

# Cross-border governance in times of crisis

## *First experiences from the Euroregion Meuse-Rhine*

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### **Introduction: closing the national border as a shock for cross-border citizens**

On 15 June 2020, Dutch and Germans were allowed to cross the Belgian border without “good” reason for the first time in weeks. The previously unimaginable had happened in the Euregion Meuse-Rhine: national borders and national border controls were reintroduced for reasons of pandemic control. The Belgian border had been closed to all inhabitants of the border region since 20 March. Only persons with a reason explicitly mentioned on a list of exceptions (such as border work, transport) were allowed to cross. For a border region without borders this was a drastic measure. Suddenly, streets were blocked where people had normally lived the “open Europe” in practice every day. Suddenly even family visits across the border were no longer allowed. Also on the German side, for example at the Belgian-German border in Aachen, a ban on entry for persons without good reason was in force in North Rhine-Westphalia since 16 March in accordance with federal legislation, which was likewise only lifted on 15 June 2020. Although the Dutch government had not adopted any official entry restrictions, it tried to prevent Germans and Belgians from entering the country through appeals and recommendations.

This article describes how the effects of the crisis on the border area of the Euregion Meuse-Rhine can already be cautiously assessed today – in July 2020 – and how the events will probably be influencing future cross-border cooperation. This first analysis is based on the Institute for Transnational and Euregional cross border cooperation and Mobility (ITEM)’s

impact assessment of the effect of the corona crisis on the cross-border territory. It is mainly based on a series of background discussions and interviews with stakeholders and experts during May, June and July 2020. A full report will be published in November 2020. As the crisis can be characterised as possessing significant dynamics, current assessments of its impacts should also allow us to see their influence beyond the immediate time horizon. To date, the crisis has meant great uncertainty and a rapidly changing level of information in many areas.

### **Existing Cross-border governance: not appropriate in times of crisis**

Of course, measures during the Corona pandemic had to be taken within days or even hours. Of course, there was very often not much time to take all the effects into account. And of course, governments had to act according to the precautionary principle to prevent citizens from experiencing possible worst case scenarios during a pandemic crisis. Nevertheless, there are indications today that the closure of national borders was not always motivated by exceptional infection rates on the other side of the border but as a national reflex out of helplessness.<sup>1</sup>

In the Dutch-Belgian case for instance, due to non-coordination of national measures, mayors on the Belgian side at times had difficulties in coping with Dutch visitors who were not aware of the stricter Belgian rules. That was the reported experience of the mayor of the Belgian border town of Lanaken, close to the Dutch city of Maastricht;<sup>2</sup> and on the other hand, when shops were already closed in Belgium, citizens in the border regions could still frequent their favourite Dutch shops and markets. What had been a normal practice in a cross-border region suddenly led to irritations in this case for the Belgian authorities. They tried to restrict travel and activities and saw that the open border did not help. In this respect, the closure of the border from the Belgian side (for non-essential travel) was a sort of b-solution, since other coordinated measures with the neighbours were apparently not at hand.

In retrospect, coordination across the border was very difficult even in a cross-border territory that is in comparison to other EU border regions, relatively well integrated. According to practitioners, the health crisis was in the first place coordinated by the capitals. In the beginning there was no opportunity to coordinate national measures before they were taken. Existing cross-border governance structures (established governmental routines, Euroregions, networks, the Benelux) could not help in coordinating national measures or find a joint answer to the problem of tracking and tracing infections in a regional context, preventing the spread from a regional hot spot. Closing or restricting free movement across the border was in this respect a consequence of non-coordination that could not be prevented by the existing cross-border governance structures. As described later, this does not mean the existing structures did not help. They were helpful *after* national measures were taken, helping to analyse and solve problems that occurred as a result of non-coordinated measures. It is up to future research to analyse to what extent the neighbouring countries (DE, NL, BE) were taking action in the area of hospital cooperation, joint procurement of materials and respiratory equipment, or with respect to the coordination of hospital capacity.<sup>3</sup> It was, for example, not possible to publish infection data on cross-border territories in order to assess the necessity of the closure of national borders from a cross-border pandemic point of view. One of the reasons was certainly, that there was a big difference with respect to the national registration of infections and death rates. This led to a situation where the Belgian numbers could not be properly understood in comparison to the Dutch or German figures without knowing that they also counted assumed Covid related cases in care home settings. This was not the case in the Netherlands, and means that proper monitoring of the cross-border situation was hindered

from the outset by non-harmonisation of national statistics.<sup>4</sup> The question therefore arises as to whether health systems that currently operate within purely national monitoring systems can meet the general challenge of a cross-border crisis, let alone whether they can offer a structured and defined option to share the capacities of hospitals in a pandemic crisis. It was reported that there were examples of Dutch patients being treated in German intensive care units, but this was the result of ad-hoc decisions rather than well-prepared exchange structures. The crucial question to be answered by future research will be how this can be avoided in the future through coordinated action.

### **Crisis management and the socioeconomic border effects: the dilemma of structural data collection**

What has proved to be a problem in many impact assessments in border regions becomes apparent in the light of the Corona crisis: there is no consistent monitoring of economic data for the cross-border territory of the Euroregion Meuse-Rhine. Data is available at national level and partly at regional level. Economic development at regional/local level is still determined by surveys or assessments of the chambers of industry and commerce for various sectors. The fundamental difficulty, however, is evident in the assessment of border-related effects of the national corona measures. These cannot be separated from the general effects of national measures (such as the closure of parts of public life). In some sectors – as mentioned by stakeholders from public transport companies – the size of the overall reduction in turnover shows that the restriction of the few cross-border lines has only a marginal impact. The same is true according to representatives from Chambers of Commerce for the overall restrictions or even forced closures with respect to shops and other businesses. Less cross-border travel was not their first concern at the peak of the crisis.

For the Netherlands, initial studies are available which show that the structure of the respective regional economy seems to be more decisive for the effects of the crisis. For example, particularly negative effects are expected for the Dutch province of Limburg not because of its border location, but because of the higher share of trade, transport and catering in economic output.<sup>5</sup> In the area of employment, national measures (financial compensations for working time reduction, financial aid for companies) have so far prevented a large wave of redundancies. However, even if this will happen in the autumn, it is hardly possible to determine the effects of the restrictions on border traffic in the border area on the basis of the figures. There is a lack of cross-border data on the employment of cross-border companies in the Euroregion, which are regularly collected, as well as surveys of companies on the conditions and obstacles to cross-border activities. Evidence of the economic effects of border restrictions was instead provided by the assessments of the Chambers of Industry and Commerce in BE and DE: despite the border restrictions, the free movement of goods and services was not really hindered from their point of view during the crisis, which was identified by the governments as an official goal of their crisis management. In the Euroregion Meuse-Rhine, it was also possible to avoid obstacles to the movement of goods caused by long traffic jams. In this sense, the Belgian border controls did not have any serious negative effects either. This does not at all mean that the cross-border territory will not be hit by an economic downfall with very negative effects on the labour market. However, it is so far not possible to make a solid assessment in how far the decline will be made worse by border restrictions during the crisis and very different from regions not close to the border.

## Crisis management and the principles of European Integration: a diverse picture

The national measures to contain the spread of Covid-19 were accompanied by cuts and restrictions on public life and civil liberties unknown in peacetime. The closure of private shops and public institutions ordered by the state, the prohibition of public and private events and even private visits, have on the whole restricted many fundamental freedoms and civil rights. In this respect, the restrictions on the crossing of borders and the restrictions on the freedom to travel are not of a fundamentally different quality, but it is assumed that their effect in the border region is different, since integrated cross-border areas are suddenly separated as a result. Unlike in domestic regions, border closures affect the daily routines of work, shopping, leisure or family life.

Figure 1: Border restrictions in comparison

Indicator	NL	DE	BE
Days with border controls	0	0	87
Closed border for all travel without essential reasons	0	66 <sup>6</sup>	87
Closed borders: traffic jams/waiting time at the border	To NL: no official controls  Accidental policy controls (recommendations not to enter)	To DE/NRW: no official controls at the border <sup>7</sup>  (incidental controls in the border region)	Strict controls travel to Belgium: short waiting times first days of the controls
Requirement of a special commuter permit	Travel to NL: no	Travel to DE: not required by law, but a form was offered by German Federal Police <sup>8</sup>	As of 22 March: confirmation from employer required for cross-border workers,  Special vignette offered for cross-border workers in essential professions (health care, etc.)
Number of cross-border workers with a permit	-	Not registered	Not registered
Number of cross-border workers potentially affected by border restrictions	The Euroregion Meuse-Rhine is one of the most integrated cross-border regions in the EU. There are around 36,000 cross-border-workers, with 5,000 working in the health sector <sup>9</sup>		

The citizens in the Euroregion Meuse-Rhine saw an imbalance in terms of restrictions on the freedom to travel and the rights of citizens and businesses. This was due to different pandemic control strategies with different national measures. The main difference was that while in Germany and Belgium there was a legal restriction on entry (in Belgium also on exit) for weeks, the Dutch government operated with recommendations only. While in Belgium the restrictions were structurally controlled at the border, this was not the case in Germany. While in Belgium, citizens who contravened travel restrictions were also punished with fines, this was not the case in NL and DE. For Belgium and Germany, it can be noted that the list of exceptions for crossing the border was similar. A clear issue of discrimination arises in the area of families. While mutual visits of family members (who were not in hospitals or care institutions) were not restricted in any country internally, this was the case for families living in the border area on either side of the border (between NL-BE and DE-BE). The extent to which political actors in the border area were alive to the nature of this inequality was revealed by a joint lobbying campaign of the Euroregion Meuse-Rhine with politicians from the German-speaking Community of Belgium. After the Whitsun weekend on 1 June, family visits and shopping in the neighbouring country were once again possible. This was particularly supported by politicians of the German-speaking Community, as well as the board of the Euroregion Meuse-Rhine.<sup>10</sup> At the time of writing this article, it was not known whether Belgian citizens had also taken legal action against the restrictions on family visits.

By contrast, the border between the Netherlands and Germany can, on the basis of the data, be considered as an “open border” during the crisis compared to other internal borders of the EU. Although the Dutch side made recommendations not to enter the country without good reasons, for example in the case of holiday trips to the NL coast, it was difficult to enter the country. However, this never had the character of a legal ban. The border from Germany to the Netherlands remained open not only for the transport of goods and services, but also for passenger transport. According to the rules of the German government, there had to be good reasons for entering Germany from the Netherlands, but unlike other German borders, there were no controls at the border. Therefore, when Dutch people entered Germany, there was hardly any legal question of whether there was a valid reason for entering the country, such as the daily commute to work across the border. This is also why there were no legally difficult considerations that affected sensitive areas such as family visits. Only sporadically, newspaper articles described that the Federal Police actually questioned Dutch people about their reasons.<sup>11</sup>

When comparing the exceptions to the entry ban (valid reasons), it is striking when comparing Germany – or one has to say the land North-Rhine Westfalia since the situation was not always the same at the German border – and Belgium that the regulations basically name the same aspects as exceptions. These catalogues were not static, but were adjusted slightly over the weeks. However, the most important reasons for allowing entry are very similar for North-Rhine Westfalia/DE and BE. In this sense, the border to NRW was legally not much less open or closed than the Belgian border. However, in Belgium there were structural controls and sanctions in case of violation. Thus, the Belgian border was perceived as much more closed, but this was also related to the communication strategy of the governments. Between NL and NRW, the governments jointly maintained a communication of the open border, which was actually more open than other borders with Germany due to the lack of entry regulations on the Dutch side.<sup>12</sup> While in the case of the Belgian-German border, entry restrictions and quarantine rules applied to both sides, this was not the case with NL. Above all, the situation was much more relaxed for border commuters and other groups of people with and without

good reason, as there were no structural controls on the German-Dutch border. The fact that there were no official controls on the German side of the Belgian border had the same effect because of the Belgian controls. Even more importantly, where increased controls in Belgium could also lead to high fines, fines at the German-Dutch border played no role. Where in Belgium special instruments such as commuter certificates and commuter vignettes for people in “systemically important” occupations played a major role, the instrument was hardly used by the German side and not at all by the Dutch side. Restrictions on family visits at the Belgian border proved to be particularly problematic, which for a long time were not among the valid reasons. These were not legally restricted in the DE-NL relationship for the reasons mentioned.

Also, the coordination of measures with regard to cross-border commuters and companies operating across borders can be assessed very differently for the Euroregion Meuse-Rhine depending on the measure. Border commuters were at no time affected by entry bans. The national travel restrictions in DE and BE have formulated exceptions for border commuters. It is not surprising that border commuting was especially supported in the case medical personnel. In Belgium, a special vignette was introduced to avoid waiting times for this group because of the border controls that had been introduced. The extent to which this actually led to relief could not be assessed in retrospect.

For the group of border commuters who had to work at home in their home office, the national governments had bilaterally agreed on exceptions in the area of tax liability at different times. With regard to social security contributions, the responsible authorities in the three countries had already agreed to exceptions after a few weeks,<sup>13</sup> for some combinations more clearly than for others. The “ITEM Cross-border Portal” provides a close observation of this dynamic development.<sup>14</sup> At the time of writing (end of July 2020) there are still uncertainties regarding the situation of civil servants or quasi-civil servants working at home (not in the country of their work).

The question of the extent to which certain forms of national financial aid has not led to discrimination against cross-border commuters and entrepreneurs is controversial. The Dutch income support scheme in the form of the Temporary Scheme for the Self-Employed (Tozo) had in its first version offered subsistence support which, according to the Dutch government, could only be paid to self-employed persons resident in the Netherlands, even though a group of self-employed living abroad pay tax and social security contributions in the Netherlands because of their Dutch business activities. A similar issue of discrimination arose with the restrictions on the payment of the German short-time work allowance. According to the German government, an enterprise resident in BE or NL that employs employees in Germany (who are subject to tax and social security contributions in that country) is not included in the notes for the corona rules on short-time working allowance if it does not also have a permanent establishment in Germany. In both cases, the question is whether the German and Dutch practice is in line with EU Regulation 883/2004. According to ITEM’s analyses, this is considered questionable from an EU law perspective and should be clarified before the courts.

## **Conclusions: Crisis management and the impact on future cross-border cooperation and cohesion**

What does the crisis mean for the quality of future cross-border cooperation and “Euroregional” cohesion? The results show that existing cross-border governance structures have not been sufficient to cope with a health crisis of this kind. Especially at the beginning of the crisis, cross-border structures and instruments were missing.

### *Serious irritations between NL and BE*

The aforementioned background discussions suggest that the strict restrictions on entry and exit on the part of the Belgian government were a consequence of the lack of coordination of national measures, especially with the Netherlands. This was triggered by assessments on the Belgian side in March that the Netherlands wanted to adopt a much less restrictive approach. Subjectively, the Dutch approach was seen as incompatible with the Belgian approach (avoid as many infections as possible). Obviously, there was no attempt of coordination from the Dutch side with the Belgian national or regional governments in order to alleviate the Belgian concerns or to agree on a common line.

With the Belgian federal government, an actor also appeared who had not previously been represented in many cross-border cooperation bodies. And the Benelux Union (NL and BE are both members) was not used by the two governments as an organisation for coordination. Non-coordination meant that when stricter rules were already in force in Belgium in March, these were also counteracted in the eyes of Belgian actors in the Euroregion by the open border. One result of the study is that these irritations and disgruntlements between BE and NL could potentially have negative effects for the Euroregion Meuse-Rhine. This would be the case if the political support for compromises in cross-border affairs was damaged in the longer term.

### *No protocol in times of pandemic crisis management*

Unlike in areas of civil protection (accidents in industrial plants close to borders), there were no protocols or arrangements for mutual assistance in the border region or between neighbouring countries in the event of a pandemic. And this despite the fact that, compared to other border regions, the Euroregion Meuse-Rhine has a functioning network in the field of cross-border emergency response (EMRIC).

The problem of the different monitoring systems of the neighbouring countries showed how little this area was harmonised or bi-nationally coordinated in the EU. DE, BE and NL have to date used different counting methods and estimates of the number of infections and corona-related deaths. This had the effect that national figures were not really meaningful, especially in the border region. Therefore, the corresponding data for the assessment of the cross-border infection incidence were also missing. Euroregional actors were therefore unable to use euroregional data to argue against entry restrictions. The containment of the virus was clearly a national task that stopped at the national border. It was mainly oriented towards national capacities in the field of hospitals and intensive care. As there were no overarching bi- or trilateral agreements on the exchange of medical capacities or patients, policy was national in scope. Although there were a few Dutch patients in German hospitals, this was due more to ad hoc cooperation than to previous agreements between governments. ITEM's first ad-hoc research showed that the systemically conditioned national orientation, occasionally even counteracted Euroregional solidarity. Cross-border networks were slowed down rather than encouraged by national governance. Therefore, a major effect of the crisis is to highlight the need in the Euroregion to develop cross-border protocols and agreements in the event of a pandemic, and to structure cross-border cooperation between health actors.

### *Ad-hoc task force had positive effects for the Euroregion Meuse-Rhine*

It was seen as not politically possible to coordinate national measures in advance. However, a tri-national task force was set up during the crisis as an initiative of the government of the German region NRW (from 20 March) to solve emerging problems. From April, representatives

of the Belgian federal government, the Dutch national government, their embassies, the police forces and the national government met here. Lower Saxony (the Northern German Region at the Dutch border) was also represented and, at a later date, the Rhineland-Palatinate (with a border with Belgium). This had positive consequences for the Euroregion Meuse-Rhine. Together with other Euroregions and border info points, the Euroregion Meuse-Rhine was connected as an organisation and provided problem analyses and recommendations for action. The anticipated problems with taxes and social security of border commuters, for example, were thus signalled at an early stage and mitigated by means of exceptions. In contrast, other major problems such as the difficulties in providing financial assistance to cross-border self-employed persons and companies could not be solved. One effect of the crisis was therefore certainly that the Euroregions and the border info points were perceived together as actors by the task force and were also able to speak with one voice. This could also strengthen political lobbying in the future for the benefit of the Euroregion.

### *Negative public perception of cross-border cooperation*

A major problem in the post-crisis period will be the negative public perception of cross-border cooperation in the Euroregion Meuse-Rhine. The obstruction of freedom of travel, barriers at the border, border controls and fines can potentially shake confidence in a future of “open borders” and thus the belief in the “Euroregion” as a common space. It will therefore potentially become more difficult to promote cross-border work and business. The problems shown in the context of financial aid, for example, have achieved widespread publicity and may lead to a decline in cross-border activities. In particular, the systemic national reflexes in pandemic control have thwarted cross-border thinking. For this reason, the health sector also appears to be a key sector: in the Euroregion Meuse-Rhine, solid structures for cooperation in the health sector already exist. A pilot model for cross-border pandemic control could, for example, be forward-looking and trigger positive effects.

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- <sup>1</sup> See Martin Unfried, “Mehr Reflex als Effekt” (8 April 2020).
- <sup>2</sup> See Dirk Selis, “Burgemeester Marino Keulen verscherpt grenscontroles met Nederland”, (19 March 2020).
- <sup>3</sup> ITEM will be involved in a new INTERREG project on crisis management starting in September 2020.
- <sup>4</sup> Ruben Tans, “Three countries, three ways of counting?” (24 April 2020) [last accessed 09/06/2020].
- <sup>5</sup> See, for instance, Rogier Aalders et al, “Regionale prognoses: krimp door corona verschilt per regio” (15 June 2020).
- <sup>6</sup> The German Federal government had decided that unnecessary travel should be avoided, i.e. entries into Germany by persons not resident in Germany should only be made for valid reasons. For persons residing in Germany, sufficient protection against infection should be guaranteed after entry. Against this background, all federal states – including the region of North Rhine-Westphalia (on the German side of the Euroregion Meuse-Rhine) – issued regulations on entry and return travel. The NRW entry regulation came into force on 10 April.
- <sup>7</sup> The Land North-Rhine Westphalia was partly responsible for border regulations together with the German Federal government.
- <sup>8</sup> The German Federal Police provided a form. See: [https://www.bundespolizei.de/Web/DE/04Aktuelles/01Meldungen/2020/03/pendlerbescheinigung\\_beruf\\_down.html](https://www.bundespolizei.de/Web/DE/04Aktuelles/01Meldungen/2020/03/pendlerbescheinigung_beruf_down.html).

