qualitative interviews with employees of the public employment services, EURES advisers and many informal discussions in the course of 2015 and 2016. These are mainly insights obtained from participatory observation during two projects on the border between Dutch Limburg and the German Land of North Rhine-Westphalia. The ITEM employee responsible for this study was actively involved in the discussions between UWV South Limburg, municipalities, the German National Employment Service (Bundesagentur für Arbeit) Aachen-Düren and Jobcenter Urban Region on the establishment of cross-border public employment services in Kerkrade/Herzogenrath. In addition, he has often taken part in discussions about closer cooperation between UWV North Limburg, the Arbeitsagentur Krefeld (employment service) and the municipalities of Venlo and Roermond. Figures on the total number of relevant cross-border service provisions by UWV or the separate services are not included. This problem was also identified by the national 1 actieteam grensoverschrijdend werk en economie (action team cross-border work and economy) during its activities in the year 2016. On the one hand, there are almost no comparative figures of the last few years, and, in addition, they cannot be compared with the number of employment services provided by the partners in the neighbouring country. The issue of comparative employment-service figures is currently being discussed among the EURES partners in the Euregio Meuse-Rhine. This means that currently no analysis is possible that connects the quality of cross-border employment services with Euregional economic development. Although individual job placement results with additional capacities can be

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493 The definitions are provided in Article 3 of the EURES 2016/589 Regulation (EU).
494 This difficulty was identified during work meetings with practitioners in employment services in the year 2016.
495 As shown by the results of an ongoing ITEM study into the definitions and processes of EURES cooperation in the Euregio Meuse-Rhine.
explained, for example in North Limburg, no general statements about economic development or the development of the unemployment figures can be derived from them.

1.4 Principles, benchmarks and indicators
What are the effects of the UWV approach on the border regions? ITEM generally makes a distinction between consequences or effects

- that directly affect citizens in their Union citizenship, aimed at non-discrimination and European integration in general;
- between the consequences for Euregional economic and sustainable development;
- and the consequences for Euregional coherence, the cooperation between cross-border actors.

The UWV study puts emphasis on the first and third aspect of cross-border effects. Since the new EURES Regulation expressly constitutes a decree on closer cross-border cooperation, it makes sense to study the impact of the implementation and approach of UWV on the cooperation with German and Belgian actors. Since fundamental rights of EU citizens in the area of freedom of movement and the use of employment services are at stake, their perspective also plays an essential role, as do the implications for European integration. As stated earlier, it is not possible to draw direct conclusions about the positive or negative effects of cross-border services on Euregional economic development. This is in part due to a lack of data that would allow for cross-border comparisons in the field of employment services. Nevertheless, an attempt is made hereinafter to develop the appropriate principles, benchmarks and indicators for this field, so that they may be used for a more in-depth discussion about EURES and better statistical registration of cross-border placement services.
Table 3: Principles, benchmarks, Indicators

<table>
<thead>
<tr>
<th>Principles</th>
<th>Benchmarks</th>
<th>Indicators</th>
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<tbody>
<tr>
<td>European integration/freedoms/non-discrimination</td>
<td>Job seekers who may be able to find work in the neighbouring country will get personal coaching that is tailored to meet the job requirements in the neighbouring country. Job seekers and employers from the neighbouring countries will receive the same support as Dutch actors, and their data will be recorded by the UWV. Employment services will have adequate financial means to provide adequate further training to potential frontier workers.</td>
<td>Does the UWV have the staffing necessary to offer personal guidance beyond regular domestic mediation to job seekers? Which services can job seekers and employers from neighbouring countries expect from the UWV? Are the data of foreign job seekers and employers being entered in the UWV’s system according to the information of national actors? Which financial resources does UWV have for the further training of potential frontier workers?</td>
</tr>
<tr>
<td>Euregional economic and sustainable development</td>
<td>A benchmark for employment (in accordance with Europe 2020) 75% of the 20- to 64-year-olds will be employed Benchmark Euregion (EMR): Clear expansion of cross-border job supply and demand. Improved use of Euregional training and development capabilities</td>
<td>Euregional economic growth Cross-border figures on unemployment and vacancies for Euregional economic areas Labour-force participation of different age groups for Euregional economic areas Number of frontier commuters and cross-border business activities Figures for the cross-border use of Euregional training and development capabilities</td>
</tr>
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</table>
Over the past decades, the EU has actively supported the cooperation of the national public employment services by rebuilding the EURES networks. Recently, the foundations, i.e. the fundamental legal principles and objectives, have been reinforced by the new EURES Regulation. The preamble to this document points to the principal rights of EU citizens regarding free movement. In particular, clear rights are described that apply to the search for work in another EU Member State. Under this Regulation, public employment support services are open to ‘all citizens of the Union, who, according to Article 45, TFEU, have a right to commence employment and to their family members.’

The underlying aim is to ensure the free movement of all workers by voluntary mobility of labour in accordance with Union law and national laws and practices, as set out in Article 46 (a), TFEU. This article of the Treaty stipulates that the Council and the European Parliament shall take measures towards the establishment of free movement, among others ‘by ensuring close cooperation between the employment services of the individual countries’. EU citizens seeking employment in another EU Member State are therefore legally entitled to the same support that

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496 See preamble, recital 4, Regulation (EU) 2016/589.
the employment agencies of this country guarantee their own nationals. This is also laid down in Article 5 of the Regulation (EU) No 492/2011 on the free movement of workers within the Union, dated 5 April 2011. This obligation and the requirement of closer cooperation between the employment services constitute the essential legal background to this inquiry, from which the principles of cross-border placement can be derived. They affect the areas of free movement of workers and non-discrimination, as well as the requirements of territorial cohesion, in the sense of closer cooperation between the public employment services. Since the beginning of 2016, the Dutch Grenzenloos Werken (Working Without Borders) sectoral plan has provided statements on cross-border employment services. The objective is to create 800 jobs in Germany from the Netherlands, as part of additional funding from the Ministry of Social Affairs and Employment. The assessment of the feasibility of the transposition so far is also an indicator for the approach of UWV and the coordination of cross-border cooperation.

Subsequent studies are advised to also incorporate indicators of economic development, so as to make the connection between intensified cross-border employment services and, for example, labour-force participation rates. As mentioned before, however, this requires both improvements in the comparability of cross-border placement successes and in customised Euregional economic data.

2. Research theme: two projects for structural reinforcement of the cross-border employment services

This study is based on the active participatory observation by ITEM of two projects for the structural reinforcement of the cross-border employment service collaboration between UVW and the Bundesagentur für Arbeit at the border of the Dutch province of Limburg and North Rhine-Westphalia. The first project was initiated by the province of Limburg and the municipality of Kerkrade in South Limburg in 2015. The outcomes of this study are based on the participatory observation of numerous project-group meetings at the technical and political level. The ITEM employee concerned had an active advisory function in these meetings and thus the opportunity to carry out many interviews with the project participants during the development phase. The interviewees were practitioners in the field of employment services of the Bundesagentur für Arbeit Aachen Düren, UWV South Limburg, WSP Parkstad, Podium 24 (Maastricht-Heuvelland) and Jobcenter city district of Aachen. It was also possible to take part in the meetings of the steering group, the political committee of the project with the political leaders of the Dutch municipalities, the province of Limburg and the responsible managers of the UWV and the Bundesagentur für Arbeit. September 2016 marked the opening of the first common 'cross-border employment service' of the UWV, Dutch municipalities and the Agentur für Arbeit Aachen-Düren in the Eurode Business Center on the border of Kerkrade (NL) and Herzogenrath (D). The format is based on the common branch of the Bundesagentur für Arbeit Offenburg and its French partner Pôle emploi in Strasbourg-Kehl on the French-German border. This attempt to achieve closer structural cooperation of cross-border employment services is used to study the role of the UWV approach and its equipment in the realisation of this common branch.
Key insights were also obtained from the participation in ongoing discussions in the network of UWV North and Central Limburg and the Bundesagentur für Arbeit Krefeld, districts of Viersen and Mönchengladbach respectively. In this case, an agreement had already been in place since April 2014 on the strengthening of cross-border cooperation and the exchange of vacancies. In the course of 2015 and 2016 talks were held on the strengthening and extension of the cooperation by including Dutch municipalities. The progress of this project also provides indications as to the capabilities the UWV had or has on the basis of the existing approach.

Another important role is reserved for the insights that ITEM obtained from its participatory observation of the creation of the Dutch sectoral plan Grenzenloos Werken (Working Without Borders) in the year 2015/2016. In this context, it was possible to attend several advisory meetings in South Limburg. The sectoral plan, which was funded by the Ministry of Social Affairs and Employment, was intended to serve as an additional source of funding for the UWV and other parties, allowing them to invest more time and financial resources in achieving cross-border employment in Germany and Belgium as of 2016.

This impact assessment also bundles the insights obtained as part of an ongoing research project into the work of the EURES network in the Euregion Meuse-Rhine. In addition, qualitative interviews were conducted at the five participating public employment services on, inter alia, the relationship of the EURES activities and the regular placement work of the partner organizations.

3. How do current staffing capacity and placement practice address the challenges of cross-border service provision and the obligation to reinforce cross-border cooperation?

In 2015 the Netherlands saw a public debate on the approach of the UWV. The central question was whether and to what extent the UWV had gone too far in digitizing its employment services, thus neglecting the personal coaching of job seekers, all to the backdrop of a significant reduction in UWV resources. EUR 401 million was economized on task implementation between 2012 and 2015, and another cut of EUR 88 million will have to take place before 2018. The competent Minister, Lodewijk Asscher, stated in the autumn of 2015 that coaching had to become more personal. In June 2016, Tof Thissen, director of the UWV Werkbedrijf (UWV Employment Services) announced in an interview in national newspaper De Volkskrant that extra funding would become available for personal advice to job seekers as per 1 October 2016, thus reinforcing this service. At this occasion, it was also mentioned that this would apply particularly to young adults, 55-year-olds and frontier workers.

This was the recognition of a problem that had longer been identified as an obstacle by practitioners in cross-border employment service provision. During the pilot projects for closer

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499 Ibidem.
cross-border cooperation, practitioners from both the Dutch UWV and the German Arbeitsagentur repeatedly emphasized that personal coaching was one of the key factors in successful cross-border placement. In the South Limburg/Aachen-Düren cooperation, this received particular focus in the business plan for the common service. 500 Job seekers must therefore receive active coaching from initial contact to job interview. The Netherlands focused on ‘unburdening’ job seekers. The practitioners have established the higher advisory fees, also bearing in mind employers in the case of cross-border vacancies. The UWV estimates that the employment services in cross-border areas are around 30% more expensive than similar services at national level. 501 Practitioners in both countries agree that digital information offers only limited advantages. This is explained by the fact that the general need for advice on employers, job interviews, professional qualifications, etc. is significantly higher. From this it can be concluded that the public employment services should have adequate staffing resources for monitoring potential frontier workers, which can also be found in the employee objectives. No additional staff consultancy had been planned until the summer of 2016, in accordance with the UWV’s approach of the regular, i.e. non-EURES, placement of potential frontier workers. Staff consultancy remained reserved to job seekers with a large distance to the labour market, e.g. older employees. 502 This also meant that the objectives of the labour brokers were not specifically defined for cross-border placement. That is why expensive, target-oriented cross-border placement hinders rather than promotes the achievement of the objectives set with the national situation in mind. Particularly regional managers, faced with the difficulty of achieving their targets despite considerable additional costs, confirmed this. For this reason, it is surprising that the leading principle of the UWV to date has been that cross-border placement has to be carried out as part of the regular activities. It was a higher strategic objective within the UWV to integrate, at least until the summer of 2016, the cross-border dimension into the regular activities of the labour brokers, and thus not to free up any staff for this task nor to specify separate objectives or instruments. As a result, in principle no additional funds were made available for the more expensive activity at least until summer 2016. In conversations with the UWVs of South, North and Central Limburg, this situation was repeatedly identified as a structural problem to the projects for closer cooperation with the Bundesagentur für Arbeit. This restriction also became apparent in the organisation of the common service in Kerkrade/Herzogenrath, leaving the UWV unable to contribute its own resources to co-finance the secretariat of the common branch in the starting phase in 2016. Likewise, it was not easy for the UWV to allocate one half-time employee to the service in the beginning. One reason might be that, on the basis of the above principle, there was no one within the UWV who was exclusively involved in personal coaching as part of cross-border placement at the time. As such, the central activity of the common team was merely

500 In the course of the year 2015 a Business Plan was drawn up for the future of ‘cross-border employment services’, on the basis of which the partners signed a declaration of intent at the beginning of the year 2016.  
501 This is, for example, an estimate of the UWV North and Central Limburg based on experiences of closer cooperation with the Arbeitsagentur Krefeld-District of Viersen.)  
502 The wording is as follows: ‘onze dienstverlening is indien mogelijk digital’ (our services are digital whenever possible). This can, for example, be found in the brochure ‘UWV op weg naar 2017 een uitgestrekt hand’ (‘UWV toward 2017: an outstretched hand’). UWV, 2014, recalled on 2 October 2016 via http://www.uwv.nl/overuwv/images/uwv%20op%20weg%20naar%202017.pdf.
a fringe activity within the UWV and not covered by internal staffing as a consequence. Added to this was the difficulty that the intensive coaching of potential frontier workers as agreed upon in the common service and described above did not suit the UWV’s principles of digital service provision. The principle of active coaching was actually more in keeping with the practice of the German Bundesagentur für Arbeit and the Belgian VDAB, where personal advice already plays a much more important role in the national context than at the UWV. For example, there was no structurally organised personal advice for German or Belgian job seekers from the UWV up to the establishment of the common services. The Bundesagentur für Arbeit Aachen-Düren, on the other hand, has for years been offering detailed personal advice to Dutch job seekers, tailored to the needs of frontier workers. This includes, for example, the special requirements with regard to the professional qualification, the written application, the CV and the job interview. This principle of coaching also served as a mould for the work of the common branch, apparently making the personal supervision of German job seekers in the Netherlands new to UWV.

In recent years, additional staffing capacity had already been necessary to attend the regular meetings as part of the collaboration between the UWV North and Central Limburg and the Arbeitsagentur Krefeld and Mönchengladbach, also under the title ‘cross-border employment services’. This collaboration comprises the construction of a structural network with weekly joint meetings to exchange vacancies and coordinate joint projects for employers. The increase in staff was, however, not structurally covered either until the summer of 2016 due to the UWV’s principle of integration into the regular service activities and regular job descriptions. In that sense, it was entirely thanks to the conviction and commitment of the employees and managers on site. This was also made possible by the dynamism of the cooperation, which was accelerated with great interest, also from the side of the Arbeitsagentur, and seen as a mutual obligation on both sides. In that sense both projects have had a positive effect. The cooperation in the north of Limburg was further reinvigorated in the spring of 2016, when the Bundesagentur managed to free up additional staffing capacity, so that, according to the latest data, five employees can mainly devote themselves to cross-border tasks. This led to yet more staffing capacity becoming available at the UWV. According to the latest state of affairs, the UWV has three employees available for the cooperation. This is particularly thanks to the dynamics of the cooperation and the larger projects for large potential German employers with an immediate shortage of employees, not to an adjustment of the internal guidelines regarding cross-border activities, however. Particularly successful are the massive inflow projects with large information events for job seekers that were organised for employers such as Zalando, Reuterbad, BEWA-security, Förstwald Krefeld and Jago, in cooperation with commercial employment agencies. Only thanks to successful direct placements and prospects of successful placements are and were the responsible managers able to justify the addition of staff, given the organisation’s own objectives. The strengthening of the cooperation since 2014 and the additional deployment of staff have actually led to more placements. While, before 2014, the announcement of German vacancies and successful placements were only ad-hoc and limited phenomena in the working

503 The services are described by UWV and the Bundesagentur für Arbeit Krefeld in a common brochure entitled, ‘Service grensoverschrijdende arbeidsbemiddeling’ (Cross-border Employment Services), (without mentioning a date).
area of the UWV North and Central Limburg, both have shown an increase since the strengthening of the network. In this case, internal figures are available over the last years.504

Table 4: announced German vacancies and successful placements by UWV North and Central Limburg in North Rhine-Westphalia.

<table>
<thead>
<tr>
<th>Year</th>
<th>Announced German vacancies</th>
<th>Successful placements</th>
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<tbody>
<tr>
<td>2014</td>
<td>29</td>
<td>10</td>
</tr>
<tr>
<td>2015</td>
<td>51</td>
<td>72</td>
</tr>
<tr>
<td>2016</td>
<td>26</td>
<td>62 (September)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>forecasting 75-100</td>
</tr>
</tbody>
</table>

Additional use of resources can thus be justified with increased placement figures; however, the potentially higher costs per job seeker have still not been structurally anchored. Based on the first successes, the responsible Area Manager for North and Central Limburg thinks that a much larger number of cross-border placements in Germany could be realistic, provided there is adequate staffing capacity with a long-term guarantee.

In part, the difficulties in South Limburg regarding the deployment of additional staff at the UWV can be explained by the fact that this great need of individual employers does not exist today on the German side. This actually makes cross-border placement much more expensive, while contacts with many different employers and potential Dutch job seekers should first be permanently extended.

In summary, various factors have hindered the structured use of staff in cross-border placement in the past: on the one hand, the personal advice and coaching of frontier workers has not become part of the regular work of the UWV so far, supported by corresponding internal objectives and resources. This has made it quite difficult to provide additional staff for the cooperation in South Limburg, for example. This was due to the fact that it was not clear from the structure of the cross-border labour market that considerable placement figures could be achieved in a short amount of time. Rather, it was clear that the advice and coaching costs per placement would be much higher, which corresponded with the experience of the Bundesagentur für Arbeit Aachen-Düren. The projects of the UWV North Limburg aimed at large employers, on the other hand, allow for faster placement successes, which permits the deployment of additional staff under the internal guidelines. In both projects of intensified cooperation, the responsible UWV employees achieve cross-border placement, not based on the objectives set and resources.

504 This study integrally refrains from citing cross-border job placement figures: due to the different calculation methods they are not actually significant, nor can they be compared with the figures from the partners in Germany or Belgium, again due to different calculation methods. This was established in a still ongoing ITEM study of the EURES network in the Euregio Meuse-Rhine, entitled ‘Definitions en processen van de grensoverschrijdende arbeidsbemiddeling van de EURES Partners in de Euregio Maas-Rijn’, november 2016 (‘Definitions and processes of the cross-border employment services of the EURES partners in the Euregio Meuse-Rhine’, November 2016).
allocated, but rather and only by making significant personal commitments and using unorthodox means. While this may have functioned at project level, there has not been a solid basis so far for a long-term guarantee of closer cooperation with the Arbeitsagentur in the sense aimed at by the new EURES regulation.

4. What are the effects of the current implementation of the EURES network by UWV on the challenges of reinforced cross-border employment services?

A second important indicator in the present study is whether the UWV, given the restrictions on its regular services, is using the opportunities that EURES (European Employment Services) offers regarding cross-border employment services. The public employment services have been working together under the concept of EURES since 1993, with special advisers for cross-border and transnational issues. This cooperation is supported through EU funds, and the EURES services are coordinated in regional, cross-border networks. The partnership of the public employment services in the Euregion Meuse-Rhine, for example, was first officially confirmed in 1993 by the signing of a cooperation agreement, which has been regularly renewed since. The relevant partners are: the Bundesagentur für Arbeit (D), UWV (NL), VDAB (B), the Arbeitsamt der deutschsprachigen Gemeinschaft (B) and Le FOREM (B). The network also incorporates trade unions and other actors. In 2016 the network was extended geographically to include EURES services in the Euregions Rhine-Waal and Rhine Meuse-North. The current legal framework is Regulation (EU) No 492/2011 of the European Parliament and the Council, which describes, for example, the information-exchange mechanisms for national jobs. The EURES program itself has been laid down in Regulation (EU) No 1296/2013 of the European Parliament and of the Council dated 11 December 2013 and is part of the EU’s EaSI programme for employment and social innovation. In addition, a special EURES Regulation has been in place since 2016: Regulation (EU) 2016/589. As mentioned previously, it states that the increasing mutual dependence of the labour markets requires closer cooperation between public employment services, including those in the border regions.

In 2016 the UWV employed 19 EURES advisers, according to the official contact list for the Netherlands. According to UWV’s own description, these services are embedded in its second-line services. EURES advisers are therefore tied to the services of the employer service points and provide customized advice. They work on projects that are tailored to different industries and organise meetings online and offline. In addition, EURES advisers match vacancies with the profiles of job seekers and mediate between them, according to UWV’s own description. They mainly serve their colleagues in an advisory role concerning cross-border issues as part of their daily regular employment services. Until 2016, the UWV’s EURES advisers were responsible

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505 This cooperation is captured in work plans, for example for the year 2016: ‘EURES in the border regions Rhine-Waal, Rhine-Meuse-North, Meuse-Rhine’. Work plan 1 January 2016 - 31 December 2016 (action area 1: cross-border partnerships.).


507 During the conversation with EURES advisers in the summer of 2016, it was reported, however, that in practice there were fewer.)

for both cross-border and transnational services. For the area under investigation, i.e. the German Dutch labour-market regions on the border with the province of Limburg and North Rhine-Westphalia, a list was officially compiled for 2016, consisting of three EURES advisers, whose geographical working area had been substantially larger until then, including labour-market regions in the Dutch province of North-Brabant. They were responsible for the employer service points in the South East Netherlands area and its border regions with Germany and Belgium. Until the summer of 2016, there was no Dutch EURES adviser in the area under investigation who was solely responsible for cross-border employment services. Capacity had been very limited until then, especially since transnational tasks played a vital role. Several conversations with EURES practitioners at the UWV, Agentur für Arbeit and Forem revealed that the staffing capacity of the Dutch EURES advisers for specific cross-border employment services was substantially smaller than that of the partner organizations. It was also established that, on the Dutch side, staffing capacity would be a problem regarding the requirements of continuous cross-border cooperation. It was not until the summer of 2016 that, after internal discussions, the UWV appointed a EURES adviser who could focus on cross-border cooperation in the South East Netherlands area and who was stationed in the area under investigation. By comparison: the Arbeitsagentur Aachen-Düren alone employs two EURES advisers solely responsible for cross-border employment services, while another EURES adviser works in the Arbeitsagentur Mönchengladbach and a fourth one in the Arbeitsagentur Krefeld-Viersen. Since the EURES program does not fund staffing, but only the cost of a closer cooperation within a EURES network, these are own investments on the part of the Bundesagentur für Arbeit, which are not being made on the Dutch side. This also had consequences for the two projects under investigation regarding closer cooperation between the UWV and the Arbeitsagentur. During the talks about the organisation of the common service in Kerkrade/Herzogenrath, it soon became clear that the Arbeitsagentur Aachen-Düren was able incorporate the activities of its two EURES advisers in the common service, which was indeed the case at the opening in September 2016. This was made possible by the fact that their job descriptions were very easy to align with the planned joint service. The two EURES advisers already advise Dutch employers and place Dutch job seekers through personal advice sessions. Their work area is matched to the Euregion Meuse-Rhine and they take a central position in the German-Dutch labour market. EURES experience and its corresponding networks were thus incorporated into the common cross-border employment services. This was impossible, in this way, on the side of the UWV. The causes for this are related, as described above, to the approach of EURES by the UWV and the corresponding staffing capacity. The UWV lacked EURES advisers who fit the profile and the geographical approach. For that reason, it was long uncertain who exactly would occupy the joint office on behalf of the UWV during the concrete implementation of the common services. In the end it proved impossible to deploy someone with a EURES profile, but an employee was found who had cross-border experience, which until then was part of the regular work of the UWV. EURES thus plays no role in terms of staffing in the cooperation on the Dutch side.

508 This information was also available from the pages of the Bundesagentur für Arbeit Aachen-Düren, Mönchengladbach and Krefeld-Viersen (figures of October 2016). These pages are accessible via the main website www.arbeitsagentur.de.
The enhanced network cooperation between UWV North and Central Limburg and the Arbeitsagentur Krefeld-Viersen was also achieved from the side of the Arbeitsagentur through the ongoing efforts of an EURES employee who is embedded in the EURES network. Here too, the UWV failed to provide opportunities for deploying EURES consultants for this cooperation with a focus on cross-border employment services in this region. As already demonstrated with regard to staffing capacity for personal employment services, the persons in charge were forced to link additional staffing for the cooperation much more closely to immediate placement results than to a long-term strategy of closer cooperation or joint services. Although this was possible on the basis of the favourable circumstances, i.e. the then current demand among large German employers, it also meant that there was continuous uncertainty during the process about whether the network and the common service would be realised. While the German side clearly formulated the requirement that EURES staffing capacity play an essential role in effective border cooperation through common cross-border teams, this was not the case for UWV.

It is thus due to the way in which the UWV has organised and funded its own EURES services in the cross-border area under investigation that they have not played a major role in current projects so far. Rather, UWV's current implementation of EURES has a restrictive effect on the desired closer structural cooperation with employment services on the border.

5. **Has the UWV created the technical conditions for recording the data of foreign job seekers and the vacancies of foreign employers?**

A third indicator investigated was how the UWV processes the data of foreign job seekers and employers in its own systems. Article 21 of the new EURES Resolution (EU) 2016/589 stipulates in the basic principles that the Member States ensure ‘that employees and employers can obtain access to support benefits on national level, online or offline, without undue delay.’ This includes various benefits. It would seem obvious that this extends beyond the EURES databases and raises the question whether it is possible for foreign employees and employers to respectively register as a job seeker in the UWV’s systems or add one’s own vacancies there as an employer. These services are available to national job seekers as well as employers.

Since digital information and impersonal advice are a substantial part of the UWV principles, as already shown, it must be assumed that these services are extremely relevant for foreign customers. UWV distinguishes between special services for job seekers who are entitled to benefits from the unemployment insurance (Dutch: WV) and general services that are open to all job seekers and should therefore include foreign job seekers too. These include the option of registering online, making one’s own employment portfolio, CV storage and access to a vacancy database. The many conversations with UWV practitioners until the summer of 2016 confirmed that the use of services and the data-entry functionality were not equally accessible to foreign job seekers as to Dutch nationals. Initially, this was blamed on technical problems: job seekers need a Dutch DigiD to register autonomously. This can only be obtained, however, with a Dutch citizen.
service number, which is provided upon registration in a place of residence in the Netherlands. Since foreign potential job seekers do not have a place of residence in the Netherlands, however, they cannot register autonomously on the relevant website werk.nl on initial contact. The interviews with UWV staff also made clear that even they could not register foreign job seekers from the neighbouring countries, i.e. without citizen service numbers, in the simple, regular manner. Difficulties with foreign postal codes were identified, among others. The figures of UWV North-Central Limburg show that significantly more (600) Dutch job seekers were entered in the Arbeitsagentur’s system between 2014 and 2016 than German job seekers in the UWV system (240). It must be assumed that technical problems might have played a role. According to UWV internal data, however, these should be resolved in the course of 2016.

Foreign employers in the border region also faced technical problems with tax numbers and postal codes until the summer of 2016. In the spring of 2016, for instance, entrepreneurs from the Belgian province of Limburg complained publicly about not being able to add their vacancies to the UWV system. The UWV responded through a statement of position, clarifying that German and Belgian employers from the border region had been able to add their vacancies to werk.nl through a special method as early as 2013. The relevant information, however, had been absent from the website, according to the UWV. Only employers with a relevant account can normally add vacancies to werk.nl. To create such an account, a Dutch tax number is required, which foreign companies do not have. Nevertheless, a workaround has been in place since 2013, according to UWV statements. According to this procedure, any registration requests from foreign employers are carefully screened by UWV before they are granted. Moreover, only businesses from the border region qualify, so not businesses from Hamburg or Berlin, for example. So far, UWV has thus failed to provide all employers from neighbouring countries access to werk.nl. Internal data show that around 30 employers from Belgium and 10 from Germany were registered on werk.nl in the summer of 2016. UWV admitted, however, that even these employers were still facing problems as the postal codes of the places of employment were not recognised by the matching system. For this reason, their vacancies might still not be taken into account fully.

According to statements from practitioners of the German Agentur für Arbeit and the Belgian VDABs, their systems are more open to cross-border data processing. Both entering Dutch job seekers and foreign vacancies is possible without any limitations. It must therefore be maintained in this study that the UWV’s internal data systems and the online platform werk.nl have not

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513 Employers are currently being informed again about this option through: https://www.werk.nl/werk_nl/werkgever/account/aanvragen, visited on 05 October 2016.
514 The figure was taken from a UWV internal description of the situation in July 2016, entitled ‘Uitleg over indienen vacatures uit het buitenland terug op werk.nl’ (Explanation on how to submit foreign vacancies back on werk.nl).
515 Ibidem.
facilitated structural cross-border cooperation and that substantial improvements are necessary. Especially the common service of the UWV and the Arbeitsagentur in Kerkrade/Herzogenrath aims to achieve practical improvements in the exchange of data.

6. Does the UWV have adequate means for additional training of job seekers, given the special requirements made of frontier workers?

During the development of the common cross-border employment service in South Limburg (Kerkrade/Herzogenrath) in 2015/2016, repeatedly discussions took place of questions about the funding of the additional training of job seekers in order to enable their integration into the labour market in the neighbouring country. Common pilot projects of the UWV and the Agentur für Arbeit for Dutch child day care employees seeking a job at day-care centres in North Rhine-Westphalia led to the following, for instance: in order to increase the chance of placement, a preparatory course was developed for Dutch day care employees, containing both cultural, legal and linguistic elements. This caused funding needs to rise. In 2014/2015 these courses could not be financed from regular UWV means, also because the UWV did not consider child day care employees a target group with a large distance to the labour market at that time. As already established, no regular means for intensive coaching are available to job seekers who do not fall into this category, and the same was true for the need for means for the additional training of childcare employees. The additional training of childcare employees and their coaching could be provided after all thanks to additional funding from the Dutch province of Limburg, which had allocated a sum of EUR 2.5 million out of a training fund to training vouchers, valid from 15 March 2014 to 31 July 2016. The aim of the funding was to integrate job seekers who were unemployed at that time, with an available budget of EUR 2500 per person. In the case of the childcare employees, these vouchers could be used in the additional training project, which provided further training that was not yet aimed at the needs of one specific employer.

In 2016, the issue of who should bear the costs of further training in combination with specific commitments of employers became more prominent, for example in the case of a German security firm looking for security staff for refugee centres. This concerned special further training for the security of refugee centres, with its legal basis in Germany. The UWV had no means to provide this further training, and the training vouchers from the province could not be used either, partly due to the existence in the Netherlands of rules for self-funding for such targeted further training. These regulations constituted no impediment to Dutch employers as this was national practice, applicable to all. The different funding practices of the Agentur für Arbeit for the further training of German job seekers did, however, prove to be a potential problem for both German and Belgian employers, who did not have to contribute at all to further training on their own respective national levels but would have to do so for Dutch job seekers, obviously making them less attractive candidates. From these practical cases, it must be concluded that, between

In 2014 and 2016, the UWV did not have the financial means to meet the need for further training that concrete projects in Limburg revealed.

In principle, the need for additional means for further training of potential Dutch frontier workers was recognized at Dutch government level in 2014/2015. In January 2016, Minister of Social Affairs and Employment Lodewijk Asscher announced that his Ministry would reserve EUR 4.9 million for the Grenzenloos Werken (Working without Borders) sectoral plan.\textsuperscript{517} In total, the plan should finance the placement of 800 Dutch nationals in Belgium or Germany.

Table 5: objectives of the Grenzenloos Werken (Working without Borders) sectoral plan

<table>
<thead>
<tr>
<th>Number of participants</th>
<th>From work to work (15%)</th>
<th>From WW benefits to work</th>
<th>Other to work (20%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>800</td>
<td>120</td>
<td>520</td>
<td>160</td>
</tr>
</tbody>
</table>

Source: Ministry of Social Affairs and Employment

The sectoral plan focuses on further training and additional training. Three categories for further training are identified that qualify for funding: first, the target group that still has work experience in a profession and needs further training for a new job or the transition into a new field (duration: 4 weeks to 3 months). This category could, for example, include employees with a partial recognition of their professional qualification abroad, who require an additional internship or additional schooling. The second category includes applicants with relevant professional experience who require significant further training (duration: 3-4 months). Here too applicants might qualify with partial recognition of their qualification, who still require several additional mandatory courses. The third category comprises applicants with a large distance to the labour market but with a special interest in a certain field (duration: 6 months).\textsuperscript{518} In that sense, the sectoral plan follows a clear analysis of the funding possibilities so far. Exactly for the above target groups, it had previously been almost impossible to use the UWV's regular means to finance further training in a cross-border context.

The following activities that might offer support are explicitly listed in detail:

- Language and cultural courses
- International recognition of professional qualifications
- Cross-border employment services
- Travel expenses and further training of participants
- On-the-job coaching as part of further training

For this reason, in the spring of 2016, the practitioners in cross-border employment services in Limburg and NRW expected that the additional resources might also become an essential building


\textsuperscript{518} See the information site: visited on 26 September 2016 at https://www.grenzenloos-werken.eu/Info.
block of the enhanced cooperation. From conversations, for example, it had become clear that, although Provincial vouchers could facilitate projects on the Dutch side on the short term and to a modest extent, they could not be a structural solution. The concrete funding for further training also raised hopes among practitioners that staffing at UWV could be improved through resources from the sectoral plan, since the general information also refers to placement work as beneficial. At the conclusion of this study in September/October 2016, the UWV and Arbeitsagentur in Limburg/NRW still had not announced any project that could be financed with funds from the sectoral plan. Informal talks made it clear that there had been a need since January for clarification on the issue of the practical implementation of the promotion directives as well as on promotion capacity. This includes, for example, the question to which extent the UWV and municipal services would be able to finance additional cross-border employment staff in the context of the sectoral plan and refers to the issue of the limited human resources, as already established in this study. In fact, the deficits overlap in the areas of staff and other instruments deployed, such as the budgets for further training. In the spring, other open questions of the sectoral plan were also discussed. In discussions with VDAB and Arbeit Agentur, reference was made to a special difficulty, due to the demands of financial own contributions of employers. The general descriptions of the sectoral plan state that applicants, e.g., employers, or implementing organizations, e.g., the UWV or commercial mediation services, would have to pay an own contribution of at least 55% of the value of the measure. Practitioners from the Arbeitsagentur and VDAB subsequently pointed out that these conditions might be very unattractive for German and Belgian employers, particularly when compared to the funding options for training offered by the Arbeitsagentur or VDAB, who would not require an own contribution from employers in comparable cases. The requirement of an own contribution, though standard in the Dutch national context, would thus constitute a fundamental impediment to the successful use of the funds of the Grenzenloos Werken (Working Without Borders) sectoral plan.

In principle, the following can be concluded, based on the approach of the current difficulties of the sectoral plan: the sectoral plan was actually a response to the difficulties in funding further training in the cross-border context through the own resources of the UWV or municipalities. The plan describes a list of eligible further trainings, the smooth funding of which would be important to placing more Dutch applicants in NRW, in particular in the context of two Limburg-based projects. In principle, the plan included the prospect of financial resources, which might be intended for the necessary extension of staff in the field of personal guidance of job seekers. Due to the delay in the implementation and the ongoing discussions, however, it can also be concluded that the prior coordination of the plan between the Ministry and the participating actors apparently was not optimal and essential questions, such as detailed questions about support capacity, were not clarified. Especially the public employment services in Germany and Belgium also pointed out that several aspects, such as the issue of the own contribution by

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519 Ibidem.
520 Those were the FNV (trade union), CNV (trade union), VNO-NCW (employers), MKB Nederland (the Dutch branch organisation of SMEs), KMU, UWV, VNG (Dutch Municipalities) and the Dutch border provinces.
German and Belgian employers, were insufficiently discussed with the colleagues from the neighbouring countries. This is an indication that the Grenzenloos Werken (Working Without Borders) sectoral plan was unable to improve the funding of the further training of Dutch potential frontier workers until the summer of 2016. The structural funding problems, which were only confirmed by the development and approach of the sectoral plan, still require resolution because they are also a fundamental impediment to enhanced cooperation in the field of cross-border employment services.

7. Summary and Conclusion
The first important indicator of this study was whether the UWV had sufficient staffing capacity for the personal coaching of job seekers on the other side of the border. Presently, the UWV mainly offers support to job seekers through online channels. Potential frontier workers do not qualify as job seekers that require additional staff support. Both the placement specialists of the UWV and those of the Arbeitsagentur with ample experience in cross-border employment services observe that cross-border job placement requires more personal coaching.

Based on the statements of experienced placement specialists, it is concluded that cross-border funding is still difficult to integrate into the UWV’s regular services. UWV staff are subject to targets, which might even be jeopardised by overly focusing on cross-border employment services. In spite of this, the current principles of the UWV dictate that this task be integrated into regular funding.

Although regional efforts, especially in the North Limburg area, have resulted in the deployment of additional staff to reinforce the cooperation projects between the UWV and the Arbeitsagentur, this additional capacity is only temporarily available and not structurally anchored. It also still has to be justified through the immediate placement successes of large projects. While this is currently possible thanks to the demand of smaller German employers, the focus of local employees on cross-border employment services has not been institutionalised beyond these large projects so far. Strictly speaking, these are exceptions. The example of South Limburg demonstrates, contrary to the North Limburg region, how extremely difficult it is for the UWV to deploy additional manpower for the new cross-border service when large applications from employers are lacking. The current capacity of the UWV thus hinders the extension and reinforcement of its cross-border employment services.

A second important indicator in the present study is whether the UWV, given the restrictions imposed on its regular services, is using the opportunities that EURES (European Employment Services) offers regarding cross-border employment services. For the staffing of the new cross-border service in Kerkrade/Herzogenrath, which was set up together with the partners in the South Limburg area, the Arbeitsagentur was able to deploy its own EURES advisers since they were already working across the border, placing, for instance, Dutch job seekers with German employers. It was impossible for the UWV to do this in this manner because EURES advisers in the Netherlands are more focused on the provision of information and advice rather than on the concrete placement of job seekers. In addition, the total staffing capacity of EURES in the Netherlands is clearly more limited than that of the Arbeitsagentur. Furthermore, the few
advisers active in the Netherlands have so far not only performed cross-border tasks but mainly transnational tasks. The manner in which the UWV falls back on EURES and finances EURES thus limits closer structural collaboration with other employment services on the border.

A third indicator investigated was how the UWV processes the data of foreign job seekers and employers in its own systems. Until the summer of 2016, German and Belgian job seekers could not immediately be registered in the UWV system.

Impediments arose due to the absence of a DigiD or a suitable postal code. Foreign employers also faced technical problems with tax numbers and postal codes until the summer of 2016. The systems of the Arbeitsagentur and VDAB, on the other hand, seem more open to cross-border data transfers. This implies that the UWV’s IT systems have not been able to sufficiently support the structural cross-border cooperation so far.

This impact assessment has also demonstrated that the UWV currently has insufficient financial means for the targeted further training, i.e. language courses, etc., of job seekers in preparation of activities on the other side of the border. The ad-hoc funding through provincial means or with the help of a sectoral plan has not proven a satisfactory solution so far.

The intensive monitoring and the analysis of the concrete cross-border projects in Limburg have enabled ITEM to establish that the current approach as well as the current staffing and funding capacity of the UWV insufficiently support the objective of more closely linked cross-border employment services. Rather, the regional services in Limburg so far have been trying to circumvent the institutional impediments through individual, ad-hoc solutions and much personal effort on the part of the responsible staff.
Source List:
EU Legislation


UWV Documents


UWV Noord-Midden-Limburg en Agentur für Arbeit Krefeld-district Viersen: ‘Service grensoverschrijdende arbeidsbemiddeling’ (Cross-border employment service), brochure, no date.

Sectorplan Grenzenloos Werken (The Working without borders sectoral plan)

Official homepage: www.grenzenloos-werken.eu


EURES


Contact details and number of German EURES advisers in the area under investigation through http://www.arbeitsagentur.de

General information about the EURES network in the Euregion Meuse-Rhine through http://www.eures-emr.org/nl/contacten-eures-adviseurs

Contact details and number of Dutch EURES advisers in the area under investigation:

UWV (2016): ‘Contactlijst EURES Adviseurs’ (Contact list EURES advisers), last visited on 4 October 2016 on https://www.werk.nl/xpsimage/wdo214882

Informal conversations and interviews:

Informal conversations with those responsible from the UWV, the Bundesagentur für Arbeit Aachen-Düren, social services (Social Affairs) Maastricht-Heuvelland (Podium 24), WSP Parkstad and Jobcenter city district Aachen regarding the development of the common cross-border employment service in Kerkrade/Herzogenrath in 2015 and 2016.

Participation in official meetings of the steering group of the common cross-border employment service Kerkrade/Herzogenrath in 2015 and 2016.

Participation in official meetings of the technical group of the common cross-border employment service Kerkrade/Herzogenrath in 2015 and 2016.

Concluding interview with the responsible EURES advisers about the situation in Limburg, conducted in Kerkrade on 6 September.
Participation in informal meetings with those responsible from the UWV, the city of Venlo, the city of Roermond and the Bundesagentur für Arbeit Krefeld-Viersen district on the further development of the cooperation in 2015 and 2016.

Concluding interview with the responsible managers from the UWV North-Central Limburg on 23 September about the situation in North-Central Limburg, specifically in Roermond.

**Participation in discussions with practitioners involved in public employment services**

Debates on the approach of the EURES network Euregion Meuse-Rhine with EURES advisers and practitioners from the border information points (GIPs) ‘GIP Together’ on 16 September 2016 in Eupen.

Debate on the approach of the labour-market activities in the Euregion Scheldemond, 15 September, The Hague.

Participation in various workshops and informal conversations with practitioners involved in cross-border employment services, organised by the ‘action team cross-border employment and economy’ on the theme cross-border employment services and border information points (Dutch: grensinfopunten or GIPs).
3.9 Cross-border train travel – Fourth Railway Package

Dr. Johan Adriaensen - Centre for European Research in Maastricht (CERiM)

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1. Introduction

‘Het mag als bijzonder contradictorisch bestempeld worden dat net met de start van de Europese Integratie, die van het opheffen van de grenzen haar paradepaardje maakte, het voor de reizigers steeds moeilijker werd met het openbaar vervoer diezelfde grenzen te overschrijven.’

(It can be characterized as extremely contradictory that just as European integration was taking off, which made the elimination of borders its flagship, it became increasingly difficult for travellers to cross those same borders by public transport.)

The Western European Member States have the most developed rail network in the world. The reasons for this are largely historical. The first railway on the European mainland came into use between Mechelen and Brussels in May 1835, and at the beginning of the twenty-first century, there was a dense network of railways through the Low Countries. The great surge in rail transport ended after World War II. The Belgian net saw a number of rationalisation measures between 1950 and 1980. The local railways and some smaller lines were eliminated or shortened, which led to many dead-ends. More in particular, the cross-border lines were the main victims of this practice. This trend has continued in Belgium since the 1980s, albeit in lighter form. In Germany the network has shrunk too, while the number of kilometres of track remained fairly stable in the Netherlands.

The fragmentation and underutilization of the European rail network was already noted in the 1980s by the European Commission, which suggested the realisation of a single market for rail transport as a remedy. The European legislators attempted to realize this unification via so-called track packages (Railway Packages). The previous three railway packages have been insufficient, however: many of the reforms which the Commission had hoped for have not been realized, not only due to the lack of ambition in the legislation framed for the purpose, especially with regard to the harmonization of technical and safety standards, but also due to the half-hearted implementation by the Member States. As a result, the European Commission felt compelled in 2008 to open twenty-four cases with the European Court of Justice to enforce the implementation of the first railway package, legislation which should already have been implemented in national legislation in 2003.

Moreover, (cross-border) public transport by rail remained largely unaffected by these reforms due to the many exemptions and long implementation periods. The relative importance of the train as a means of transport has further decreased in the last few years, which is a sad evolution, also from an environmental perspective. The laborious realisation of a train connection between


522 Ibid.


Maastricht and Aachen shows how difficult it is to realize new railway lines in the current political and economic context. The ordeal of establishing the Spartacus tram line from Hasselt to Maastricht reinforces this image. But even if the infrastructure is available, the presence of high-quality public rail transport is not self-evident. Several train lines in the Euregion Meuse-Rhine fell into disuse in the second half of the 20th century (e.g. Neerpelt-Weert), whereas service levels declined on others. Maastricht, for instance, used to have a direct connection to Brussels in 2009, the so-called Maastricht-Brussels Express. Today, however, travellers have to travel via and transfer in Liege.

Several initiatives from the region, such as those taken as part of the INTERREG IV-M3 project, have opened the way to better service. This contribution studies whether the Fourth Railway Package will reinforce or weaken this process.

2. Research Objectives, Definitions, Themes and Indicators

The Fourth Railway Package is comprised of three directives and three regulations, which were soon organised into three pillars in the discussions following the proposals of the Commission.525

The first pillar is the least politically sensitive and aims to reduce the technical obstacles to the single European railway market. Despite previous directives and regulations, Member States often still apply different technical and safety standards. This implies, among other things, that all the rolling stock must comply with the standards of the different Member States whose networks are used by the locomotives and wagons. This constitutes an important obstacle for cross-border transport. More specifically, this pillar comprises two directives and one regulation. The two directives pertain to the standardization of the safety standards used and the rules for interoperability.526 The regulation refers to a revision of the competences of the Railway Agency of the European Union, as the Fourth Railway Package will give this agency the authority to issue permits that are valid throughout the European Union.527

The second pillar is politically more sensitive and pertains to the market effect of passenger and other transport by rail in the Member States.528 More specifically, it refers to the further liberalisation of the national markets. In many Member States, services are still dominated by a national monopoly that is assured of obtaining a portion of the market through private contracts. The legislation proposed by the Commission would make public services contracts the rule and private contracts the exception.

The third and last pillar relates to the administrative structures that regulate the relationship between the net manager, the competent authorities and the service provider(s).529 The key point of discussion here is the degree of independence of the net manager from the service providers.

526 Directive 2016/797; Directive 2016/798
527 Regulation 2016/796
528 2013/0028 (COD)
529 2013/0029(COD) & 2013/0013(COD)
This pillar also provides for the setup of a European network of infrastructure managers with the task of following up and continuing the coordination between the various networks.

2.1 Defining the research in time and space

The decision-making process on the fourth railway package has only recently been completed. There was relatively limited discussion about the technical pillar, and the impact studies showed clear benefits, which were not disputed. The Member States requested and obtained a number of concessions aimed at the perpetuation of the national agencies that currently provide the safety certificates. The two regulations and the directive were adopted by the European Parliament and the Council of the European Union in April 2016 and published in the Official Journal of the European Union on 25 May 2016. The pillar on market effects and management structures was more politically sensitive and an informal agreement was reached under the Dutch presidency by the end of April 2016, after a trilogue. The consolidated text has not been published to date, although the key amendments to the Commission's original proposal did become clear in the days following the publication of the agreement. The legislation is expected to be published at the end of 2016, after a legal check and the necessary translation work. This impact measurement, however, did not have access to these documents yet.

As such, this impact measurement attempts to make an ex-ante assessment of the frontier effects of the fourth railway package. Not only the recent conclusion of the legislative process can justify this focus; the (long) implementation periods of ten years provided by the legislators makes it difficult to observe any effects at this early stage. In addition, the Member States will retain the authority to grant 15-year licences until 2019, so that the Belgian railway market will in principle have a national monopoly until 2034. Also, due to the transition arrangements provided for in the technical pillar, it will take some time before actual ex-post effects become observable and measurable. The impact measurement will therefore consist of a document analysis with the objective to map the main implications for border regions. The sources of this measurement are the original legislative proposals as drawn up by the European Commission, the opinions of the Committee of the Regions and the European Economic and Social Committee, the three impact studies commissioned by the European Commission as well as the amendments of the European Parliament and, if available, the final, approved legislative texts.

A starting point for any impact assessment is the demarcation of the area for which the effects will be analysed. As previously stated, the Commission only had the impact on the EU as a whole investigated. At the national level, this task was left to the Member States. The Dutch government, for instance, already ran a quick scan shortly after the publication of the

SWD/2013/08 final

Although the impact assessments of the Commission showed a larger positive effect of the political pillar, they were criticized from multiple sides (Dehousse et al. 2015)

The last available documents at the time of writing were the proposals of the Council published on 18 October 2016

Commission’s proposals. Both analyses do not specify the effects of the relevant legislation for border regions.

The analysis that follows abstracts in a way, based on the specific region to which the findings are applicable. The focus is on cross-border rail transport, which implies at least two consecutive train stops in two different countries that belong to the same border region. In order to make the analysis more concrete, examples are taken from the Euregions Meuse-Rhine. This implies that we depart from the regulations to first draw a number of general lessons on cross-border passenger transport and then examine the consequences for service provision on the cross-border railway connections between (South) Limburg (NL) and the border region at large. Following the definition, there are three connections to be analysed: the connection between Maastricht (NL) and Visé (B), between Heerlen and Aachen (D), between Welkenraedt (B) and Aachen, as well as the planned links Hasselt (B)-Maastricht and Neerpelt-Weert (NL). Specific attention is paid to the cross-border public transport that is inter-urban in nature rather than to international, commercial transport. The latter type of transport, if available, is usually limited to the largest cities of a border region.

2.2 Objectives of the impact assessment

The fourth railway package primarily aims to promote the use of rail transport in the EU. Subsequent sections particularly focus on studying the effects on European integration and the development of cross-border governance structures. Despite the effects of the railway package on cross-border socio-economic development, this will not be part of the analysis. These effects tend to be secondary rather than primary, being an indirect result of the increased mobility of students, workers and consumers in the border regions.

1. Effects on European integration

European integration consists of the elimination of border effects. In a single market, distance would have a similar effect on domestic and cross-border economic activities, whether they be shopping, working, studying or trading. In this respect, the facilitation of cross-border passenger transport is a necessary condition for the mobility of persons, and public transport has a crucial role to play. The challenges in the area of quality, accessibility and the cost price of cross-border public transport imply the existence of an obstacle to the realisation of European integration. Just as the arrival of the railways was instrumental in opening up the many cultural islands that made up Belgium in the 19th century, so one may also expect the improvement of cross-border local passenger transport to promote European integration. Translated into the evaluation of the fourth railway package, the cost price and service provision are quite relevant.

The effect of a (possibly) improved cost price on European integration depends largely on the type of service offered. For commercial services on the rail network (competition by rail), a

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reduction in the costs will advance the time at which it becomes profitable to operate a cross-border line. Existing lines may reduce ticket prices without sacrificing profit. If the exploitation of a cross-border connection takes place under a public-service contract, i.e. competition over railway lines, the effects for travellers are less clear cut. Ticket prices are often fixed, and, depending on the competition for the contract, the benefits will be distributed among the competent authority, i.e. the taxpayer, the service provider or the traveller.

The quality of services pertains to, inter alia, the search and organization costs associated with cross-border transport. This has, among other things, to do with the purchase of tickets, the provision of information on the connections and the ability to give cross-border transport equivalent treatment during promotional activities. The effects on European integration are summarized in the first row of Table 1.
Table 1: Principles, benchmarks and indicators

<table>
<thead>
<tr>
<th>Principles</th>
<th>Benchmark</th>
<th>Indicator/Method</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>European Integration</strong></td>
<td>The quality, price and accessibility of public transport should not significantly differ if there is a border between the point of departure and the destination, ceteris paribus.</td>
<td>Effect of Fourth Railway Package on:</td>
</tr>
<tr>
<td>Article 45(2) Treaty on the Functioning of the EU describes the freedom of movement of workers in the Union. It describes the ambition to eradicate discrimination on the basis of nationality, not only in recruitment and remuneration, but also in other working conditions and employment opportunities.</td>
<td>- The costs for the provision of cross-border connections</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The search and organization costs for travellers who want to make use of cross-border connections, i.e. ticketing &amp; scheduling.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Euregional cohesion</strong></td>
</tr>
<tr>
<td></td>
<td>The provision of public transport by rail in border regions presupposes effective coordination between the competent net managers, officials and service providers.</td>
<td>Effect of Fourth Railway Package on:</td>
</tr>
<tr>
<td></td>
<td>The structures set up for the regulation of cross-border transport should be as simple and efficient as those regulating the national market.</td>
<td>- Number of independent actors involved in the coordination of the granting and organization of cross-border public transport.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The facilitation of the consultations between the actors concerned. Both horizontally (cross-border) and vertically (internal)</td>
</tr>
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</table>

2. The cross-border governance structures

The effect of the Fourth Railway package on Euregional cohesion depends on two related factors. On the one hand, there is the effect of the railway package on the need for cross-border coordination, and on the other hand, there is the extent to which the regulations studied here provide for cross-border governance structures in order to meet this need. It is the ratio between both factors which is of importance to the impact measurement.

The organization of cross-border public transport implies cooperation between very different organizations with equally different backgrounds. The academic literature on international cooperation and studies on political behaviour show that changes in policy become more difficult
to achieve as the number of negotiation partners increases and their preferences are further apart. Applied to the railway market, and in particular cross-border public transport, we analyse the impact of the railway package on the relationships between the competent local and other authorities for the public service contract, the infrastructure managers operating the network on both sides of the border and the final service providers wanting to offer the transport. In brief, we assume that a greater fragmentation of actors, i.e. more autonomy, and a greater diversity in market structures will increase the need for consultation structures.

The existence of consultative structures in which the parties involved regularly meet can facilitate collaboration. The second pillar of the analysis studies both horizontal and vertical consultation structures. In this study, horizontal coordination is limited to the partnerships that exist between similar entities across borders. More specifically, this can pertain to consultations between the authorities with joint competence on the awarding of cross-border public transport or coordination between the infrastructure managers on both sides of the border. By contrast, the vertical coordination mechanisms are more aimed at improving the coordination between the various market players within a country. Prior to awarding a new connection, for example, coordination is required between potential service providers and the infrastructure manager. If these consultation mechanisms are open to foreign players as well, they can also be classified as diagonal. The second row of Table 1 concisely summarizes this framework.

3. Does the measure promote or impede European integration and what does that mean for the citizens of the border regions

The analysis consists of two sections. Primarily, the impact of the Fourth Railway Package on the profitability of cross-border routes will be studied. Secondly, the implications of the Fourth Railway Package for the search and transaction costs of cross-border travellers will be explored.

Profitability of cross-border passenger transport

The impact studies are reasonably in unison about the consequences of the technical pillar of the Fourth Railway Package. The approval of the reforms to the European Railway Agency and the further harmonization of the technical and safety standards would lead to a 20% reduction in the cost price for new market entrants, while reducing the time required to obtain the necessary certificates by 25%. The principal change to the original proposals of the Commission is the role that is still assigned to national safety authorities. Under the influence of the European Parliament and the Council, the Railway Agency became exclusively competent for cross-border operations, where railway companies can still turn to the national safety authorities for strictly internal affairs.

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538 European Commission: Press release, European railways at a junction: the Commission adopts proposals for a fourth railway package, 30 January 2013, IP/13/65
The effect of this on the traditional railway undertaking is a reduction of the marginal cost for entering an additional market within the EU. The impact on cross-border transport is felt immediately, as it practically cuts in half the administrative burdens. The Fourth Railway Package retains the possibility for neighbouring countries to allow exceptions from the safety rules for cross-border transport. However, this requires the conclusion of an agreement between the two countries or at least between the provider of the one and the net manager of the other country (see below).

The reform of the management structures and the market forces should further decrease the cost of rail transport through increased competition in the market. The proposal of the European Commission initially contained strict rules with regard to the size of the concession areas, the granting of private contracts and the separation of the infrastructure manager and the railway undertakings. The original proposal was drastically rewritten under pressure from the Member States.\(^\text{539}\) As a result, the original quick scan for the Dutch market, for instance, still incorrectly assumed that only up to 30% of the rail net could be included in a single concession. This would have had great implications for the organization of the Dutch railways because the main network is being operated by the national railways, whereas the local lines are tendered publicly.\(^\text{540}\) This requirement was alleviated after trilogue negotiations between the Council and the European Parliament. Many exceptions were also created in order to allow the private award of contracts, while the unbundling of the infrastructure manager of the (national) railway undertaking was partly reversed under German pressure.

As a consequence, the originally quantified effects no longer apply. Much will depend on the effective implementation of the legislation and the goodwill of the Member States in promoting competition. The positive effects on cross-border passenger rail transport will surely be more limited than originally expected, all the more so because it is unclear whether any change will occur in the ticket price for the connections covered by a public-service contract.\(^\text{541}\) If the public-service obligations also specify the frequency of the connections, the immediate benefits for citizens in the border regions becomes less easily discernible. These benefits are then, no doubt, rather to be found with the competent authority or the railway undertaking.

**Service provision**

Cross-border mobility can also be promoted through better service provision. Special attention will be given to the extent to which railway undertakings shall be deemed to take part in a joint system for the provision of information and integrated tickets. In the impact study ordered by the


\(^{541}\) Ibid.
Commission, the possibility of introducing an EU-wide integrated ticket was discussed. Unfortunately, its potential benefits were not quantified in the final analysis.\textsuperscript{542}

The political discussion mainly concentrated on requiring the mandatory participation of railway companies in such integrated information and ticketing systems. The European Commission proposed to make this optional for the Member States, whereas the European Parliament and the Committee of the Regions wanted to make it mandatory. The impact study suggested that the contexts were very different across the Member States and would thus require a flexible approach, an opinion shared by the industry.\textsuperscript{543}

The Council proposed a sort of compromise, allowing the Member States freedom in introducing an obligation for railway undertakings but in which the Commission would continue to monitor the market and, if deemed necessary, would propose additional legislation if the service didn’t improve. The Fourth Railway Package will not give a large boost to service provision in the border regions, even though the revision of the system planned at the end of 2022\textsuperscript{544} does leave the necessary room for investigating whether or not a stronger framework is conceivable for developing an integrated ticketing system for cross-border connections.

From the perspective of the border regions, the effects of the Fourth Railway Package on European integration will be positive but also somewhat limited. The technical pillar will clearly produce benefits, although partly mitigated by the public service contracts, which include most of the cross-border connections. The effects of the political pillar will be less clear cut, given that the proposal has been greatly watered down and leaves a substantial amount of discretion to the Member States to come to a flexible interpretation.

4. Does the measure promote or impede Euregional cohesion and Euregional governance structures?

Two indicators were put forward in section 2.3 as relevant for the promotion of Euregional cohesion and Euregional governance structures: the need for coordination caused by the railway package and the extent to which the rules provide for the necessary consultation structures to handle the specific border issues.

1. The unbundling of market structures and complexity in coordination

The possible effects of the Fourth Railway Package on the need for emergency (cross-border) coordination are analysed via two components. On the one hand there is the number of actors involved in the organization of cross-border public transport; on the other hand there is the variety of market structures that need to be reconciled.

An analysis by the research department of the European Parliament places all Member States in three categories according to the prevailing market structure for passenger transport by rail. The
three Member States whose respective territories together cover the Euregion Meuse-Rhine each fall into a different category. The current structures in the selected border regions are shown in Table 2. Differences can be noted regarding the independence of the infrastructure manager, the use of public procurement and the competent authorities responsible for the public-service contracts. Germany is a special case because it is the only country that allows competition on long-distance railway connections, meaning that commercial services may be operated on the same line. However, competition has been limited since the national railway company (DB ICE) has a strong start position. Critics attribute this to the entanglement of the net manager (DB Netz) and the railway company.

Table 2: Market Structures in the Euregion Meuse-Rhine

<table>
<thead>
<tr>
<th></th>
<th>Netherlands</th>
<th>Belgium</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure Manager</td>
<td>Independent</td>
<td>Independent</td>
<td>Holding (integration)</td>
</tr>
<tr>
<td>Competition over/on railway lines</td>
<td>Over railway lines</td>
<td>Over railway lines</td>
<td>Over railway lines (local) On railway lines (long distance)</td>
</tr>
<tr>
<td>Award procedures</td>
<td>• Private • Public award</td>
<td>• 100% private</td>
<td>• Public award • Commercial</td>
</tr>
<tr>
<td>Competent authority for public procurement</td>
<td>• State Government • Regions (Local)</td>
<td>Federal Government</td>
<td>Länder</td>
</tr>
</tbody>
</table>

In the original proposals of the Commission, the Fourth Railway Package sought to achieve a more profound division between net managers and service providers. In addition, public service provision was to be the rule and private award the exception. Wherever this would lead to a further division of powers, and therefore a greater need for (vertical) coordination, the multitude of market structures would be increasingly homogenised, thus facilitating cross-border cooperation.

The European Parliament and the Member States in the Council largely tore the original proposal to pieces, however. Under the influence of the Germans and the French the holding structure was

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kept intact. At the same time, Member States such as Belgium attempted to allow private awarding.

In summary, the number of actors to be aligned by the rail package will only increase when Member States are involved where private awards are still the rule, i.e. Belgium, in our case. After all, this implies that the interests of the competent authority and the service provider will diverge further. Moreover, the diversity in the market systems adhered to will be maintained, adding further complexity to cross-border coordination.

2. Facilitation of cross-border consultation structures

The complexity in the award of cross-border public transport requires effective coordination between a multitude of actors. As stated previously, this can be accomplished by the strengthening of both horizontal and vertical consultation structures.

Horizontal consultation structures

The Fourth Railway Package addresses cross-border cooperation both in the political and the technical pillar. A crucial question for the political pillar is how cross-border connections will be awarded. In their opinion on the proposal of the Commission, the Committee of the Regions (CoR) and the European Parliament took to heart the border-regional interests. The CoR, for instance, proposes, among other things, a broader definition of local authorities so as to include cross-border cooperation. One option is to make use of the 'European grouping or Territorial Cooperation' here (CoR. General comment 10). These are cross-border legal entities recognised in European law, which could take on the award of cross-border public transport. The European Parliament also recognised the problems of the border regions and the vacuum that the texts prepared create. In response, they too suggested broadening the definition of the competent local authority to include cross-border regions. This option was not supported by the Council, however. In its place we find an explicit recognition of the need for coordination in Recital 6 of the position of the Council. This dictates that the competent authorities on both sides of the border must work together in the procurement of cross-border public transport.

This effectively represents a recognition of the current situation, which also leans on ad hoc consultations. The current concession for South Limburg, for instance, dictates that the future operator cooperate with the competent net managers and authorities of both countries on the operation of the border crossings, i.e. Maastricht-Visé and Heerlen-Herzogenrath. In other words, there is still no clear picture about how cross-border lines are to be awarded. Relying on mutual cooperation between service providers, public authorities and net managers has created a void,

548 Local competent authorities, such as the Verkehrsverbund Berlin-Brandenburg, were also strong proponents of this. Available online at Http://images.vbb.de/assets/downloads/file/19323.pdf
550 Committee of the Regions (2013) Opinion: The fourth railway package. 7-9 October 2013 CDR27-2013_00_00_TRA_AC
which may take vastly different forms, depending on the organization of the markets in the neighbouring Member States.

At the level of the net manager, cooperation will assume a more structural form. The original proposals of the Commission already mentioned the creation of a European network of network operators. Both the Council and the Parliament supported this initiative and even accelerated its implementation. The directive creates a consultation platform that brings together ALL European net managers and that it is also competent to deal with cross-border issues. This should see its official start as early as 2019. It is encouraging that an informal precursor of this platform already exists under the name PRIME, which shows a strong cross-border perspective in its brochure ‘the performing rail infrastructure manager’. The intention is that this consultative body will help ensure better coordination of the schedules, design joint procedures to deal with network malfunctions, but also facilitate the promotion of cross-border investment in new infrastructure. The latter may also be of interest with a view to the promotion of European integration in the border regions (see previous section).

Much of the horizontal cooperation on the technical pillar will take place in the setting of the Railway Agency of the European Union. Coordination can be achieved through the Board of Directors, on which the Member States and the industry are represented (Art.47), but also via the networks of national agencies that will establish the Railway Agency (Art.38). However, Member States may also work together directly to circumvent the regulatory barriers. According to Art. 10(9) of Directive 2016/798, an exception to the dual-certification requirement can be granted if the safety can be guaranteed by an agreement between the relevant Member States or if the Foreign service provider has reached an agreement with the infrastructure manager of the network utilised. While international agreements, such as the one about the Antwerp-Amsterdam connection, are an option for important international connections, such ad-hoc agreements are much less likely to be concluded to consolidate inter-urban border connections.

Vertical (and diagonal) consultation structures

In addition to cooperation between the border regions, the railway package provides for the establishment of a coordination committee for each network. The aim of these committees is to bring all the interested transport companies and the net manager together. Here too the Council has diluted the original ambitions of the Commission. The establishment of the committee is not mandatory. Its organisation shall be established on the initiative of the Member States, not the net manager. The Member States can optionally invite transport-user associations and competent authorities. Although this committee has no direct impact on cross-border cooperation, it does create a platform where transport companies and network administrators can align their interests and hence also facilitates horizontal coordination. The recommendations of the Committee of the

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552 2013/0029(COD)
553 See un 23 Art.53
555 Regulation 2016/796
Regions would also make diagonal alignment of interests possible, i.e. coordination between travellers or local/regional authorities on one side of the border and the net manager on the other side. After all, the Committee advocated the compulsory invitation of local, regional and national authorities to the coordination meetings, as well as the relevant transport-user associations. These recommendations were not followed.

In summary, the effects of the Fourth Railway Package on the cross-border managerial structures are not unambiguously positive or negative. The need for coordination will increase slightly over time due to the further division and the built-in flexibility. The package provides for horizontal consultation structures for the net managers but was significantly less ambitious in facilitating the cross-border award of public transport.

5. Conclusions and avenues for further study

In general, it can be said that the fourth railway package will obviously have a positive impact on the border regions. The exploitation costs of cross-border transportation will definitely decrease, but whether the border population will benefit from this remains uncertain for two reasons: Firstly, the financial profits will be spread across all actors involved, i.e. the awarding government, net managers and railway companies. Secondly, eventual service provision will depend on the future award procedures for cross-border lines.

It is clear that the fourth railway package will not be an endpoint in the establishment of the unified railway market. If the deficiencies in the implementation of the previous packages and the long transition periods provided for in the current railway package are any indication, the market will be a volatile one over the coming twenty years. Member States will be awarding concessions less privately, which implies that the challenges with public service contracts in border regions will become a more frequent phenomenon.

Only then will it become clear whether the administrative tangles can be unravelled in practice without a further helping hand from the EU. In the meantime, a useful step towards anchoring this would be to catalogue the existing award procedures for all cross-border lines, along with the consultation structures used on them, the efficiency in terms of the award process, and the services ultimately provided under them. Cross-border impact assessments such as this one may prove useful in this process, but the regulator already has a number of instruments to automate the process.

The first railway package entrusted the Commission with the task of monitoring the correct implementation of the regulations and reporting on this. This has so far resulted in four reports on the development of the railway market, the Rail Market Monitoring Schemes (RMMS). The recasting of the directive in 2012 and the ensuing implementation regulation extended the reporting obligation of the Member States by a questionnaire to be filled in annually. This questionnaire already collects a number of statistics regarding cross-border passenger transport, e.g. punctuality, passenger kilometres, number of lines awarded. Currently there is only one

556 Directive 2001/12/EC, Section V bis
557 Implementing Regulation 2015/1100, Annex
question about cross-border transport through a public service obligation: service volumes and compensations. No questions are asked about the agreements drawn up with the partners across the borders. In accordance with the implementation regulation, it should be possible to expand this questionnaire in the future. In principle, this instrument can contribute to mapping the efficiency of cross-border public transport.

The network of infrastructure managers also has the task of studying the various networks and their management from a comparative perspective. Although the first developments at informal precursor PRIME seem hopeful, the focus of their task is currently on commercial cross-border connections, e.g. the TEN-T project, and on the realisation of cross-border infrastructure rather than on inter-urban, cross-border public transport.

The effects of the railway package on cross-border public transport are thus open to interpretation. More straightforwardly put, it may be concluded that the railway package contains a number of missed opportunities from the point of view of border regions. The recommendations of the Committee of the Regions, the scenarios of the impact analysis and the contributions of interest groups led to numerous suggestions that address the specific problems of the border regions. Many of these recommendations ultimately did not make it into the final legislation. Further study of the reasons not to incorporate these seemingly innocent suggestions would be useful.
3.10 The new toll system for HGV in Belgium: Impact on the border region

Fontys International Business School Venlo, Knowledge Business Consulting:

Kimberly Hoffmann
Julia Jespers
Dunja Soubai

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Executive Summary

This report is based on an investigation into the new Belgian toll system which was introduced on 1 April 2016. The purpose of this investigation is to discover the effects of the introduction of the new toll system on logistics and forwarding companies in the Euregio Rhein-Meuse-North area. The main focus will be on companies in Venlo as a logistic hotspot, but German companies are also included.

This is how the research was conducted. In the first step, secondary research was used to acquire information on toll systems generally. This was done to create an overview of how companies are affected by tolls when taking alternative routes through other countries than Belgium. This was followed by research into the new Belgian toll system. In the second step, primary research in the form of interviews with logistic and forwarding companies from the area concerned was conducted. The aim was to gain first-hand information and opinions from professionals who are directly affected by the new toll system.

The outcome of this investigation is this report. It provides information on the change of routes and costs as well as insight into the opinions of logistic and forwarding companies with lorries driving through Belgium.

Here are the results and the conclusion of the research. Firstly, the introduction of the new toll system does not seem to have a major impact on the routes taken by lorries operated by the interviewed companies through Belgium. Apart from trying to avoid Brussels due to the high toll in this area, lorries from the interviewed companies still take the same routes through Belgium. In contrast, some articles do report changes in routes as more freight traffic has been observed on roads in the Dutch border region with Belgium. However, this could not be confirmed by the companies interviewed for this research. Moreover, the costs faced by the companies due to the new toll system have soared. A one-way route through Belgium costs on average 290% more than with the previous toll system (toll only). Yet, when companies buy the Eurovignette for the remaining member states, they still pay the same price as before when Belgium was still included.

Finally, the interviewees do not appreciate the new Belgian toll system very much. They consider it as a change that they merely have to accept. In view of the increased costs for companies, there are high expectations: the companies that have been interviewed hope to see road improvement and better maintenance on Belgian motorways. If they had the option, they would choose a toll system which encompasses Europe as a whole.
## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euregio</td>
<td>Cross-border region between the Netherlands and Germany</td>
</tr>
<tr>
<td>Euregio Rhein-Meuse North</td>
<td>(ermn) Cross-border region between the Netherlands and Germany, around Venlo and Mönchengladbach, called “Euregio Rijn-Maas-Noord” in Dutch</td>
</tr>
<tr>
<td>Eurovignette</td>
<td>Time-based road user charge for lorries in countries such as the Netherlands and Luxembourg</td>
</tr>
<tr>
<td>GCWR</td>
<td>Gross Combination Weight Rating</td>
</tr>
<tr>
<td>GVW</td>
<td>Gross Vehicle Weight</td>
</tr>
<tr>
<td>HGV</td>
<td>Heavy Goods Vehicle</td>
</tr>
<tr>
<td>OBU</td>
<td>On-board-unit; device which measures the distance driven on roads affected by toll</td>
</tr>
<tr>
<td>TVA</td>
<td>Tax in Belgium (English: VAT)</td>
</tr>
<tr>
<td>Viapass</td>
<td>Name of the new toll system in Belgium</td>
</tr>
</tbody>
</table>
Introduction
In April 2016, the Flemish Region, the Walloon Region and the Brussels-Capital Region undertook to introduce a distance-based toll system for heavy goods vehicles. This means that it is no longer possible to use the Eurovignette on Belgian roads.

As part of a research line by ITEM, this research was conducted after external partners submitted their request for a dossier concerning the cross-border effects of the new Belgian toll system. The research line encompasses relevant topics which are most worth studying and analysing in more detail.

Interest in this research was not only triggered by the request to investigate this topic but also by voices from several sources.

According to a study conducted by the VID, the introduction of the new Belgian toll for lorries produces more freight traffic on Dutch roads. “It appears that transport companies are trying to reduce the number of kilometres in Belgium, in order to save toll charges (…) This means that it has become noticeably busier on the Dutch East-West routes.”

A different source states that the introduction of the new, more expensive toll system for lorries in Belgium increases prices in the affected industries (in their example: the food industry).

Until now, there has not been a study to specifically examine the impact of this new toll system on the logistics and forwarding companies in the German-Dutch border region near the Belgian border. This is the focus of this report.

The investigation was conducted in Euregio Rhein-Meuse-North (ermn), the cross-border region around Venlo, a logistic hotspot. To close the circle, Dutch companies as well as companies on the German side were asked to take part in this study. The research focused on potential changes of truck routes, costs and general opinions about the toll system among professionals affected by these changes. The exact methods used in this investigation will be explained later on.

Project Description

Definition
On 1 April 2016, a new toll system was introduced in Belgium. Instead of the time-based Eurovignette, the new kilometre-based system Viapass requires HGVs to be fitted with an on-board-unit (OBU) which tracks the exact route of the vehicle in order to calculate the fee. The problem with this project is that there has not yet been a study into the impact of the new toll system in Belgium on road usage and the financial and time costs incurred by logistic firms and forwarding companies in the Euregio Rhein-Meuse-North (ermn) and their clients who might have to face higher prices. The following question needs to be answered in order to solve the problem:
what impact does the new toll system in Belgium have on logistic firms and forwarding companies from the ermn with lorries driving through Belgium?

**Project aim**
The aim of the project is to investigate the impact of the introduction of the Belgian toll system on 1 April 2016. To do this, the routes of the logistic companies and any changes they make to these routes will be studied. Moreover, it will be studied whether the companies have higher costs, how high these costs are and whether they pass them on to their clients. It is also interesting to explore what has changed for companies which still need to buy the Eurovignette for journeys through the remaining member states, i.e. whether they drive less through Belgium than before or whether they use alternative routes through other countries to reduce their costs. Furthermore, the opinions of the logistic and forwarding companies with regard to the long and short term effects of the Belgian toll system are interesting. It will be investigated whether they had any problems with installing the OBU Boxes and whether it takes more time to organize the Belgian toll documents etc. Finally, it will be investigated whether the companies would like to change anything about the Belgian toll system and what they would change.

**Research approach**
In order to achieve the aim of this project, the following research questions need to be answered:

1) **How do the toll systems in the surrounding countries Germany, the Netherlands, Luxembourg and Belgium work?**
   By answering this question, the difference between the new toll system in Belgium and the other toll systems will be outlined. This is interesting for the logistic firms and forwarding companies, as they might take alternative routes through other countries than Belgium in order to avoid the new Belgian toll system.

2) **What has changed for logistic firms and forwarding companies driving through Belgium?**
   This question is divided into two sub-questions to create a focus on two main topics: the costs and routes that may have changed after the introduction of the new toll system in Belgium.
   a. **How did the routes change?**
      This question will be answered by comparing the routes taken now and before April 2016. It will show the potential effect of the toll system on the routes taken.
   b. **How did the toll costs change?**
      Here the financial matters regarding the new toll system in Belgium will be presented.

3) **What is the opinion of the professionals having HGVs driving through Belgium on the new toll system?**
   The answer to this question will show what the companies expect of the new toll system and what they feel it should change in Belgium. Also, answering the question will give information if the companies want to change anything and what they want to change.
Preliminary investigation

The following pages will give detailed insight into the preliminary investigation on the data collection methods used to answer the research questions and the corresponding two sub-questions. These will help answer the problem question: how does the new toll system in Belgium affect logistic firms and forwarding companies from the ermn driving through Belgium?

1. How do the toll systems in the surrounding countries Germany, the Netherlands, Luxembourg and Belgium work?
   In order to answer this question, desk research on the toll systems in these countries will be used. For each country in question, general information on the toll system and costs will be given. This information will be sourced from original websites of the toll systems and used to create a broad overview of toll systems that companies from the ermn driving through Belgium may have to deal with.

2. Did the HGV routes of logistic firms and forwarding companies driving through Belgium change?
   a. How did the routes change?
      The method used to answer this question is primary research in the form of interviews with managers of logistic firms and forwarding companies. In the interviews, 15 logistic and forwarding companies in the ermn will be asked questions from the interview script. Eight Dutch and seven German companies are chosen to represent both countries in the interviews. To find these firms, a list containing logistic and forwarding companies in the ermn area will be set up. This is done by searching for firms of all sizes online and by asking logistic lecturers from Fontys Venlo for contact details of such enterprises. The criterion for the chosen firms is that their lorries regularly drive through Belgium and that they are familiar with the old and the new Belgian toll systems. To answer the above research question, the interview script will contain questions about the routes they used before and which routes they have used since the introduction of the new toll system. The routes will be added to a map to show the changes of the selected routes.
   b. How have the toll costs changed?
      To answer this question, a table for toll costs will be made. The information needed to complete this table will be taken from the individual interviews with the logistic and forwarding firms. The final table will present the toll costs for a one-way route through Belgium before April 2016 compared to the costs of the same one-way route since the introduction of the new Belgian toll system.

3. What is the opinion of the professionals having HGVs driving through Belgium on the new toll system?
   This question will also be answered through interviews with the logistic and forwarding companies. To do this, the interview script will contain several questions to find out how people personally regard the new toll system in Belgium as well as whether and how the
the introduction of the new system changed anything for the company in terms of time, costs and effort.

1. **Toll Systems**

How do the toll systems in the surrounding countries Germany, the Netherlands, Luxembourg and Belgium work?

1.1 **Introduction**

Most countries in Europe charge toll for road usage. Lorries in particular cannot usually travel through countries without having to pay toll at some point. The difficulty of this is that different countries have different toll systems, involving a lot of organization for logistics and forwarding companies. Germany, the Netherlands, Luxembourg as well as Belgium all charge toll for lorries on specific roads. Germany has its own, distance-based toll system for domestic and foreign HGVs. The Netherlands and Luxembourg are Eurovignette countries, as was Belgium before the introduction of its own toll system on 1 April 2016. Belgium has abandoned the time-based Eurovignette to switch to a distance-based toll system as well - Viapass. Next, the different toll systems will be explained to give a detailed overview.

1.2 **a. Toll system in Germany**

Since 2005, toll applies in Germany to road haulage vehicles with minimum 12t GVW. Lorry drivers are required to pay toll on all German motorways and selected federal trunk roads. The German “LKW-Maut” (HGV toll) is a toll for heavy goods vehicles based on the distance driven in kilometres, the number of axles and the emission category of the vehicle. The toll system in Germany consists of a satellite system and cellular technology. The use of an electronic system with on-board units is compulsory for every lorry using German roads. The German Federal Highway Research Institute (BASt) publishes the official toll road network on the Internet (Appendix 1).

1.2.1 **Toll Collect system**

Toll Collect GmbH was commissioned by the German government to develop and set up a toll system that combines satellite positioning with state-of-the-art wireless technology.

1.2.2 **The toll rates**

The toll rates are recorded in the German Federal Trunk Road Toll Act (BFStrMG). The total amount is based on the distance that a vehicle or a vehicle combination travels on a German road subject to toll and a toll rate per kilometre that includes the infrastructure costs and costs due to the air pollution caused by the...
vehicle. These costs will be explained later on. The figure below gives an overview of toll rates for vehicles belonging to different categories. The rates given in the table count per kilometre.\textsuperscript{562}

1.2.3 Partial toll rate for infrastructure costs

The partial toll rate for infrastructure costs varies for lorries with two axles, three axles, four axles and five or more axles. The table on the right (fig. 2) shows the proportion of toll rate that goes to the cost of infrastructure depending on the number of axles.\textsuperscript{563}

<table>
<thead>
<tr>
<th>Number of axles</th>
<th>Proportion of toll rate (in €-cents)</th>
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<tr>
<td>2</td>
<td>8.1</td>
</tr>
<tr>
<td>3</td>
<td>11.3</td>
</tr>
<tr>
<td>4</td>
<td>11.7</td>
</tr>
<tr>
<td>5 or more</td>
<td>13.5</td>
</tr>
</tbody>
</table>

(source: Toll Collect)

1.2.4 Partial toll rate for air pollution costs

The partial toll rate for air pollution costs is determined according to the emission class, which is used as the basis for assigning each vehicle to one of the six categories: A, B, C, D, E or F.

No costs for modern lorries of emission class Euro 6 (category A) are charged for causing air pollution. Only the infrastructure costs are calculated for the partial toll rate for this type of lorry. The indication of the emission classes is the responsibility of the toll customers; customers are obliged to declare this correctly (principle of self-declaration). In the figure below (Fig. 3), the emission classes according to the German Federal Trunk Road Act are listed.\textsuperscript{564}

<table>
<thead>
<tr>
<th>Emission class</th>
<th>Category A</th>
<th>Category B</th>
<th>Category C</th>
<th>Category D</th>
<th>Category E</th>
<th>Category F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro emission class</td>
<td>S6</td>
<td>EEV, class 1, S5</td>
<td>$4, S3 with particulate reduction class 2</td>
<td>$3, S32 with particulate reduction class 1</td>
<td>S2</td>
<td>S1, no emission class</td>
</tr>
<tr>
<td></td>
<td>Euro 6</td>
<td>EEV 1, Euro 5</td>
<td>Euro 4, Euro 3+ with particulate reduction class 2</td>
<td>Euro 3, Euro 2+ with reduction class 1</td>
<td>Euro 2</td>
<td>Euro 1, Euro 0</td>
</tr>
</tbody>
</table>

(source: Toll Collect)

\textsuperscript{562} Toll Collect 2016.
\textsuperscript{563} Toll Collect 2016.
\textsuperscript{564} Toll Collect 2016.
The table below shows the costs that incur for lorries using German toll roads.

<table>
<thead>
<tr>
<th>Category</th>
<th>Proportion: costs for air pollution</th>
<th>Number of axles</th>
<th>Proportion: costs for infrastructure</th>
<th>Toll rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0</td>
<td>Up to 3</td>
<td>0.125</td>
<td>0.125</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4+</td>
<td>0.131</td>
<td>0.131</td>
</tr>
<tr>
<td>B</td>
<td>0.021</td>
<td>Up to 3</td>
<td>0.125</td>
<td>0.146</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4+</td>
<td>0.131</td>
<td>0.152</td>
</tr>
<tr>
<td>C</td>
<td>0.032</td>
<td>Up to 3</td>
<td>0.125</td>
<td>0.157</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4+</td>
<td>0.131</td>
<td>0.163</td>
</tr>
<tr>
<td>D</td>
<td>0.063</td>
<td>Up to 3</td>
<td>0.125</td>
<td>0.188</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4+</td>
<td>0.131</td>
<td>0.194</td>
</tr>
<tr>
<td>E</td>
<td>0.073</td>
<td>Up to 3</td>
<td>0.125</td>
<td>0.198</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4+</td>
<td>0.131</td>
<td>0.204</td>
</tr>
<tr>
<td>F</td>
<td>0.083</td>
<td>Up to 3</td>
<td>0.125</td>
<td>0.208</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4+</td>
<td>0.131</td>
<td>0.214</td>
</tr>
</tbody>
</table>

(source: Toll Collect)

1.3.1 Eurovignette

Eurovignette is a road user charge for lorries of a minimum of 12 metric tons. It is a certificate that shows that the special tax (in the Netherlands it is the duty for heavy motor vehicles, BZM) has been paid.  

1.3.2 Participating countries

Following the signing of an international treaty in 1994, the Eurovignette was implemented in the Netherlands in January 1996. The Eurovignette is accepted in all participating countries - the Netherlands, Luxembourg and Denmark. Therefore, even if you travel through several Eurovignette countries, only one valid Eurovignette is needed. The Eurovignette was also valid in Belgium until its replacement in April 2016.

1.3.3 How it works

The Eurovignette is stored electronically and there is no need to carry further paper documents with you since 1 October 2008 – when it became the “e-Vignette”. The figure below illustrates how the Eurovignette works.
1.3.1 Tariffs

The price of the vignette depends on the engine’s environment class and the number of axles in the combination. Revenue is shared with a distribution across the participating countries. An overview of the tariffs is provided in the table below (fig. 6).\textsuperscript{568}

![Figure 6: Table of Eurovignette Tariffs 2016](source: AGES)

<table>
<thead>
<tr>
<th>ANNUAL TARIFF</th>
<th>1 - 3 AXLES</th>
<th>4 OR MORE AXLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro 0</td>
<td>400.00</td>
<td>1'200.00</td>
</tr>
<tr>
<td>Euro 1</td>
<td>800.00</td>
<td>1'400.00</td>
</tr>
<tr>
<td>Euro 2</td>
<td>750.00</td>
<td>1'250.00</td>
</tr>
<tr>
<td>Euro 3</td>
<td>750.00</td>
<td>1'250.00</td>
</tr>
<tr>
<td>Euro 4</td>
<td>750.00</td>
<td>1'250.00</td>
</tr>
<tr>
<td>Euro 5</td>
<td>750.00</td>
<td>1'250.00</td>
</tr>
<tr>
<td>Euro 6</td>
<td>750.00</td>
<td>1'250.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WEEKLY TARIFF</th>
<th>1 - 3 AXLES</th>
<th>4 OR MORE AXLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro 0</td>
<td>26.00</td>
<td>47.00</td>
</tr>
<tr>
<td>Euro 1</td>
<td>23.00</td>
<td>37.00</td>
</tr>
<tr>
<td>Euro 2</td>
<td>20.00</td>
<td>33.00</td>
</tr>
<tr>
<td>Euro 3</td>
<td>20.00</td>
<td>33.00</td>
</tr>
<tr>
<td>Euro 4</td>
<td>20.00</td>
<td>33.00</td>
</tr>
<tr>
<td>Euro 5</td>
<td>20.00</td>
<td>33.00</td>
</tr>
<tr>
<td>Euro 6</td>
<td>20.00</td>
<td>33.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MONTHLY TARIFF</th>
<th>1 - 3 AXLES</th>
<th>4 OR MORE AXLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro 0</td>
<td>66.00</td>
<td>166.00</td>
</tr>
<tr>
<td>Euro 1</td>
<td>65.00</td>
<td>162.00</td>
</tr>
<tr>
<td>Euro 2</td>
<td>75.00</td>
<td>125.00</td>
</tr>
<tr>
<td>Euro 3</td>
<td>75.00</td>
<td>125.00</td>
</tr>
<tr>
<td>Euro 4</td>
<td>75.00</td>
<td>125.00</td>
</tr>
<tr>
<td>Euro 5</td>
<td>75.00</td>
<td>125.00</td>
</tr>
<tr>
<td>Euro 6</td>
<td>75.00</td>
<td>125.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DAILY TARIFF</th>
<th>1 - 3 AXLES</th>
<th>4 OR MORE AXLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro 0</td>
<td>8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Euro 1</td>
<td>8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Euro 2</td>
<td>8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Euro 3</td>
<td>8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Euro 4</td>
<td>8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Euro 5</td>
<td>8.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Euro 6</td>
<td>8.00</td>
<td>8.00</td>
</tr>
</tbody>
</table>

(source: AGES)
1.4 c. Toll system in Belgium

On 1 April 2016, the new toll system called Viapass was introduced in Belgium for lorries, national and international, with a gross registered weight over 3.5 tons. This means that Belgium, a former Eurovignette country, will no longer accept the time-based Eurovignette for road usage. The new kilometre-dependent toll system is completely electronic and will apply to the same route network\(^{569}\) as previously within the regions of Flanders, Wallonia and Brussels.

1.4.1 Objectives of the new toll system

HGVs and other vehicles cause a great deal of damage to the road infrastructure as well as harming the environment, through noise and air pollution, for example. To encourage the reduction and optimization of routes used by heavy goods vehicles, the three Belgian regions Flanders, Wallonia and Brussels signed a Political Agreement on 21 January 2011. A kilometre toll will allow the infrastructure costs as well as the environment costs to be charged in a fair way. The Viapass project marks a permanent transition towards a fairer and more sustainable way of road pricing.\(^{570}\)

1.4.2 Fundamental changes

The satellite-based toll system Viapass replaces the Eurovignette in Belgium. Instead of charging based on time spent on Belgium roads, the new system is based on the kilometres driven on roads that are subject to toll. Viapass requires every lorry with a gross vehicle weight of more than 3.5 tons to have an on board unit (OBU) that is constantly switched on when driving on Belgian roads, because the new system works completely electronically. This makes the procedure more complicated compared with the Eurovignette times. The roads subject to road charges are the same as with the previous system, although rates have risen.\(^{571}\)

1.4.3 Tariffs

Parameters

The tariffs of the toll roads have been fixed by the governments of the regions, based on three parameters:

- **The Gross Vehicle Weight** - When the pulling vehicle has a GVW of more than 3.5 tons, the Gross Combination Weight Rating (GCWR) must be declared.

- **The Euro Emission Norm** - This is the emission norm that categorizes the level of pollution of the lorry (EURO 0-2; 3; 4; 5-6).

- **The type of toll road** - All roads in Belgium are toll roads. Most of them are charged at 0-tariff.

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569 For the route network in Belgium, see [https://www.dkv-euroservice.com/gb/media/content/documents_1/benefits/toll_9/belgium/streckenkarte_maut_belgien_en.pdf](https://www.dkv-euroservice.com/gb/media/content/documents_1/benefits/toll_9/belgium/streckenkarte_maut_belgien_en.pdf)

570 Viapass 2016.

571 Viapass 2016.
Others have a paying tariff.\footnote{Viapass 2016.}

Concrete Rates

The rates in the different Belgian areas vary. Every violation of the new system will receive a €1000 fine.

**Flanders and Wallonia**

In Flanders and Wallonia, the tariff is based on the vehicle weight (3.5-12t, 12-32t, > 32t) and the euro emissions. The most expensive tariff (for EURO 0-2) is €0.20/km. In Wallonia, the kilometre tariff is based on the TVA (21%); the other two regions do not apply TVA.

**Brussels**

In Brussels, the tariff varies by zone (motorway or urban) travelled.

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\footnote{Viapass 2016.}
1.4.4 On Board Unit (OBU)

When you have a lorry weighing over 3.5 tons GVW, you must have an On-Board-Unit (OBU) that is constantly switched on when driving in Belgium. An OBU is a small device that registers the number of kilometres you have driven on toll roads. It sends the total to the billing centre which regularly sends you a detailed bill. The use of the On-Board-Unit is monitored. Fraudulent or non-use will be fined. 573

The OBU can be ordered from the service providers of the kilometre charge. There are currently two: Satellic and Axxes. The use of the OBU is free. To get a device at Satellic, you must pay a deposit of €135. A full refund will be given on returning the device undamaged. 574

1.4.5 Affected routes

The new toll will apply to all the roads where the Eurovignette toll used to be applied in Belgium. Satellic, the operator in charge of the project, has confirmed that the coverage will be over 7000 km of Belgium’s 154,000 km road network. 575

1.4.6 Registration

For companies that occasionally use the Belgian road network

Prior to entering the area regulated by the new toll, lorry drivers must visit one of the new vending machines installed in numerous parking concourses and service stations in Belgium, Luxembourg, the Netherlands or Germany. A user account then has to be created on the Satellic Road User Portal and the vehicles subject to toll have to be registered. 576

For companies that regularly use the Belgian road network

You have the option of post-payment. You can request this via the Satellic portal and order your OBUs by registering for the post-pay scheme. It will then be shipped directly to your offices/home. 577

1.5 Exemptions

Only a very limited number of categories are exempt from the Kilometre Charge: vehicles run by the army, the fire service, the civil protection and ambulances, tractors solely used for agriculture, forestry, horticulture and aquaculture. Some vehicles are out of scope of the road charging such as some machine-vehicles to the extent that they do not transport goods and other vehicles such as old-timer vehicles with an O-licence plate for instance. A full list of vehicles that are exempt from the charges can be found in the appendices. (Appendix 2)
1.6 Conclusion

Whilst Luxembourg and the Netherlands have the same toll system, Germany and the new Belgian system differ from each other. The following table gives a quick summary of the relevant differences of the three different toll systems.

<table>
<thead>
<tr>
<th>Toll System</th>
<th>Country/countries</th>
<th>GVW</th>
<th>Based on</th>
<th>Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toll Collect</td>
<td>Germany</td>
<td>12t</td>
<td>distance</td>
<td>€0.125-0.214 per km</td>
</tr>
<tr>
<td>Eurovignette</td>
<td>The Netherlands, Luxembourg, a.o.</td>
<td>12t</td>
<td>time</td>
<td>€4.25-8.00 per day</td>
</tr>
<tr>
<td>Viapass</td>
<td>Belgium</td>
<td>3.5t</td>
<td>distance</td>
<td>€0.074-0.292 per km</td>
</tr>
</tbody>
</table>

The table shows an important difference: whilst the German toll system and the Eurovignette countries charge lorries with a GVW of at least 12 tons, the new Belgian toll system also takes into account lighter lorries with a GVW of at least 3.5 tons.

Both the German and the Belgian toll systems are distance-based. Comparing the rates, it is obvious that the Belgian Viapass has a wider rate range than the German Toll Collect system. The average rate of the German system is lower than that of the new Belgian toll system. It is more difficult to compare the Eurovignette and the Viapass rates. Depending on the distance travelled through Belgium by lorry, the costs can be higher, lower or the same as the daily rate for the Eurovignette. However, in view of the fact that Belgium was part of the Eurovignette road network before, the lorries which only needed to buy a Eurovignette to travel through the Netherlands, Belgium and Luxembourg in a day now need the kilometre-based costs of Viapass as well as the Eurovignette.

2. Changes with regard to costs and routes

What has changed for logistic firms and forwarding companies driving through Belgium?

2.1 How have the routes changed?

In response to the change in Belgium’s toll system, some companies may also have changed the routes on which they send their lorries in order to either take advantage of the new Belgium toll system or to avoid it and take routes through countries with other toll systems.

2.2 What did the routes look like before the new toll system in Belgium?

This question was answered in the interviews with logistic firms and forwarding companies particularly from the Netherlands and Germany in the border areas with Belgium. They were asked to map the routes on which they used to send their lorries to or through Belgium before
the introduction of the new toll system. It appears that the most frequent routes through Belgium before the introduction of the new toll system on 01.04.2016 were as shown in the illustration below (Fig. 12).

![Figure 12: Truck routes of Dutch and German companies driving through Belgium before 01.04.2016](source: own illustration using Google Maps)

### 2.3 What do the routes look like now?

It appears that the companies have made very few changes to their routes since the introduction of the new toll system. The only difference is that companies sometimes try to avoid Brussels because the toll in the capital is the highest in the country (fig. 2). The reasons why the companies have not changed their routes otherwise are the following.

On the one hand, using alternative routes does not save much money on the tariffs. On the other hand, the driver of the lorry will take much longer on the alternative routes. As a result, the labour costs will rise and the money saved on tariffs will be spent on extra labour. Eflexlogistics says: “Belgium has set the toll rates high but yet low enough that an alternative route is not worth the additional distance.”

Furthermore, alternative routes are less productive than taking the direct route, because delivery time, costs for fuel and depreciation of vehicles increase.

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578 Eflexlogistics 2016.
All in all, the introduction of the new Belgian toll system has had very little impact on the routes taken by lorries operated by Dutch and German companies from the border region with Belgium. The only thing that can be noticed is that lorry drivers are told by their employers to avoid Brussels if possible as the toll is the highest in the capital.

2.4 How have the toll costs changed?
As it has been discovered, the routes taken by lorries driving to or through Belgium have changed very little. However, this does not mean that the costs have not changed. The logistic and forwarding companies interviewed indicate the following changes with regard to costs.

Before the introduction of the new Belgian toll system, lorry drivers only needed the Eurovignette for the Netherlands as well as Belgium, costing €8 per day per lorry, whatever the distance driven. Now that Belgium is no longer part of the Eurovignette system, lorry drivers still need to pay €8 for the day if crossing the Netherlands in addition to the Belgian toll.

The figure below (fig. 3) illustrates the change in the costs paid by eleven of the companies interviewed for a one-way journey to a destination requiring their lorry to cross Belgium. Before, they only needed to pay €8 for the Eurovignette for a journey which now costs €32, meaning an increase of €24 and therefore 290%.
To conclude, the new Belgian toll system has increased the costs for companies with lorries driving through Belgium. Before, the Eurovignette costing €8 per day was sufficient for a journey through Netherlands and Belgium. Now, they need to pay the €8 for the Eurovignette in addition to the Belgian toll. On average, this means a 290% increase in costs.

<table>
<thead>
<tr>
<th></th>
<th>Costs before (in €)</th>
<th>Costs now (in €)</th>
<th>Change of costs (in €)</th>
<th>Change of costs (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8</td>
<td>25</td>
<td>+17</td>
<td>+213%</td>
</tr>
<tr>
<td>2</td>
<td>8</td>
<td>35</td>
<td>+27</td>
<td>+338%</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>35</td>
<td>+27</td>
<td>+338%</td>
</tr>
<tr>
<td>4</td>
<td>8</td>
<td>50</td>
<td>+42</td>
<td>+525%</td>
</tr>
<tr>
<td>5</td>
<td>8</td>
<td>25</td>
<td>+13</td>
<td>+163%</td>
</tr>
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<td>6</td>
<td>8</td>
<td>12</td>
<td>+4</td>
<td>+50%</td>
</tr>
<tr>
<td>7</td>
<td>8</td>
<td>35</td>
<td>+27</td>
<td>+338%</td>
</tr>
<tr>
<td>8</td>
<td>8</td>
<td>35</td>
<td>+27</td>
<td>+338%</td>
</tr>
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<td>9</td>
<td>8</td>
<td>38</td>
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<td>10</td>
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<td>30</td>
<td>+22</td>
<td>+275%</td>
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<tr>
<td>11</td>
<td>8</td>
<td>30</td>
<td>+22</td>
<td>+275%</td>
</tr>
<tr>
<td>12</td>
<td>8</td>
<td>28</td>
<td>+20</td>
<td>+250%</td>
</tr>
<tr>
<td>Average</td>
<td>8</td>
<td>32.5</td>
<td>+24.2</td>
<td>+290%</td>
</tr>
</tbody>
</table>

(source: own illustration)

3. Opinions on the new Belgian toll system

What is the opinion of the professionals which have HGVs driving through Belgium on the new toll system?

Fourteen logistic and forwarding companies in the Netherlands and Germany were asked to answer this question. Their opinion on the Belgian toll is quite similar and generally more negative than positive. Here follow their opinions on #1 whether the new toll is a good or bad idea, #2 long-term and short-term expectations about the new toll system, #3 positive changes thanks to the new system, #4 fears with regard to the new toll system, #5 negative changes and problems caused by the new system, and #6 changes they would like to make to the toll system if they could.

Firstly, when asked whether they thought that the Belgian toll was a good or a bad decision, most answered that the Belgian toll system was a good decision for Belgium, because they earn much more money. However, it was a bad decision for the logistic and forwarding companies because their profit margin is lower since the introduction of the toll in Belgium.

Secondly, people hoped for positive short-term and long-term effect of the new, more expensive toll system. First of all, they hoped for a short-term effect in the form of better maintenance of Belgian motorways and service stations. They also hoped that the long-term effect might be the improvement of Belgian motorways and infrastructure.
Thirdly, the interviewees had not yet seen any positive changes resulting from the new system. Most of the interviewees agreed that the Belgian toll system had not changed the situation on the motorways or the infrastructure at all so far. In their opinion, the money would flow into the Belgian economy.

Fourthly, some companies expressed their fear that in the long term, the new toll system would mean higher costs for the consumer because companies would be forced to pass on the additional costs to the end consumer. However, not every company can pass on the higher costs resulting from the toll system to their clients. Some clients refuse to pay the higher costs because of the toll. The logistic companies decide individually whether they want to work with them even if they do not want to pay the higher costs, because then they could lose them to competitors. Some logistic companies do not increase their prices because they think they can balance the lower margin with more clients.

Fifthly, apart from the additional costs for companies whose lorries are affected by the new toll system, the new system causes more negative changes and problems. Firstly, although many companies had no problems with the delivery and installation of the tracking boxes, some companies reported very late delivery on the weekend before the introduction of the toll in Belgium. Another problem was the delivery of the boxes without the correct allocation papers to the number plates of the lorries, so they could not allocate the boxes to the right lorries on the weekend before the toll was introduced. These problems meant that some lorries did not drive before the start of the toll because they did not want to risk the high penalty.

Moreover, some companies indicated that they did not need more time because of the new toll system, but some did. This is because of the auditing and the on-charging to the clients.

Sixthly, if they could, the interviewees would want to make the following changes to the toll system – although some have no problems with the system. Some companies would like to abolish the Belgian toll system if they could to avoid extra costs, but this would obviously not benefit the Belgian government.

A more realistic wish is that most companies would like to merge all the toll systems in Europe into one big system with the same condition for every company. With a uniform system, conditions for everyone would be transparent and they would only need one tracking box that can be used for every country.

Moreover, all companies still buy the Eurovignette because they need them for the Netherlands or Luxembourg. Some companies complained that the Eurovignette still costs the same as when Belgium was still included. Now that Belgium has its own toll system, the interviewees agreed that it would only be fair to reduce the price of the Eurovignette.

To conclude, the firms that were interviewed do not like the new toll system in Belgium but they do not reject it either. The overall opinion is quite neutral with a few complaints about the
organization when the system was first introduced. Of course, nobody likes the fact that the fees for using Belgian roads have risen for them. In turn, some have had to increase the prices for their customers, even though this is not always easy. Many people are sceptical about how Belgians will use the additional revenue gained through the increased fees. It is hoped that it will be invested in improving the infrastructure and motorway and service station maintenance. However, a few people believe that it is just additional income for the government. Now that Belgium is no longer a Eurovignette country and has its own toll system, the Eurovignette should be reduced in price to keep it fair. Moreover, if people could change the system, they would introduce one generic toll system for Europe as a whole to facilitate the process for lorry drivers and their employers.

4. Conclusion

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

The introduction of the new Belgian toll system has had very little impact on the routes taken by lorries operated by Dutch and German companies from the border region with Belgium. The only thing that can be noticed is that lorry drivers are told by their employers to avoid Brussels if possible as the toll is the highest in the capital.

Although their routes stayed basically the same, the new Belgian toll system has increased the costs for companies whose lorries drive through Belgium. Before, the Eurovignette costing €8 per day was sufficient for a journey through the Netherlands and Belgium. Now, they need to pay €8 for the Eurovignette in addition to the Belgian toll. On average, this means a 290% increase in costs.

The firms interviewed do not appreciate the new toll system in Belgium very much. The overall opinion is quite neutral with a few complaints about the organization when the system was first introduced. Of course, nobody likes the fact that the fees for using Belgian roads have risen for them. In turn, some have had to increase the prices for their customers, even though this is not always easy. Many people are sceptical about how Belgium will use the additional revenue gained through the increased fees. It is hoped that it will be invested in improving the infrastructure and motorway and service station maintenance. However, a few people believe that it is just additional income for the government. Now that Belgium is no longer a Eurovignette country and has its own toll system, the Eurovignette should be reduced in price to keep it fair. Moreover, if people could change the system, they would introduce one generic toll system for Europe as a whole to facilitate the process for lorry drivers and their employers.
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### Vehicles exempt from Belgian road tolls

**Appendix 2** - Vehicles exempt from Belgian road toll, 2019
Appendix 3 – Interview with Martin Wismans BV

1. Transportieren Sie durch Belgien?
   Ja
2. Wie oft transportieren Sie durch Belgien?
   Täglich
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Frankreich, Spanien und Belgien
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Gleich, keine Veränderungen
   Gleich, keine Veränderungen. Routen:
   Aachen – Hensies
   Aachen – La Gruerie
   Maastricht/Visé – Hensies
   Maastricht/Visé – Luxemburg
   Postel – Tourcoing
6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?
7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   Belgische Mautkosten € 0,128 pro „Belgische“ Kilometer. Transitkosten daher variabel zwischen € 22 und € 28
8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Zeitpunkt der Einführung schlecht, besser wäre zum 01.01.2017
   Wir haben mit vielen Kunden Preisvereinbarungen für das ganze Jahr. Des Weiteren
drücken die Mautkosten auf den Preisen.

9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Viel zusätzliche Arbeit. Kunden müssen informiert werden, neue Preisvereinbarungen mit
   Kunden machen, EDV muss gepflegt werden mit neue Preisvereinbarungen. Manche
   Kunden zahlen eine Pauschale für Mautanteil, andere zahlen die tatsächliche Kilometer x
   € 0,128.

10. Kaufen Sie trotzdem noch die Eurovignette?
    Nicht mehr für Belgien, weil dafür die Maut eingeführt wurde, aber wir kaufen für NL und
    LUX weiterhin eine (tägliche) Eurovignette

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
    Ja

12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie
die Probleme)
    Nein

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
    Erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre
    Kunden erhöht?
    Ja, für die Kunden an denen wir die Maut weiterbelasten

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von
    Belgien war?
    Schlechte Entscheidung

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System
    sind?
    Wegen Ratenerhöhungen stehen Preise (und damit Export und Import) unter Druck

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
    Abschaffen!
Appendix 4 – Interview with Eflexlogistics B.V.

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Täglich ca. 10 LKW
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Antwerpen
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Genauso wie vorher
   Die gleichen Routen wie vorher, Belgien hat die Mautkosten genau so gewählt das sie noch hoch sind, aber dennoch zu niedrig, dass es sich lohnen würde Umwege zu fahren und dass sich diese Mehrkosten nutzen würden.

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut) € 35

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Es ist verrückt, die Eurovignette war doch ein gutes System.

9. Welchen Einfluss hat die Maut auf Ihre Logistik?
   Keine

10. Kaufen Sie trotzdem noch die Eurovignette?
    Ja für andere Länder

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
    Nein
12. Hatten Sie Probleme mit der **Installation** von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme) **Nein**

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht? **Nur erhöht**

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Ja, aber die Leerfahrten wie z.B. Rückwege werden uns ja nicht bezahlt, nur zum Teil. Diese sind jetzt durch die Maut noch teurer für uns.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Schlecht, weil wir Europa sind und jetzt macht jeder sein eigenes Ding.

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   **Jedes Land wird sein eigenes Mautsystem entwickeln**

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Ich würde mir ein einheitliches Mautsystem für Europa wünschen und das jetzige abschaffen.
Appendix 5 – Interview with Elkar B.V.

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Täglich mit 20 Lkw
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien? Nein kein Einfluss

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   Von Postel bis Frankreich wie sie nach Calais fahren € 26,77, bei nördlichen Unternehmen kann man versuchen über Rotterdam zu verschiffen, in südlichen Regionen in England lohnt sich das nicht. Plus die € 8 die man sowieso braucht für die niederländische Vignette.
   Kosten vorher nur für die Eurovignette € 8 am Tag, egal wo man fährt.

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Es ist nur Kostenerhöhend und es ist nicht deutlich wo das Geld bleibt. Scheinbar nur in den Taschen der Regierung. Was damit gemacht wird ist dem Befragten unklar.

9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Auf Logistik keinen Einfluss, man muss Ware nach wie vor transportieren, es ist einfach Kosten erhöhend. Andere Route sind zeitlich viel mehr Aufwand und somit steigen auch die Personalkosten so sehr, dass es sich nicht lohnt.
10. Kaufen Sie trotzdem noch die Eurovignette?
   Ja, Risiko für Bußgeldstrafen zu hoch

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
   Ja, wurde aber im eigenen Unternehmen über ein Wochenende in allen Fahrzeugen angebracht durch einen Mechaniker. Unternehmen war auch gut vorbereitet. Anbringung in jedem Lkw, denn jeder Lkw muss bereit sein in Belgien auszuliefern oder nach England zu fahren.

12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Keine Probleme

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Unternehmen hat 115 Lkw. Hohe Anschaffungskosten 115Lkw *€ 135= € 15.525.

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Teilweise, bei neuen Kunden auf jedenfall, oder wenn neue Preise verhandelt werden.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Eine schlechte Entscheidung, weil jedes Land seine eigenen Vorschriften und Geräte hat. Außerdem sind die Auswirkungen auf die verschiedenen Geräte untereinander nicht bekannt.

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Dass die Kosten Stück für Stück auf die Kunden verteilt werden über die Zeit. Auf einmal ist dies nicht möglich, weil die Konkurrenz es auch nicht macht und somit die Kunden verloren gehen würden.

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Ein Gemeinsames Mautsystem für Europa
Appendix 6 – Interview with Spedition Ziegler GmbH

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Täglich
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Nur nach England
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Nein genauso wie vorher
   Nein genauso wie vorher, über Brüssel danach Calais und dann nach Dover
6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
   Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?
7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   Zusätzlich € 50 zu vorher. Vorher nur die Vignette.
8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Ist halt wie in den anderen Ländern. Ist einfach in jedem Land mittlerweile ein eigenes System.
9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Gar keinen
10. Kaufen Sie trotzdem noch die Eurovignette?
    Ja für die anderen Länder
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
    Nein, alles geht automatisch
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Nein gab gar keine Probleme

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Nur erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Ja, die Kosten werden komplett auf die Kunden umgerechnet.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Eine gute Idee, wie auch in den anderen Ländern.

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Bessere Straßen und verbesserte Wirtschaft

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Gar nichts.
Appendix 7 – Interview with Matthiesen & Warnt GmbH & Co. KG

1. Transportieren Sie durch Belgien? **Ja**
2. Wie oft transportieren Sie durch Belgien? **Täglich**
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   
   Hauptsächlich durch Frankreich vom Rheinruhrgebiet überall zum Festland in Frankreich.
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   
   Genauso wie vorher
   
   Die gleichen Routen wie vorher. Wir transportieren ja nur nach Frankreich und der Weg über Luxembourg ist einfach viel zu lang.

6. Wenn Sie Frage 5 mit **Ja** beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
   
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit **Nein** beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   
   Zurzeit ca. 25 Euro vorher halt nur die Vignette

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   
   Es ist halt Pflicht und muss akzeptiert werden damit wir unsere Kunden bedienen können.

9. Welchen Einfluss hat die Maut auf ihre Logistik?
   
   Nur Mehrkosten

10. Kaufen Sie trotzdem noch die Eurovignette?
    
    Klar, für die anderen Länder ist es ja trotzdem Pflicht

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
    
    Nein
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Nein, es ist ja ähnlich wie die Systeme von den anderen Ländern mit einer Mautbox
13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Nur erhöht
14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Ja auf jeden Fall, irgendetwas muss ja für die Kosten letztendlich aufkommen. Und die Unternehmen an die wir liefern erhöhen natürlich dann die Kosten für ihre Produkte auch und somit sind die Endverbraucher nachher die, die auch für die Kosten aufkommen müssen.
15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Für Belgien auf jeden Fall gut. Denn die Straßen sind in Belgien so schlecht und die Raststätten und Sanitäranlagen sollte man meiden, wenn es möglich ist und erst wieder in Frankreich anhalten. Da kommen einem teilweise Ratten entgegen.
16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Wünschenswert wären neue Autobahnen oder Raststätten. Aber ich glaube, dass das Geld nur in die Kassen des Landes fließen und sich nichts an der Infrastruktur in dem Land ändern wird.
17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Nichts, aber das Geld soll auch wirklich in die Straßen und Raststätten fließen. Dann lohnt es sich auch das Geld zu bezahlen.
Appendix 8 – Interview with Hans Sturm Internationale Spedition

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Zwei Mal die Woche
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien? Genauso

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   12 Euro und ein paar Zerquetschte

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Ist schlecht, kostet nur sehr viel und das Geld sieht man nie wieder. Aber man fährt halt dahin, wo der Kunde möchte.

9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Keine

10. Kaufen Sie trotzdem noch die Eurovignette?
   Ja für Holland
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
   Nein

12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Die Installation selber war kein Problem. Aber die Boxen kamen erst 2 Tage vor Beginn der Maut und am Tag an dem sie gestartet ist, hatten ein paar LKW immer noch keine Boxen und konnten somit nicht den geplanten Weg nach Belgien fahren. Das war sehr schlecht!

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Nur erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Nein, das funktioniert leider nicht. Ich sag das mal ganz salopp. Es gibt immer Geier an der nächsten Ecke die die Kunden dann bedienen und denken sie schaffen es dann über die Menge die Kosten wieder rauszuholen. An die dürfen wir unsere Kunden nicht verlieren.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Für Belgien auf jedenfall gut, denn die haben ja richtig schlechte Straßen und das schon seit 20 Jahren. Das schadet nicht nur den LKW sondern auch den PKW’s

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Ich denke das ist eine Möglichkeit von Belgien die Wirtschaft über Wasser zu halten. Das Land ist ja schon lange pleite und die Einnahmequelle wird bestimmt nicht in den Straßenbau fließen, sondern wird dazu dienen die Schulden des Landes abzubezahlen.

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Abschaffen, oder ein gemeinsames System für Europa, aber da wird Frankreich und Deutschland auch nicht mitmachen, jeder will sein eigenes Ding machen und seine eigenes Geld verdienen. Aber man hat ja mittlerweile so viele verschiedene Mautboxen im LKW hängen.
Appendix 9 – Interview with Gebrüder Sauels GmbH & Co. KG

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? 1 Mal die Woche
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren? West Belgien, Grenzübergang Aachen wird benutzt
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien? Genauso

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt? Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie fragen 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   7% mehr pro Fracht
9. Welchen Einfluss hat die Maut auf ihre Logistik? Preise pro Fracht sind teurer
10. Kaufen Sie trotzdem noch die Eurovignette? Ja für die Niederlande muss man ja
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut? Nein
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Nein

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Gut, aufgrund von Verbesserungen für das Land.

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Veränderungen wie in Deutschland, Investitionen in die Renten und Wirtschaft. Aber ich glaube nicht daran, dass sich was an den Straßen verbessern wird, das ist ja auch nicht in Deutschland passiert.

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Das man auch ohne Boxen fahren kann in anderen Ländern, wie auch in Deutschland.
Appendix 10 – Interview with Dsts Jürgen Senz GmbH

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Jeden Tag
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?  
   Von Düsseldorf nach Beveren bei Antwerpen, oder Antwerpen selber oder nach Zeebrügge selber und wieder zurück nach Düsseldorf
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?  
   Unverändert
6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?  
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?
7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   Keine Auskunft aber die Eurovignette hat vorher im Jahr 1250 Euro gekostet und die wird auch weiter als Jahresticket gekauft
8. Was sagen Sie zu dem neuen Mautesystem in Belgien?  
   Arbeitsbeschaffungsmaßnahme für Alle
9. Welchen Einfluss hat die Maut auf ihre Logistik?  
   Auf die Logistik selber hat sie keine
10. Kaufen Sie trotzdem noch die Eurovignette?  
    Ja
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
Ja viel mehr Zeit. Für die Rechnungsprüfung und die Weiterbelastung an unsere Spediteure und noch viel mehr.

12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
Nein gar nicht, es fallen höchstens mal welche aus die ausgetauscht werden müssen.

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
Nur erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
Soweit es ging. Nicht alle Spediteure lassen das zu.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
Absolut eine schlechte. Für Alle bedeutet die Maut ein größerer Aufwand. Bei einem Ausfall einer Box kann der LKW nicht durch Belgien fahren oder muss eben an der Grenze warten und das Problem beheben lassen. Das führt dann zu großen Ausfällen der Fahrer und der LKW

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
Appendix 11 – Interview with IV Niederrheinlogistik GmbH

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Wöchentlich ca. 1-2 Ladungen
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Nach Oostende und Meulebeke
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Genauso
   Nein wir nutzen die gleichen wie vorher.
   Zur Route: Start in Viersen, über Holland und in Belgien über E17

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut) € 35 ca.

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Dass das Problem ist, dass die Kunden nicht bereit sind die Mehrkosten zu bezahlen und die Logistik und Speditionsunternehmen auf den Kosten sitzen bleiben und somit geringere Magen haben.

9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Weniger Gewinn

10. Kaufen Sie trotzdem noch die Eurovignette?
    Ja, für die anderen Länder natürlich

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
    Nein alles automatisch
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Zu Beginn hatten einige Fahrer Probleme mit der Bedienung, aber das hat sich jetzt gelegt.
13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Nur erhöht
14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Wir haben es bei allen versucht, aber nur ca. 75% sind dazu bereit auch die Kosten zu tragen. Der Rest hat sich geweigert.
15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Auf jeden Fall eine Gute aus der Sicht von Belgien, weil sie damit viel Geld verdienen.
16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Hoffentlich bessere Autobahnen
17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
Appendix 12 – Interview with Grueters Logistik GmbH

1. Transportieren Sie durch Belgien?
   Ja

2. Wie oft transportieren Sie durch Belgien?
   Insgesamt 80 Fahrzeuge. 5-15 Transporte pro Tag

3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Alle Postleitzahlen in Belgien in Frankreich. Transit.

4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Kommt auf den Kunden an. Von manchen Kunden kommen weniger Aufträge als vorher.


6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   Im Schnitt € 30 - € 40

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Ärgerlich, dass es für jedes europäische Land unterschiedliche Mauten und Boxen gibt.

9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Keinen

10. Kaufen Sie trotzdem noch die Eurovignette?
    Ja, für Luxemburg und NL
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?‘
   1-1,5 Stunden pro Monat. Anfangs war es viel länger, jetzt brauchen wir nur Zeit für die
   Auswertung, aber es gab ja auch vorher die Deutsche Maut die ausgewertet werden
   musste.
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie
   die Probleme) Problemlos, wir haben Boxen durch die man auch durch Frankreich fahren
   kann und die dort die Maut auch brech
13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Nur erhöht
14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre
   Kunden erhöht?
   Alle die belgischen Touren betreffen haben wir erhöht. Es wird hier auch immer der
   Rückweg mit berechnet (Sprit- und Mautkosten)
15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von
   Belgien war?
   Außerhalb für uns Spediteure sehr schlecht.
16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System
   sind?
   Keine Änderungen am Straßenbau. Die Kosten landen auf dem Produkt und somit bei
   dem Endverbraucher. Steuern sollten ja auch in den Straßenbau fließen, werden aber
   dazu nicht genutzt und zusätzlich eine Maut eingeführt.
17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Ein vereinheitlichtes System in Europa. Dann sind die Preise auch nachvollziehbar für alle
   Spediteure und für alle die gleichen Bedingungen.
Appendix 13 – Interview with Beurskens Allround Cargo B.V.

(Speditionsunternehmen, kennt die Routen nicht)

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien?
   Täglich ca. 20 Sendungen direkt nach Belgien hinein und 60 bis 70 Sendungen durch Belgien hindurch in andere Länder
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Frankreich, Italien, Spanien, Portugal und England
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Etwas weniger wir versuchen bei Sendungen nach Italien zum Beispiel durch Deutschland und Schweiz zu fahren. Das dauert dann länger, ist aber eine Route die sich lohnt zu fahren.

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   ca. 35-40 Euro für ein Komplett Lkw hängt aber von der Strecke ab

8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Eigentlich sollte man das nicht machen aber alle Länder haben es, Holland macht das bestimmt auch bald. Wir sind das einzige Land was keine eigene Maut hat.
9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Alles wird teurer und die Maut kann man nicht immer auf den Kunden berechnen. Der bezahlt eh schon viel und wir können nicht jedes Jahr die Preise ändern. Provit für uns Spediteure und Transporteure wird immer geringer.

10. Kaufen Sie trotzdem noch die Eurovignette?
   Ja müssen die Transporteur Unternehmen machen, sie müssen ja auch noch durch andere Länder durch

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut? Nein für uns als Spediteur Unternehmen nicht

12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
   Nein, weil das machen auch die Transportunternehmen

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
   Nur erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Haben wir versucht, aber nicht jeder Kunde akzeptiert das, die kleinen ja damit wir auch Profit machen, aber die großen Firmen wie zum Beispiel Bayer akzeptieren das nicht, deshalb können wir auf sie die Mehrkosten nicht umrechnen. Dass bedeutet für uns ein viel geringeren Profit. Wir wollen unsere Großkunden halten, aber wenn sie nicht die mehr Kosten akzeptieren wird es teurer für uns, sonst gehen sie zur Konkurrenz.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Schlecht, weil die Fahrer versuchen andere Routen zu nehmen um die Mehrkosten zu senken, das bedeutet aber das die LKW’s länger fahren und somit mehr die Umweltverschmutzen als vorher. Außerdem werden die Straßen, wo vorher keine LKW gefahren sind viel voller.

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Dass die Transport und Speditionsunternehmen weniger verdienen können, weil sie alle mitmachen müssen bei der Maut, ob sie das wollen oder nicht.

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Entweder alle Mautsysteme abschaffen oder ein einheitliches Mautsystem. Wir sind schließlich in Europa, da sollte man doch ein gemeinsames System wählen und nicht jeder sein eigenes.
Appendix 14 – Interview with Jac de Kievit en Zn B.V.

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Ein mal in zwei Monaten
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Leuk in Brüssel, ans Meer, Antwerpen
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Gleich
5. Nutzen Sie seit der Mauteinführung andere Routen als zuvor? Bitte vergleichen Sie den
   Unterschied von den alten und neuen Routen. (Längere Wege/ vermeiden Sie
   Autobahnen/ vermeiden Sie es durch Belgien zu fahren? / welchen Grenzübergang
   wählen Sie?
   Nein für diese Anzahl an Transporten ist das nicht nötig
6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte
      Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug
      auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?
7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf
   die Maut)
   Kann ich Ihnen nicht genau sagen. Ich glaube bis zu 30 Euro.
8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Gut für Belgien aber nicht gut für uns, weil es teurer wird. Aber wenn die Wege besser
   werden ist es okay, weil die Wege im Moment sehr schlecht sind.
9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Keine
10. Kaufen Sie trotzdem noch die Eurovignette? Ja
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut? Ja,
    aber das ist vielleicht eine Stunde pro halbes Jahr
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)
    Nein war gar kein Problem

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
    Nur erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
    Ja auf die Kunden wird das komplett umgerechnet, deshalb haben wir keine Mehrkosten

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
    Keine Meinung dazu, habe mich nicht damit beschäftigt, weil wir so selten durch Belgien fahren

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
    Hoffentlich bessere Straßen

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
    Nichts das ist so in Ordnung, weil wir nicht viel durch Belgien transportieren und deshalb die Kosten ganz gut auf unsere Kunden umrechnen können.
Appendix 15 – Interview with KLG Europe Venlo B.V.

1. Do you transport to/through Belgium?
   Yes

2. How often do you transport to or through Belgium?
   Daily base

3. Where exactly do you transport to when transporting to/through Belgium?
   Throughout Belgium, local distribution. Also transit traffic to UK.

4. Since the new Belgian toll system was introduced, do you drive less/more to/through Belgium?
   More or less the same.

5. Did you take different routes before the new toll system was introduced? (now longer/avoid motorways/avoid Belgium)
   -> compare old + new routes on a map
   No, we use the same routes. We have revised our transport rates to compensate for the cost impact.

6. If yes: For the most important places:
   a. Which route do you take now? Which route did you take before the new toll system?
   b. How long is the new route in terms of kilometres? How long was the old one? (one-way route)
   c. How much time does it take now? How much time did it take before? (one-way route)?
   d. How much does a one-way route cost? How much did it cost before? (toll only)
   e. What are the total costs for a one-way route? What were they before?

7. If no: How much does a one-way route cost? How much did it cost before? (toll only)
   Before, only the cost of a Eurovignet. Now, besides the Eurovignet (for NL) Transit to UK. Costs are around € 30.

8. What do you think about the new toll system in Belgium?
   Again it affects the costs for the logistics sector. In my opinion, one uniform European solution would be better. Also, we don’t believe that all the revenue will be re-invested in the infrastructure.

9. How has it affected your logistics?
   The costs are higher. It’s always difficult to sell a cost increase to your customer.

10. Do you still buy the Eurovignette?
    Yes, for Dutch motorways.
11. Do you spend more/less time on organizational formalities for the Belgian toll?
   The main impact was before the introduction. This was to get all rates raised. Now it only
   affects checking the invoices of our subcontractors (KLG Europe Venlo doesn’t have its
   own fleet).

12. Did you have problems installing the OBU box? (If yes: be specific)
   No, as KLG Europe we don’t have our own fleet. Subcontractors had problems, but we
   don’t know all details.

13. Has the new Belgian toll system increased/reduced the costs for your company?
   Increased.

14. Have you increased/reduced the rates for your customers since the introduction of the
new Belgian toll system?
   Yes, we increased the rates on the introduction date of the Belgian toll.

15. Do you think that the new toll system was a good or bad decision made by Belgium?
   Bad, as mentioned earlier in the case of tolls. One method would have been better.

16. What do you think are the long and short term effects of the new system?
   Fewer goods will be imported by Antwerp in both the long and short term.

17. What would you like to change about the new Belgian toll system if you could?
   To reduce daily experience with the OBU and invoices to assess operational changes.

Fast alle Autobahnen in Belgien.
Aber die Transit LKWs nach Groß Britannien werden meistens die folgende Straße nutzen (in
Blau).

![Map of Belgium showing a route in blue.](image-url)
Appendix 16 – Interview with Cabooter Holding B.V.

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien? Jeden Tag
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   In die Niederlande und nach Deutschland
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien? Gleich wie vor der Einführung

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
   Wie viel kostet eine One-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   Abhängig davon, wie viele KM durch Belgien gefahren werden
8. Was sagen Sie zu dem neuen Mautsystem in Belgien?
   Schlecht
9. Welchen Einfluss hat die Maut auf ihre Logistik?
   Transport wird teurer
10. Kaufen Sie trotzdem noch die Eurovignette?
    Ja
11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut? Nein
12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme) Nein
13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
    Erhöht
14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
   Ja, bei manchen Kunden

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war?
   Schlecht

16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?
   Fast kein Unternehmer gewöhnt sich daran

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Ab sofort rückgängig machen
Appendix 17 – Interview with Finsterwalder Transport & Logistik

1. Transportieren Sie durch Belgien? Ja
2. Wie oft transportieren Sie durch Belgien?
   Täglich mit mehreren LKW Transit oder Zustellungen oft mit Sattelzug (wichtig wegen den Kosten)
3. Wohin transportieren Sie genau, wenn Sie durch Belgien transportieren?
   Frankreich, Italien, Roosendaal in Südwest Holland
4. Fahren Sie seit der Mauteinführung in Belgien öfter oder weniger durch Belgien?
   Nein genauso wie vorher, man muss ja den Kundenwünschen nachgehen

6. Wenn Sie Frage 5 mit Ja beantwortet haben:
   a) Welche Route nehmen Sie jetzt?
      Welche Route haben Sie vorher genommen?
   b) Wie viele Kilometer hat die neue Route? Wie viele Kilometer hatte die alte Route?
   c) Wie viel Zeit brauchen Sie für die neue Route? Wie viel Zeit haben Sie für die alte Route gebraucht?
   d) Wie viel kostet eine one-way Route? Wie viel hat sie vorher gekostet? (Nur im Bezug auf die Maut)
   e) Wie viel kostet eine one-way Route insgesamt? Wie viel hat sie vorher gekostet?

7. Wenn Sie Frage 5 mit Nein beantwortet haben:
8. Was sagen Sie zu dem neuen Mautsystem in Belgien?

9. Welchen Einfluss hat die Maut auf Ihre Logistik?
Nur die Kostenerhöhung

10. Kaufen Sie trotzdem noch die Eurovignette?
Ja, siehe Frage 7

11. Brauchen Sie mehr Zeit für organisatorische Bestimmungen für die belgische Maut?
Nein, geht alles Automatisch. Alles wird auf die Kennzeichen berechnet, natürlich muss das verarbeitet werden und auch die Rechnungen gezahlt werden, aber das ist nur ein bisschen Zeit.

12. Hatten Sie Probleme mit der Installation von der OBU Box? (Wenn ja bitte erläutern Sie die Probleme)

13. Hat die Maut die Kosten für Ihr Unternehmen gesenkt oder erhöht?
Nur erhöht

14. Haben Sie seit der Einführung des neuen Mautsystems in Belgien die Kosten für Ihre Kunden erhöht?
Ja, wir bringen die meisten Kosten den Kunden in Rechnung. Das Problem war, dass am 1. April die Kosten noch gar nicht bekannt waren und diese den Kunden noch nicht in Rechnung gebracht werden konnten.

15. Denken Sie, dass die belgische Maut eine gute oder eine schlechte Entscheidung von Belgien war? Für Belgien bestimmt gut, weil es eine große Einnahmequelle ist. Für uns natürlich schlecht, weil sich die Kosten erhöht haben und diese nicht alle gedeckt sind.
16. Was denken Sie, was die langfristigen und kurzfristigen Effekte von dem neuen System sind?

17. Was würden Sie gerne am belgischen Mautsystem ändern, wenn Sie könnten?
   Einfach stornieren. Eurovignettenkosten anpassen, weil warum sollen wir denn den belgischen Anteil der Eurovignettenkosten weiterzahlen, wenn diese gar nicht mehr mit inbegriffen ist?
Welcome and Keynotes

Theo Bovens, The King's Commissioner

Ladies and gentlemen,

Welcome to the ‘Gouvernement’, our provincial parliament building on the bank of the Meuse. Welcome to our Statenzaal, the provincial parliamentary assembly hall. Our Statenzaal: not only the place where ITEM had its maiden conference last year, but also the location in which, almost 25 years ago, on 7 February 1992, the Maastricht Treaty was signed. The Treaty that outlined a united Europe without borders.

A united Europe without borders that would prevent new wars, Wars that had caused so much sadness and misery in the twentieth century. Wars that had also turned our borders into serious obstacles. Before that time, we did not let these geographic divides separate us here, in these border regions. Not really.

Not, in any case, when it came to labour; not when it came to entrepreneurship; not when it came to constructing railway tracks, to name but a few examples. Thus, towards the end of the 19th century, many workers from Limburg would travel to find employment in the German stone factories, that could use the many extra hands precisely in the baking season, contrary to the ailing agriculture at home.

Entire sections of villages were boarded up as their residents went off to fill their pockets on the other side of the border before the advent of winter. And as far as entrepreneurship is concerned: it was mainly industrialists from Liege who first discovered the potential of the South Limburg region in the second half of the 19th century. They were the ones who, using Walloon funds, founded the Société Céramique ceramic factory, and the zinc-white industry in Eijsden, and the first private mines, and the paper industry, and so many more.

Merely because they saw opportunity on the other side of the border, yet so close to home. Much like the railways of the time would not be hindered by national borders.

Indeed, the first railroad to have been constructed in Limburg was the one between Aachen and Maastricht in 1853. It was extended to Hasselt only 3 years later, thus bridging the German and Belgian rail networks.

In fact, these tracks did no more than follow the business interests and most frequent contacts of those days. Today, however...

Nevertheless, many labour opportunities still await us on the other side of the border, even today. However, those aiming to grab these opportunities today do encounter somewhat more red tape than the ‘brick baker’ of yore. What will your diploma be worth on the other side, your pension plan, your mortgage? In short: complicated. The same applies to entrepreneurship: there are opportunities galore.
However, those seeking, like the entrepreneurs from Liege, to make a solid cross-border impact now find in their way a barricade, made of tangled rules, regulations and legislation. And, yes, there will be a project here or an experiment there, with or without European funding, and while these certainly yield something, a complex, cross-border research centre remains far away.

And what to say about train travel?

That cross-border, East-West railway connection does not even exist anymore! After World War I, those tracks gradually turned inward, towards the different national centres.

Surely, you can still take the train from Hasselt to Aachen via Maastricht, but, and I have checked this for you, if you hop on in Hasselt just after 7:30 tonight, you will be in Aachen at 11:45. Well over four hours to cover a distance of 70 kilometres as the crow flies! Then again, you will have been to Liege too. Moreover, in the great railway days, we still spoke our neighbouring languages: French, German, our local dialect and even, yes, even some Dutch. And today? Ladies and Gentlemen, I enjoy addressing these situations because they reveal so beautifully the potential of Europe. Its potential for growth, which is mainly concentrated in precisely those border regions, like Limburg and its foreign counterparts in Belgium and Germany.

How much stronger and smarter could we not make Europe if we were able to build bridges across those barricades, in all those border regions? Solid, structural, unburdening bridges. Solid, structural and unburdening bridges that we can construct if we know the exact substance of the barricades. If we succeed in unravelling to the finest detail the different tangles of national laws and regulations.

Ladies and Gentlemen, it was not without reason that precisely Limburg, with its borders and neighbours always so close, saw the birth of a cross-border institute like ITEM. A cross-border institute with as its core task to offer swift and sharp legal advice and solutions in those situations where legislation is about to impose obstacles instead of overcoming them. As I formulated it last year, during its maiden conference: ‘This year, during its first annual conference, ITEM presents what it has already managed to unravel, through its own cross-border impact assessment. And its plans for a euregional professions map. A euregional professions map that offers employees more insight in the value of their diplomas on the other side of the border.’

Ladies and Gentlemen, thus one of those solid, structural, unburdening bridges is actually in sight! This makes it so special to have this ITEM Annual Conference, reflecting on 25 years since the signing of the Maastricht Treaty, precisely here, in the birth room of a united Europe. It suits the silver anniversary programme of our Maastricht Treaty just fine. I call this our Treaty, for we have always been especially proud of this Treaty. Not only because it was signed in Maastricht, but, above all, because we much recognized ourselves in the united Europe without borders that it outlines. At present, 25 years later, the Treaty seems to have lost most of its lustre. Yet, we remain ‘fans’ of what was agreed then. Precisely because we, living in this mini-Europe of ours, have known for a very long time how much stronger and smarter cooperation with our neighbours makes us. Because, secretly, we think that precisely those bridges to and constructed with our neighbours might save Europe, or, at least, make it stronger.
Ladies and Gentlemen, it is out of respect for the good that a united Europe without borders may continue to offer us, that we, the City of Maastricht and the Province of Limburg, have prepared an anniversary programme under the theme ‘Europe Calling’. This programme will transform Maastricht into a workshop where everyone can come and tinker with the future of Europe in the coming period.

On 9 December, for instance, we will relive the 1991 Euro Summit, which took place in this building, during the EU & ME conference. EU & ME is a conference in which the players of then and now look back and focus on current issues, such as our thinking about borders. On 7 February, the exact date of the 25th anniversary of the Treaty, thousands of young people from all over Europe will come to its birthplace to share their visions for the future. Their visions for a Europe, which to this Génération Maastricht has never been anything but the united Europe they were born and raised in; a Europe of open borders. Plus, we will organize a Europe Calling! Citizens’ Summit, especially for the inhabitants of the Euregio Meuse-Rhine.

A Citizens’ Summit at which Dutch, German, and Belgian citizens, speaking French, German and Dutch, will discuss the future of Europe together. Is there a ‘brick baker’ still hiding inside these citizens? Is their entrepreneurship as alive as that of the Walloons of yore? Or is their interest limited to shopping for beer, gasoline and groceries at the neighbours’ these days? We, in any case, are very anxious to hear about the cross-borders ideas and dreams of these euregional citizens. Moreover, during these anniversary days, we enjoy opening the doors of this birthplace of the Maastricht Treaty wide to meetings such as yours, devoted to the future of Europe.

Earlier this week, a mini-conference about cross-border judicial cooperation took place here, as well as a meeting between the three Ministers of Justice of the Netherlands, Belgium and North Rhine-Westphalia. And last week, in the party room one floor below, Angela Merkel, Jean Claude Juncker and Petro Porosjenko, the President of the Ukraine gathered as members of the European People's Party, in preparation of next week’s Euro Summit meeting.

So, Ladies and Gentlemen, it was here, in the middle of this room, that the Maastricht Treaty was once signed. A copy of it is kept opposite the entrance, behind the table at which it was signed at the time. You too can place your signature there today, or even leave a message in the large guest book of Europe Calling! You can’t miss it; it is even larger than the Treaty. So, please feel absolutely free to share all your personal messages for a future Europe.

Perhaps your message is about the borderless, united Europe that would have allowed you to travel from Hasselt to Aachen again, directly and in no time this evening. And back again. For this reason, I wish you a very successful and inspiring annual ITEM conference.
Professor Hildegard Schneider

Governor Bovens,
Madam Monfret,
Ladies and Gentlemen.

Tempus fugit! Time flies. It is already one year ago that we could welcome many of you to first international kick-off conference of ITEM. This month it was precisely two years ago when the provincial assembly voted in this very room in favour of the financial contribution for the establishment of ITEM, the Institute for Transnational and Euregional Cross Border Cooperation and Mobility. This all seems to be just yesterday. However, if I look back on this last year and all the events we have organized, the research we have done and the reports we have written, it seems to me already as if ITEM has existed already since years.

During these last two years since the positive decision in this room, we, my colleagues from the various faculties of Maastricht University and I, have tried with many of our external partners to give shape to a project which was first only an idea framed in a business case. We are still thankful for the trust the province, the university and all our other partners have given us by allowing us to set up this new institute.

I am also very happy that so many followed our call to come to Maastricht and attend this second annual conference. It shows a keen interest in the results of research and actions we can already present but also willingness from your side to discuss with us possible solutions for urgent problems.

It is my sincere conviction that initiatives like this are needed today more than ever before to keep the European project alive. This year in June, it was for me and as I know, for many others one of the darkest moments in the history of the European Union. I woke up very early in the morning at the borders of the Lake of Constance where I attended an international conference celebrating the 50th anniversary of the University of Constance. During the evening before, at the dinner table, we had discussed quite vividly the possible outcome of the referendum in the United Kingdom. Most of my colleagues were very optimistic and told me that I should not be worried, the British would finally vote in favour of remaining in the European Union. I was more sceptical but listened with increasing hope to the encouraging words of my dinner table partners. Therefore, I went to bed in an optimistic mood. This mood has changed totally when I heard the final result of the referendum in the early morning. Last year, Herwig Verschueren reminded us that it is only 100 years ago when WW I destroyed the lives of so many just across our borders in Belgium. In 2018 we commemorate the end of the Great War. We also shall celebrate, hopefully, the 60 years of the entering in to force of the Treaty to establish the European Economic Community, the EEC as it was called. AND we shall celebrate especially here in this city and in this building that on the 1st November 2018 it will be 25 years that the Maastricht Treaty, the Treaty on the European Union entered in to force. Theo Bovens already has mentioned that the celebrations for the Treaty of Maastricht will start next month on the 9th of December. For me, as a European lawyer, being born after World War II, the existence of the European Union has been
always closely connected with the feeling of being privileged for being allowed to live in a part of the world where peace and prosperity is considered as something normal and unquestionable.

The European integration process including the Maastricht Treaty and the Internal Market with an Area without Frontiers wherein the European Citizen can move freely and work has for me always been one of the most important achievements realized by the post-World War II generations. I still cannot believe that a majority of the population of the United Kingdom does not consider this achievement important enough for remaining in the European Union. And even in this country some people seriously consider the possibility of a NEXIT. Why now is this still the case? And what can we do against these populist movements?

Why do I think that an institute like ITEM but also many other institute and centres that work at border regions or try to help abolishing free movement problems are of such utmost importance? We have the responsibility to explain to the citizens of Europe the many advantages of an Internal Market for their daily lives and we have to do our utmost best that the once who want to work across the borders are helped and not confronted with even sometimes increasing problems and bureaucratic obstacles. It is our duty— and with "our" I mean all of us, scientists, as well as civil servants, being in the service of Member states but also working in Brusel to help people to use the rights as European Citizens. Please get the spirit of the 1980s and 1990s when we were all working for the creation of the Internal Market back into your system.

For me as a European Union lawyer, but also as citizen of this European Union who considers this project of a United Europe as essential for peace and prosperity not only in Europe but also on a wider, more global scale, is the fact that this Union is now so much under pressure and shuttered in its foundations very difficult to accept and a challenge to face with all means. With ITEM, we hope that we can contribute at least in this region for better conditions for cross-border cooperation and mobility. We hope that our experience can be inspiring for other regions. We want to contribute and engage in international networks with other organisations and institutions with common goals. Exchanges of best practices, trainings and conferences such as this one will hopefully help that the most urgent difficulties can be mastered better in the near future.

It is my sincere wish that in 2018, when we celebrate here in Maastricht the 25th anniversary of the Treaty on the European Union and the 60th anniversary of the European Economic Community but also commemorate WWI, that we can present to you our contributions to better cross-border co-operations in this Euregion but hopefully even in the European Union as a whole. We will need your help to realize this goal and I hope therefore that the coming years will show many fruitful co-operations and common initiatives at these borders and across. Thank you very much for coming to Maastricht, for your support of our institute during the past years and I wish you interesting exchanges and discussions at the border of the Meuse.
Ms Agnes Monfret

The border is where Europe, or the lack of it, can best be felt. While Europe and cross-border cooperation has existed for many years, the Interreg initiative was launched only 26 years ago. Now is the time to make an inventory of relevant issues in the border regions.

Although Interreg started 26 years ago, its funding has remained rather modest with EUR 10 billion over the last 2 programming periods, that is to say less than 3% of the EU budget for cohesion policy. Nevertheless, Interreg is the only remaining form of public funding in many border regions since the economic crisis.

Interreg is composed of three strands: the cross-border strand consisting of 60 programmes; the transnational strand for larger areas; and four interregional programmes. Eleven Interreg programmes are active in the Netherlands, with a total envelop of EUR 2.9 billion available. National co-financing represents an important share in Interreg programmes with the participation of the Netherlands, in line with the logic of regional development aimed at supporting regions so that they can ultimately support their own further development. The financial framework for the 2014-2020 period puts smart, sustainable and inclusive growth first. The programming chosen in the Netherlands has a clear focus on smart and sustainable growth.

Transparency and accountability for actions taken are crucial for any public administration. Where to start? Which changes do we want to realize? How to measure the impact of our action? Transparency and accountability are of great importance to the European Commission which, as a public organisation, is accountable for the use of taxpayers' money. An open data platform was opened in December 2015, which publishes for each European Structural and Investment programme, including the Interreg programmes, the intended targets and will now gradually report on where we stand vis-à-vis each of them. This will allow citizens to monitor the programmes outputs and results and to interact. Participation will become increasingly important, and the platform will be expanded as implementation unfolds. We must take responsibility for our actions and must not forget to be proud of our achievements.

In this light, the Commission made an inventory of obstacles in border regions, which identified legal and administrative obstacles, social security, public transport, policy planning, trade and industry as the most important fields to concentrate upon when it comes to facilitate the lives of border people. The inventory was supported by a public consultation and stakeholders' workshops, which evidenced that legal and administrative barriers are the most important barriers, followed by languages, mobility and transport.

These barriers stand in the way of cohesion and further integration, limit the regions’ economic potential and reduce the impact of funding. A first step towards improvement is documentation. An obstacle that has not been mapped, cannot be dealt with. The Commission intends to issue a communication in 2017 to account for the work done so far and to arrive at recommendations to solve these issues. Its progress can be monitored online.

With a view to guide future funding, the Commission also commissioned a study to look into border needs, focusing on potentials as well as obstacles. The study is unique given the limited
amount of cross-border data available. This study offers a first step into comparing relative border needs at EU internal borders. Not surprisingly, cultural obstacles as well as legal and administrative barriers feature high amongst the obstacles to address. The final results of this study are available online at http://europa.eu/!gb63XQ.

ITEM: one year after its opening conference
Simone van Trier meets Professor Schneider and Professor Bollen-Vandenboorn

One year after the start of ITEM, the Institute is doing fantastic. Professor Bollen thanks everyone cordially for their input in the form of casuistry, practical assignments and research assignments. This first year has not only seen questions in the form of casuistry answered, but has also led to questions being posed to the European Parliament, ministries and Parliamentary Committees. In 2017, the roll out of the knowledge bank with better visibility of the casuistry will receive special attention, so that not only the feedback of casuistry will become more transparent, but best practices will also become more visible to the outside world. In addition, this knowledge bank will clarify the scientific background to issues. Of course, the border impact assessments will be a point of focus again in the year 2017.

As a scientific backbone, ITEM is no front office but rather goes in depth on problems that the front offices face as well as on recurring problems. In this context, Prof. Schneider makes a plea to choose in dubio pro mobilitate when designing regulations, i.e. a choice for mobility in practice when in doubt and a reduced thinking in terms of the regime of the rules. Europe Calling is one important initiative to persuade regulators to adopt a broader vision and to depart from the focus on their own country to solve problems. A tool that ITEM is developing to assist regulators is the ITEM Quick Scan. By means of a Quick Scan, the cross-border impact of legislative proposals and laws can be identified. After all, it is not the legislator’s aim to damage the border regions, but it does require better awareness of the cross-border problems. The Quick Scan is designed to identify potential problems for border regions, in order to perform subsequent in-depth assessments of these problems.

Does a border hamper regional development? A macro-economic approach
Professor Côrvers (ITEM / ROA / Maastricht University)

Cross-border labour mobility is important in establishing a better match between supply and demand in the labour market. Overall, a combined labour market leads to more applicants and more vacancies. This, in turn, leads to increased productivity, higher wages, rising labour participation, more economic growth and lower unemployment on both sides of the border. Conversely, a labour market that is divided by a border and creates barriers for labour mobility leads to demographic decline in the border area, a zone extending to roughly 70 kilometres from the border. Without the barriers of borders, labour mobility between areas might be twenty times as high as today, not taking sectoral differences into account, however.
The division of labour is uneven across the Netherlands, with a concentration in the Randstad region and fewer jobs in the border regions. Nevertheless, unemployment in border regions follows the national economy. This implies that border regions without barriers could compensate for one another’s shortages and surpluses, whereas negative border effects stand in the way of this.

In conclusion, borders have an impeding influence on border regions, in that they cause demographic decline, a drop in labour mobility, migration below potential levels, and higher unemployment. Mitigating the border effects creates opportunities for a better functioning euregional labour market. Thankfully, we now have ITEM to find concrete solutions to existing impediments.

Demographic and sociological developments in Limburg and the Euregio
Dr. Reverda (ITEM/NEIMED/Lecturer Zuyd Hogeschool)

While the world population will continue to grow for the time being, Europe forms an exception with declining population rates. Combined with a high rate of ageing, this will lead to a large reduction of the active population. In order to maintain labour productivity at current levels, Europe will need 60 to 70 million more people. Changes in population size in the Netherlands are uneven too: the areas currently showing population decline, i.e. South Limburg, Groningen and Zeeland Flanders will expand somewhat. South Limburg faces an opposite trend on the other side of the border, with population increases occurring in cities such as Aachen and Liege and the province of Belgian Limburg, whereas their own cities expect a decline of 40-50 thousand people.

Besides a demographic challenge, it also faces a sociological challenge with the misleading development of a falling unemployment rate that is caused not by people finding jobs, but rather by people retiring. This socio-economic challenge has been translated into the provincial agenda.

To tackle the problems, the Euregio Meuse-Rhine needs to become a society rather than the construct drawn on a map that it is today. Making regions interdependent does not help in building a society. The motivation for cooperation will have to shift from seeing the other as the solution to your own problems to actual cooperation itself. Starting visible projects and adopting metropolitan thinking can help shift the focus. The Eutropolis concept, the Euregional city of 4 million inhabitants, should be used rather than merely adopted. A common football team could serve as an indicator; just imagine the sociological effect on the Euregio if a Eutropolis football team were to play Real Madrid - and win. Other examples of potential solutions include an exchange of students and staff between the eight academic institutions in the Euregio or the development of a common research agenda.

ITEM’s 2016 cross-border impact assessment
‘De-borderer’ Mr Unfried (ITEM)

One of ITEM’s tasks is to write an annual cross-border impact assessment, incorporating the legislation relevant to cross-border situations, as identified by a Quick Scan currently under development. This year’s topics have been proposed by several institutions and persons closely
involved in cross-border issues. Of around 50 subjects proposed, 10 have been selected for further research and inclusion in the 2016 ITEM Cross-Border Impact Assessment, focusing on labour mobility from the perspective of actual and potential cross-border workers.

There are various other instruments for measuring the cross-border effects, used on behalf of a number of different institutions. Examples of these include the European Commission’s performance of ex ante impact assessments of regulations or the Dutch government’s intention to better incorporate border effects in its legislative procedure.

The aim of the cross-border impact assessment is to reveal and present problems to the institutions of the border region, the national and regional legislators, and the European Commission. After all, it is difficult for these institutions to assess all factors that might cause border effects themselves, partly because they need to take into account a large number of border regions, and also because they cannot be expected to have the in-house expertise to assess the effects on the border region.

The studies have partially been performed ex ante, i.e. research into the potential effects of legislation proposed, partially ex post, i.e. research into the actual effects of legislation already in force. It is of great relevance to note that, besides legislation, administrative practice is important in determining the effects of that same legislation. This is a striking conclusion from the ‘Recognition of Qualifications’ Dossier especially, in which administrative practice turns out to be more of an obstacle than the European guideline or its implementation.

To perform a solid assessment of the potential and actual effects on border areas, it was important to use separate definitions of the border area for each dossier. The Euregios often show overlap, which is especially clear from the INTERREG programmes. The reports have been written from a euregional and European perspective rather than a regional or national one in order to assess the effects from a broader perspective.

The effects discussed in the report pertain to different issues:

- Aims and principles of European integration
- Socio-economic development / sustainable development of the Euregio
- Euregional cohesion and influence on cross-border administrative structures

The focus of the 2016 Cross-Border Impact Assessment is mainly on the first issue, aiming to present the perspective of the European citizen who wishes to make use of free movement based on non-discrimination. It is often difficult, however, to translate these effects into economic consequences, partly because data is difficult or impossible to obtain. The method used in the 2016 cross-border impact assessment first established best practices and norms and subsequently assessed the legislation by means of indicators.
Panel
Including ‘De-borderer’ Mr Unfried (ITEM); Mr Peyrony (MOT, Frankrijk); Dr. Soares (Centre for Cross Border Studies, Northern Ireland’; and Ms Thevenet (Euro Institute, Germany)

Question from Mr Unfried to Dr. Soares; has a cross-border impact assessment been performed regarding BREXIT?

Recently, there has been much debate about evidence-based policy making. The Centre for Cross Border Studies was involved in an impact assessment performed prior to the referendum. Its conclusion, based on overwhelming evidence, was that leaving the EU would have a negative impact. The political will, however, leaned towards a different point of view and called for experts and the media to be ignored. The previous government under David Cameron performed an evaluation of the division of competencies between the EU and the UK revolving around the question whether the European policy was beneficial to the UK. From its thousands of pages, the European model as a whole proved to be beneficial to the United Kingdom. This evaluation, however, was not disseminated widely within government circles, requiring people to enquire actively about the evaluation report to be able to access its conclusions. In summary, we could say that an effect assessment was performed that predicted a negative impact on the UK and an even more negative impact for the border regions. While this was known before the referendum, it was ignored.

Question from Mr Unfried to Mr Peyrony; Is cross-border cooperation in danger?

The open border is not in immediate danger, but BREXIT is a living example of what might happen to open borders if we do not guard against such developments. The MOT mainly operates in the French cross-border regions, where border effect assessments have hardly been performed yet. Ex-ante assessments are being performed by the national legislator, but they are not widely promoted. MOT is active in a procedural way: some MPs represent border regions in Parliament, and are able to propose amendments to on-going legislation in the name of CB regions. Ex-post assessments are more important to MOT in overcoming obstacles in a bottom-up, multi-level manner. Many obstacles, e.g. administrative, can be tackled locally; MOT contributes to the dissemination of good practices and can report to the national and European upper levels on obstacles that don’t find a local solution. At national level, ministries have to monitor the legislation and change it whenever necessary. Agreements with neighboring states may also be necessary. The same at European level: impact assessments have to include the CB dimension, which requires better CB data (DG REGIO has just launched a call for project on this issue), but also a qualitative process (role of DG REGIO and CoR).

Question from Mr Unfried to Ms Thevenet; Would a cross-border impact assessment be useful for the Euro Institute’s own border region?

Yes, certainly. The Euro-Institute tried to introduce the idea of a test phase on the impact assessment of projects as well as on selected European Directives on the French-German border when we worked together with the CCBS on the Impact Assessment Toolkit. At that time,
however, the open-mindedness and the will necessary for success was lacking. While the German side saw the advantages of such a test, the concept proved too novel for France. Nevertheless, the situation seems to change now!

The Euro Institute performs ex-post assessments whenever problems emerge on the practical side and contributes to a solution. Cooperation with authorities, institutes and other players is of vital importance and continuously developing. To exert actual influence and to control the impact of (European) legislation, it is necessary to feed Brussels with expertise. Cooperation is highly important to do so effectively.

Performing a border effect assessment in the Institute's own border region meets with many problems, such as the lack of funds for the time-consuming task of processing files. A precondition is also a shared political will on both side of the border. However, the Institute might contribute to research as member of a partnership, by making its network available and by providing its expertise.

**Question from Mr Unfried to Mr Soares: what is the Institute's current area of focus?**

The Centre for Cross Border Studies is currently mainly monitoring issues related to BREXIT. Despite BREXIT not being official yet, but rather in the stage of being the aftermath of the outcome of the referendum, it is of great importance to map its transnational consequences. One consequence of BREXIT is that Northern Ireland will no longer merely be sharing a border with Ireland but be separated from it by an EU external border. This presents a problem for Ireland too. Moreover, one should also bear in mind the potential consequences of BREXIT for the peace process in Northern Ireland. This makes it probable that the need for cross-border cooperation will actually grow after BREXIT.

**Question from Mr Unfried to Mr Peyrony; are there any EU programmes that could play a role in a cross-border impact assessment, in your opinion?**

We are witnessing an important phase in the development of cross border cooperation in the EU, with the Cross-border Review launched by the Commission and the follow-up of the Luxembourg presidency focused on the issue of obstacles. There is now common acknowledgement that we need, not only Interreg programs, but also: common knowledge of the CB region (CB data); a common vision of its future (CB strategy) supported by appropriate sustainable governance (Euroregions or equivalents) and by agencies with technical resources (Euroinstitutes, or equivalents...) All we need to do now is initiate projects and cooperate to actually make use of the expertise at our disposal (AEBR, MOT, ITEM, Euro institutes...). The biggest challenge is not the legal obstacles, because this is always possible to solve them when there is a will, but political and cultural obstacles.
Cross-border cooperation: Research into the INTERREG programmes on the Dutch border

Dr. Mariska van der Giessen (ITEM/Fontys UAS, Lector at Fontys Crossing-Borders)

The dossier of the investigation into INTERREG programmes in the Dutch border regions studies the consequences of the Regulations (EU) 1303/2013 and (EU) 1299/2013 for the INTERREG A programme.

This dossier covers three areas: Flanders-Netherlands, Germany-Netherlands and the Euregio Meuse-Rhine. The most important of the three research questions on which the study is based is the question about the difference in execution of the INTERREG V A programme compared to the previous programme period. The dossier also discusses the current state of affairs and investigates the potential causes of the negative image of the INTERREG programme. The study consists of interviews; a minimum of two interviews were held, including at least one person at programme level and one person at project level.

The state of affairs 2.5 years after the start in the programme areas shows that the INTERREG region of Germany-Netherlands is a pioneer in approving projects. There is great interest in the programmes, and all three areas are on schedule, with a large number of projects still in the preparatory phase. It is noteworthy that almost all lead partners in INTERREG V were partners in the INTERREG IV programme. This can be assessed both positively and negatively; it is, nevertheless, beneficial to have lead partners who are able to anticipate on the work ahead of them and who enter the programme with a certain degree of experience.

The foremost difference between INTERREG V and its predecessor is the substantial simplification of the procedure for project applications through, for instance, digitization. Furthermore, the procedures differ across programme areas. Also, the final settlement of projects has been simplified, using fewer control mechanisms and increasing the responsibilities of the project carriers. The interviews made it clear that the EU Regulations are sometimes interpreted differently by the different programmes, causing certain INTERREG regions to impose stricter requirements on themselves than necessary.

It is difficult to establish the exact grounds for INTERREG’s negative image. Ultimately, the interviews only leave room for assessments of what might cause this negative image. One possibility is that the feelings of administrative burden connected with the previous programme infect the next programme.

Overall, the programmes are nicely on schedule, and the new directives have eased the rules. This is, however, not equally noticeable everywhere as not all areas are making maximal use of the potential of simplification. It should, of course, be noted that the programmes set high standards for projects for a good reason: public means are involved.
Audience questions:

Question 1. Doesn't the fact that all lead partners in INTERREG V already had experience as partners in INTERREG IV indicate that the threshold is too high or the requirements made are too strict?

Reply from Dr. Van der Giessen (ITEM/Fontys): One could indeed explain this observation negatively. However, new players enter as new partners, who might become the lead partners in the next programme or project, once they have a certain amount of experience with INTERREG applications.

Question 2. Who would be the contact partner for facilitating the programmes? The partners, the Province of Limburg and North Rhine-Westphalia?

Reply from Dr. van der Giessen (ITEM/Fontys): All participating parties are potential contact partners for improving or facilitating the programmes. This includes the partners and the regional governments.

Impact of the new Dutch-German Fiscal Treaty

Prof. Prokisch (Maastricht University)

Professor Prokisch is himself a cross-border worker and has personal experience with cross-border issues. Taxation issues are not insurmountable and could be solved. The new Dutch-German Fiscal Treaty attempts to offer solutions but is still difficult to judge at the moment: it is very new, there is a transition period and there are no statistics available yet. This makes the effects discussed little more than projections, based on textual interpretations and emotional differences.

The Treaty does not include any definitions. This is problematic, in part because the previously used terms no longer cover the reality. A cross-border worker, for example, used to be a person who lived on one side and worked on the other side of the border. That definition is more problematic today, given that people can spend two days a week in the office, two more working from home, and the fifth day in Switzerland.

Before the Treaty can be discussed it is important to realize that effects not only originate from the Treaty directly, but also from alterations in national law.

The financial effects of the Fiscal Treaty have been nearly impossible to establish until now. The legal side is easier to assess, focusing on the question whether application of the new Treaty provides increased legal certainty. The choice for a new Fiscal Treaty rather than a protocol added to the old one shows that certain passages of the old Treaty lacked support. However, certain points remain unclear after reading the new Fiscal Treaty, which jurisprudence will have to clarify. Neither have all known problems from the old Treaty been addressed: a number of typical
border-regional issues have not been included in the Fiscal Treaty. While border issues are high on the Dutch agenda, a country like Germany has many more borders, and such federal politics may seem remote in North Rhine-Westphalia.

As far as employees are concerned, it is difficult to determine how many people will be affected by the changes. No-one knows exactly how many cross-border workers there are, and estimates differ vastly. While it is known that cross-border mobility is higher from Germany than from the Netherlands and that there is a downward trend, the why is, once again, unknown.

For shipping and aviation staff, the country of income taxation has changed. Whereas the old Treaty adopted the tax regime applicable in the employer’s country of residence, this provision in the new Fiscal Treaty transfers taxation rights to the tax payer’s country of residence. This would imply increased taxes for staff living in the Netherlands. Lobby activities caused this change to be repealed within weeks of its enforcement.

The main problem of the Fiscal Treaty is pensions. Persons who reside in Germany and receive a high pension from the Netherlands used to pay taxes on this pension in Germany under the old Treaty. In the new Fiscal Treaty, the height of the pension determines the tax regime to which it is subject. Once again, lobby activities caused the introduction of a transition scheme for this group.

In conclusion, a number of small changes have led to improvements, compared to the old situation. Nevertheless, many issues remained undiscussed, such as the problems of truck drivers, secondment, the disadvantages of limited tax liability, the requirement to submit tax returns in multiple countries, and the disadvantages for the highly skilled who work in multiple countries. Moreover, it is doubtful whether the compensation scheme was necessary. There are calls for a similar arrangement in Germany, but it is in fact entirely superfluous and causes legal uncertainty.

Question 1. Do you think they failed to take into account cross-border workers because the subjects were not included in the discussion or due to the nature of the negotiations, given they were conducted in English?

Reply from Prof. Prokisch: While the negotiations were conducted in English, the texts of the Tax Treaty are in Dutch and in German, which has caused some translation errors, of course.

Taxation does not pay much attention to the issues of border regions and cross-border workers. Regional issues should be on the agenda more often. This can be done by exerting influence on politics.

Addition from the audience: From the perspective of the Dutch Ministry, cross-border issues are the most important aspect of the discussion about the Tax Treaty. This can be found in the Explanatory Memorandum, which also devotes full attention to the problems of pensioners. Tax treaties are largely based on international measures, such as the OECD model treaty, which elaborates the definitions too. The negotiation process underlying any fiscal treaty implies
relinquishing some of the desired points. Germany has 9 neighbours, has to take their wishes into account and follow a line in the process. These circumstances make the Fiscal Treaty as it was signed the best possible treaty. Although German interests were different, the cross-border worker came first for the Netherlands, and it represented them during the negotiations.

Reply from Prof. Prokisch: Clearly, the situation of cross-border workers played a great role for the Netherlands. However, the international model was not designed to address regional issues and situations. Thus, from the Limburg perspective, it is not useful to follow the OECD model. It is more important to identify the problems in the region and address those. In addition, Germany has concluded a special treaty with Belgium which diverges from the treaties both countries have with the Netherlands. There should be more attention for euregional issues. Moreover, the focus on employees is insufficient since SMEs also require extra attention in establishing fiscal regulations for cross-border situations.

Question 2. Why do former cross-border workers with a Dutch pension of more than EUR 15,000 have to pay Dutch taxes on that pension?

Explanatory comment from the audience: This limit was set to prevent burdening pensioners with administration, but it does not solve the issue of having to submit tax statements in two countries. Prior to the negotiation process, Parliament demanded that the Netherlands claim taxing rights on own pensions, so the negotiators entered the process with this order. Also, with a percentage of below 10%, the tax burden on these pensions is still not high.

Explanatory comment from the audience: The Fiscal Treaty was signed and then extremely intensely debated. These debates have shown that the compensations on both sides of the border are not equal. As a consequence, there is no equality for cross-border workers, either at home or in the workplace.

Reply from Prof. Prokisch: That is indeed correct. But you start working in another country because it is attractive to you, don’t you? Countries should not have to compensate you for that.

Recognition of Professional Qualifications
Prof. Hildegard Schneider and Ms Kortese, LL.M.

Prof. Schneider

The recognition of professional qualifications has been an EU competence for over 55 years. Whenever recognition of professional qualifications is discussed, this pertains to the regulated professions and explicitly not to academic recognition, which is a Member State competency. Regulated professions are those professions for which certain requirements have been established by means of regulation. This regulation usually concerns professional practice and title but can also, for instance, consist of a description of the activities that the professional is allowed to perform. In Professor Schneider’s view, each regulation regarding a profession should result in the regulated status of that profession. This should even be the case if the only
requirement made by this regulation were the possession of a certain diploma.

On European level, the recognition of professional qualifications is governed by Directive 2005/36/EC, which is a combination of the various regulations that came into force over the years before. Although, theoretically, it was a good idea to unite these fragmented regulations, in practice, it has led to an inaccessible directive that is difficult to understand.

A number of problems that have occurred since the first European regulation in this domain in the 1960s remain unsolved. In the early years, sectoral directives were adopted aimed at certain professions. In the 1980s and 1990s the approach shifted towards the use of horizontal directives based on mutual recognition. These directives created a system for the recognition of qualifications for professions that were not covered by the sectoral directives. The intention was to require an adaptation period or other form of compensation only in case of substantial differences between qualifications. In practice, however, adaptation periods have become the standard rather than the exception. The incorporation of this regulation into Directive 2005/36/EC, nor the mutual recognition principle from art. 13 of the Directive have changed this.

There is now a successor to Directive 2005/36/EC: Directive 2013/55/EU. Even the new directive, however, fails to solve many of the problems. We should not hamper professionals educated in another Member State in exercising their profession outside of their country of education merely for fear of potential errors.

Ms Kortese, LL.M.

The survey of the border effect report, the casuistry and workshops confirm that the recognition of professional qualifications is still not a smooth process in practice. The mapping study of basic doctors/medical specialists, nurses, childcare staff and electricians in The Netherlands, Belgium and the North Rhine-Westphalia shows that basic doctors/medical specialists undergo a fairly heavy recognition procedure, which often requires double recognition for medical specialists, i.e. recognition of the basic medical diploma and the medical specialism, possibly even with two different authorities. For electricians, it is noteworthy that little uniform information is available for certain areas studied.

In spite of the above examples, the results of the mapping study warrant the conclusion that the regulations regarding the recognition procedures could facilitate a proper, swift and efficient procedure for the professions and in the areas studied. Possible negative border effects appear to stem from practical matters such as uncertainty about the costs, the duration of the procedures, and insufficient quality of information. Since, ultimately, this involves one of the four fundamental European freedoms, it is of great importance that the recognition of qualifications takes place as smoothly as possible.

Prof. Schneider

To increase the mobility of professionals in the border region, it would be a good idea to enable the issuing of a cross-border professional card. This could be a physical card, similar to a driver's license, valid for a number of training or educational programmes in the border region, without
any additional requirements for potential cross-border workers. This eliminates the need to assess all professionals individually as to whether they qualify for recognition. The recognition of the professional qualification will be embedded in the educational programme. Driver’s licenses function in a similar manner: although training and qualifications are different, we are allowed to drive vehicles anywhere with our driver’s license.

*In dubio pro mobilitate*: thinking in terms of mobility and freedom. If possible, direct and automatic recognition should always take preference. In order to pursue this ideal, ITEM will launch a feasibility study into a cross-border professional card, the first specimen of which we hope to present next year.

**Audience questions:**

**Comment from the audience:** It is of great importance to regulate the recognition of qualifications properly. But we must also bear in mind that politicians deliberate for many years to determine the exact requirements for a qualification. The transition from this internal deliberation process to the cross-border recognition of qualifications is a very difficult one.

**Reply from Prof. Schneider:** It is true that recognition is not an easy subject, but we must remember that this obligation was accepted by the Member States in various Directives more than 30 years ago. In addition, it must be remembered that a qualification is not the only criterion for assessing the quality of the services of a professional. An ophthalmologist who does not speak the language, for example, will not necessarily have patients.

**Audience question:** Sometimes, there are also progressive developments in the recognition of qualifications: the regional Training Centre (ROC) in Nijmegen has a bilateral agreement about diplomas with a partner on the German side of the border. Secondary vocational (MBO) courses receive dual recognition, so that completion of the training not only leads to a Dutch MBO diploma but also to a German equivalent.

**Reply from Prof. Schneider:** This type of pragmatic solution is very good and allows for quick and easy praxis, but it is insufficient from a broader perspective: the concept of mutual recognition should be adopted by principle again. Member States and authorities must embrace recognition as the standard once more and be more aware that they bear the burden of proof for the necessity of any adaptation period.
Social security: sickness and disability
Professor Herwig Verschueren

The theme of social security and cross-border labour is a never-ending story. Time and again, questions arise about the social security rights of cross-border workers and self-employed persons. This is not surprising. Social security is and remains primarily a national competence within the European Union, and the systems of the Member States remain vastly different from each other. In addition, these systems change regularly, causing new application issues all the time.

Since 1958, the European Union has expanded its coordination system, based on which cross-border workers are subject, in principle, to the legislation of the country where they work. If they work in more than one member state, this could be their state of residence or that of the actual seat of the employer. This system of coordination also applies to sickness and invalidity benefits. The competent country is responsible for the health benefits in case of short-term incapacity. In case of invalidity involving long-term incapacity benefits, each Member State in which the client has ever worked pays, in principle, a pro-rata share of the total amount of the benefits. The European coordination regulations include special rules with regard to, among others, the aggregation of periods and the pro-rata calculations. This coordination does contain few provisions on re-integration measures.

This year’s ITEM dossier consists of a cross-border impact assessment report on the application of Dutch disability legislation in cross-border situations with its neighbour countries Belgium and Germany. In particular, the effects of the integration in Dutch legislation of concepts such as privatisation, activation and re-integration were studied. The Dutch arrangement is quite different from those of the neighbouring countries, especially as a result of the continued wage payment obligation for the employer for a period of 2 years. It is an obligation governed by private law that still qualifies as a disability benefit under European social security coordination regulations. The Dutch scheme departs from an "incentive philosophy" in which both employer and employee are stimulated to keep employees in the labour process or to have them re-enter it as soon as possible. The general conclusions of the study are that the Dutch rules are not always known and applicable in cross-border situations. Transparent foreign policy is often lacking too, usually making it unattractive for the persons concerned to apply the Dutch rules. However, it appears that, in practice, many problems can be avoided and resolved via existing networks between the implementing agencies and the doctors of the Member States concerned.

More specifically, it is not always clear how a Netherlands-based employer should deal with the re-integration obligation if the disabled employee lives outside the Netherlands. The re-integration policy in the country of residence can be very different from that in the Netherlands. This is certainly the case for employers outside the Netherlands with a sick employee to whom the Dutch regulations apply. This foreign employer is often unfamiliar with Dutch rules and practice during the period of continued wage payment. There is, for example, often a lack of clarity about the assessment of the degree of occupational disability of the sick employee and about the re-integration measures that can be initiated abroad. Moreover, the UWV, the official
body implementing Dutch employee-insurance schemes, appears to offer customized services that could lead to legal uncertainty and confusion, for example in the application of the test of reasonableness. Also, the different durations of short-term occupational disability in the different Member States leads to problems.

The report devoted special attention to the problems with foreign medical reports. Under EU law, foreign medical reports need, in principle, to be recognized by the competent Member State. These medical reports, however, do not always provide the necessary usable data to assess the degree of occupational disability, the remaining earning capacity or the re-integration capabilities of the employee concerned. Nevertheless, German medical reports appear to be better suited to meet the Dutch requirements than Belgian reports.

The ITEM report makes a number of proposals: at national level, a reduction of the maximum continued wage payment period of 104 weeks may be taken into consideration, or, at least, its flexible application in cross-border situations. Moreover, the competent Dutch institutions could offer more support to foreign employers, inter alia by better provision of information about Dutch legislation and its application. At the regional level, reflection on the possibility of bilateral and multilateral agreements might take place in order to compensate for the shortcomings in European legislation. Also, the network capabilities of the various competent authorities need to be expanded and supported. Finally, at European level, specific provisions with regard to re-integration measures could be included in the social security coordination regulations. Solutions should be found to address the differences in the assessment of the degree of occupational disability and to fill the gaps that arise in case the invalidity benefits in the various competent Member States do not commence simultaneously.

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**Audience questions**

**Question from the audience:** “questions of job seekers and employers are often related to the German sick note, which is not recognized by Dutch employers. What can be done about this?”

**Answer Prof. Verschueren:** The relevant EU legislation states that one should visit the doctor in the country of residence. Nevertheless, there are exceptions. In many cases, the doctor abroad clashes with Dutch legislation. Consultation between employer and employee is important in resolving this situation.
Closing speech

*Inge Bernaerts*

Mr Commissioner,
Professors,
Ladies and Gentlemen,

It is with great pleasure that I am a guest here today at the Institute for Transnational and Euregional cross-border cooperation and Mobility and that I close this annual conference together with you. Not only because European cross-border mobility is a theme that is dear to me and on which I advise Commissioner Thyssen, but also because I was born in this beautiful Euregio and had the opportunity to experience all the benefits of living in a border region.

As the theme of this conference, you have chosen ‘Europe under pressure: effects on border regions - 25 years after the Maastricht Treaty’.

And indeed: Europe is under pressure!

Time and again, and this includes when I return here, to my native region, time and again I notice that people only seem to see the disadvantages of Europe and no, or no longer, any benefits. In part, this might simply be a sign of the times. Yet, this should worry us, for the European project is not self-evident, not irreversible. BREXIT rubs that in our faces.

The matter of the conditions under which people can move from one Member State to another, for study, work or retirement is high on the political agenda, and not only in the United Kingdom.

Opinions and sensitivities diverge vastly: some Member States are mainly worried about increasing secondment of employees and its impact on local working conditions and employment. Other Member States wonder whether immigrants should have automatic access to social benefits without having contributed first. In Eastern Europe, on the other hand, there is incomprehension as to why their mobile employees are suddenly regarded with suspicion; that is not the Europe they chose for. And Southern Europe is mainly worried about its ability to offer young people a nice job and a bright future at home.

It is clear to the Commission that the internal market has brought enormous growth and prosperity to Europe over the past 25 years. It creates opportunities for our entrepreneurs, employees and citizens. And precisely now, as the economic tide is tougher and social and economic differences between Member States are growing, the direction of our march is clear to the European Commission: we need more internal market, certainly not less.

What does this mean concretely?

(1) We need to continue demolishing the remaining obstacles to the internal market. Too many barriers still remain in Europe for businesses and liberal professionals aiming to offer their goods and services across borders. The same applies to people who wish to work in another Member State. Those barriers need to go. The administrative burden can and has to be reduced.

(2) However, cross-border traffic will not be left to the ‘invisible hand’. Our vision of the internal market includes a high degree of consumer protection and a high degree of social protection. Our
A notion of an internal market does not include a race to the bottom.

Therefore, the further removal of trade barriers between the Member States should be accompanied by proper protection within the unified market.

How we intend to achieve this?

The 28 Member States each have their own traditions and preferences regarding working conditions and social security. It is not our intention at all to harmonize these. Of course, there are disadvantages to having different approaches, which become the most visible in the border regions. Your cross-border impact assessment, for example, cites the vastly diverging regulations on illness and disability as the cause of many conflicts and even a hindrance to labour mobility.

You are right in addressing this issue, and hopefully it will lead to more convergence in the systems. The European Commission, however, will be highly reluctant to determine ‘from Brussels’ whether the guaranteed income should be provided by employers or social security systems and for how long.

What we will do, is encourage all Member States to establish adequate social security systems.

We use different instruments to do so: guidelines, country-specific recommendations as part of the European Semester, benchmarking, proposed Council Decisions, etc. To ensure proper working conditions, we use legislation to enforce minimum norms regarding, for instance, health and safety in the workplace.

In March, we launched a broad public consultation throughout Europe on the most important elements of social protection worth promoting and defending. Given the fundamental changes in our societies and our labour market, such as digitization, globalization and demographic evolutions, we aim to initiate a broad debate on how to adapt our labour legislation and social systems to these changes. I therefore cordially invite you to contribute before the end of this year. Based on this debate, we intend to introduce a new pillar of social rights in Europe, which will hopefully be complete by the time the Rome Treaty celebrates its 60th birthday in March next year.

But let us return to our main theme: labour mobility. I already mentioned it: a politically delicate issue, leading to great sensitivity and divided opinions across Europe.

To my Commissioner, Marianne Thyssen, it is clear that fair labour mobility rests on two pillars:

Proper, clear and enforceable regulations.

Regulations observed in the field, which can be achieved through proper information, efficient administrative systems and good cooperation, including the detection and, where necessary, punishment of abuse.

As far as regulations are concerned, we have examined two important sets of European regulations regarding labour mobility: the secondment guideline of 1996 and the social security
coordination regulation of 2004. Are these regulations sufficiently clear, enforceable and responsive to today's needs and reality? We have found that there is room for improvement in both texts. Regarding secondment, we proposed a draft bill in March of this year, triggering quite some controversy: for some it was too far reaching, for others not far enough. As to social security, we hope to bring a proposal to the table in the coming weeks.

Time is too short to discuss all aspects in detail here, but allow me to highlight several elements:

For seconded employees, the controversial term ‘minimum wage’ will be replaced by ‘remuneration’. This implies that, in future, the same generally binding remuneration rules will apply to seconded employees as to local employees from the host nation. So, no more discussions about whether a bad-weather or dirty-work compensation, a clothing allowance or a 13th month form part of the term minimum wage. Anything the host nation considers remuneration and is required to provide its own local employees, will also be provided to seconded employees in future. This is a matter of clearer and fairer regulation.

We also aim to improve the A1 certification system. We often hear complaints about the documents not being reliable or even incomplete. This relates to the enforceability of regulations. A host nation must be able to determine whether seconded employees have social insurance in their respective home countries. That is in everyone's interest.

We intend to add a chapter on long-term care to the social security coordination regulation. We aim to codify the relevant jurisdiction and clarify the term long-term care.

We also strive to clarify the conditions under which economically non-active EU citizens are eligible for social benefits in their host nations. In a number of important arrests, which we aim to codify too, the European Court of Justice has indicated that Member States are entitled to set limits to this.

And for cross-border workers, we intend to review the coordination regulations for unemployment benefits. Currently, cross-border workers form an exception to the country-of-employment principle: they depend on the country of residence rather than the country of employment for unemployment benefits. This introduces a complex system of compensations, which does not seem to work well in practice.

Simultaneously, we aim to facilitate taking unemployment benefits with you to another country where job seekers may find new employment faster. This does, however, require more mutual trust between the Member States. Precisely that, we find, is absent sometimes, as is the confidence, hidden in the motto: ‘what we do ourselves is done better’, that job seekers will be actively coached towards a new job in other Member States too. A larger-scale cooperation between the public employment agencies urges itself upon us, and perhaps border regions could pave the way.

Finally, a note on international road transport. I read in the report that ITEM has studied the impact of the Belgian toll system. The road transport sector sparks quite a lot of discussion and discontent, also in term of working conditions. We observe a growing tendency towards national
solutions that aim to protect employees but, in practice, lead to relocation effects, are extremely administratively burdensome and difficult to enforce. The Commission is preparing a ‘Road Transport Package’, in which we examine, among others, how the secondment regulations can be applied to this, admittedly highly specific, sector. This issue too is the subject of a public consultation until the end of the year, and, again, I cordially invite you to participate and let us know what we specifically need to take into account for border regions.

To the Commission, the direction of our march is clear: we aim for more upward convergence in social protection across Europe, and we want more internal market, more free movement of people properly regulated and observed, and as little as possible administrative hassle.

The political climate and the limits of the European Union’s competencies force us, in Brussels, to observe a certain level of caution in our approach; others call it realism. I don’t think anyone would be interested in a large-scale, top-down approach that would pervasively harmonize the labour and social regulations and systems of the Member States.

It is precisely in these circumstances that the bottom-up approach proposed by ITEM gains enormous importance.

The border regions could counter those calling for the closing of borders in the public debate, by pointing out how devastating that would be to the people and businesses in these regions.

They could push for more convergence. Why not make common arrangements about cabin rest periods for truck drivers, so that parking areas just before the border are not flooded with trucks from one day to the next while those just across the border are empty? Why not draw up a regional plan for the monitoring and activation of the unemployed, so that it becomes irrelevant in which country job seekers are being monitored, as long as they can find another job as fast as possible?

Also, border regions can be frontrunners in organizing common structures to apply the internal market regulations more efficiently and provide information to citizens and businesses. Why not establish multi-country EURES offices in border regions? Or a common system for ex-ante secondment registration.

Rome was not built in one day. Nor were Aachen, Maastricht and Hasselt. Still, each step towards smoother cross-border cooperation is important, especially when faced with headwind.

I would like to extend my heartfelt gratitude and congratulations to ITEM for the important contribution you have already made in what is only your first year. Hopefully, we will be blowing out many more candles on many more birthday cakes in the future!
Panel II

Ms Van Trier - to promote cross-border labour, ITEM proposes a bottom-up approach. Is this bottom-up approach the only way to make progress together?

Professor Vaeßen - today, the bottom-up approach is the only way to reach solutions. Collaborations such as those between ITEM, EURES and the Border Information Points are very important. Particularly border regions should use them to make their needs heard at the national and European level. They may benefit from exerting some pressure. In addition, it is important to involve the younger generation in such processes as well. Young people are committed, something that should be used.

Mr Van Delden - a bottom-up approach is particularly important, because we work for the citizens. The bottom-up approach is very good and important if we want to continue.

Mr Lambertz - the bottom-up versus top-down debate has been going on for quite some time now. The bottom-up approach is preferred, but does not always succeed. What we need to promote cross-border labour is concrete work. If we use concrete work to promote cross-border labour, it is possible to make progress, also at European level. The added value of the European cooperation must be carried in the heads and hearts of the people. In achieving that mission, ITEM will always encounter new problems. Every problem solved will introduce a new one to solve. We work in an exciting field. The differences between systems cannot be erased by the mere illusion of harmonization. Border regions can be seen as the ultimate test cases of whether or not something works. The people who live there are aware of this. We need to know the experience of our citizens. On that basis, we can make things compatible.

Ms Van Trier - The 2016 ITEM Annual Conference started with the message that there is pressure on our borders. The borders are under pressure in a way that we had not foreseen during last year's conference. How does the softening of the borders relate to the opportunities that people have in the border region? And what about the hardening of these borders?

Mr Van Delden - we do not have much choice but to account for both sides. The one does not have to stand in the way of the other in achieving progress on a practical and regional level. The higher the levels of administration, the more complex the decision making becomes. However, one can achieve very much by choosing a practical approach. The practical approach can become reality if you deal with border-regional opportunities at administrative level, with a balanced participation of the partners across the border as well as those in The Hague, Brussels and Düsseldorf.

Professor Vaeßen - it is of great importance to look to our citizens, as they can contribute a lot to Europe. We must do more to use of that potential in practice. Large problems will not be resolved at once. Nevertheless, problems can be overcome by taking a step-by-step approach.

Mr Lambertz - the hardening of the borders is worrying. Europe is currently going through a deep crisis, the end of which is not in immediate sight. We must ask ourselves whether we remain convinced that our future lies in a deepening and furthering of European integration. It is not only important to be convinced of this ourselves, but also to convince others. We live in uncertain
times and have a need for mobilisation, to turn in the right direction and to make the importance of Europe clear, to the hearts and to the minds.

*Final comment from the audience:* On 28 October of this year, CBS, ITEM and the City of Vaals opened the CBS/ITEM Euregional Data Center, which will start producing the much-needed cross-border statistics as per immediately.
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- Prof. Anouk Bollen - ITEM
- Jan Merks - NEIMED
- Prof. Frank Cörvers - ITEM
- Dr Marjolein Korvorst - CBS
- Dr Marjon Weerepas - ITEM
- Veronique Eurlings - ITEM
- Björn Koopmans - Euregio Meuse-Rhine
- Denise Leenders - ITEM
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 Meuse-Rhine Euregion (EMR) and the (Dutch) Province of Limburg.

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