

A coordination point in practice: the “Flemish-Dutch Schakelpunt” as a pilot for the Facilitation tool

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Introduction

In Dutch, the word “schakelen” means switching or shifting. A “Schakelpunt” in this sense means the place where you can switch from one system to another: between knowledge and policy, between governance levels and across borders. That is briefly also the essential of a joint initiative at the Dutch-Belgian border. On 4 September 2024, a new cross-border coordination point (Schakelpunt) for the border region between the Belgian Region Flanders and the Netherlands was presented to a broader public in Antwerp. The team had already been working together for the last couple of months, defining processes and the working methods. The joint initiative has an even longer history, being a cooperative process of more than a decade. The initiative is funded by the Interreg Programme Flanders-the Netherlands for a period of 3 years. The main objective is to offer

stakeholders who are confronted with a persistent border obstacle a clear address for their request. And more important, to offer a structured and transparent approach with respect to the analysis and the possible problem solving of the obstacle by national or regional authorities. The ‘schakelpunt’ is in this respect an instrument to avoid a situation, where stakeholders with a cross-border problem do not know which institution is responsible. Or if they can address their problem, how the process works across the border and within different administrations. Of course, this reminds very much of the essential elements of the revised ECBM proposal, the proposal for a Regulation on facilitating cross-border solutions, presented by the European Commission on 12 December 2023¹ (hereafter: Facilitation tool proposal).

As shown in this article, the objectives and processes of the Flemish-Dutch

1 European Commission. (2023). *REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a mechanism to resolve legal and administrative obstacles in a cross-border context*. COM(2023) 790 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0790>

Schakelpunt are very similar to the elements in the Commission's proposal. Therefore, one can certainly talk about a pilot coordination point with an interesting experimental character for the whole of the EU. The agreements between the partners, the nature of the coordination point and finally its practices are of essential interest: if it works between Flanders and the Netherlands, it could perhaps also work in other cross-border territories of the EU.

Why is there an initiative for a Flemish-Dutch coordination point?

The cross-border regions between the Netherlands and Flanders know relatively high levels of integration across borders. It is part of the so-called Meuse-Rhine Region that is a European macro-region of cross-border work¹, where main mobility flows occur from the Flemish region to the Netherlands². In some regions, the share of cross-border workers can total up to 5% of the total regional labour market. Cross-border mobility and cooperation are facilitated and promoted by different cross-border governance structures. On regional level, there are two Euroregions, EGTC's³, BGTC's⁴, cross-

border information points and public employment services and other formal and informal cooperative structures. Also on national level, cross-border cooperation is seen as a special ministerial task and amongst others the bi-annual Flemish-Dutch Top brings ministers together across borders. Furthermore, the area is stimulated by the long-lasting cooperation in the Benelux Union. Nevertheless, it is the paradoxical reality that the more cooperation and mobility occur across borders and thus more integration across borders is stimulated, the more (legal) cross-border obstacles arise and become visible.

Especially in Dutch border regions, the question of how to better legally underpin and encourage cross-border cooperation with neighbouring authorities in Belgium and Germany has long been an issue. On 19 September 2016, the then vice-president of the Council of State, Mr Piet-Hein Donner launched the idea of creating the possibility in border regions of being able to deviate from (current) regulations in a targeted manner in the event of specific bottlenecks without adapting or essentially changing the entire regulations themselves. The purpose of such an experimentation

1 About 8% of EU's total cross-border work is performed in this region: Hassan, E., Siöland, L., Akbaba, B., Cinova, D., Gasperini, M., & Geraci, M. (2023). *Annual report on intra-EU labour mobility 2022*. Publications Office of the European Union. <https://data.europa.eu/doi/10.2767/560178>

2 CBS. (2024). *Internationaliseringsmonitor – België*. CBS.

3 European Grouping of Territorial Cooperation.

4 Benelux Grouping of Territorial Cooperation.

clause – or even an ‘experimentation region’ – would be that solutions to many questions that arise could thus be provided without requiring major legislative changes in the countries concerned.

Against this background, the desire has arisen to use a specific case study to already gain insight into the bottlenecks that concretely hinder cross-border cooperation and mobility between Flanders and the Netherlands. For this purpose, the cross-border merger of the ports of Ghent and Zeeland Seaports into North Sea Port was used as a case study to gain insight into border bottlenecks. Maastricht University (ITEM) produced an inventory of bottlenecks that impeded the cross-border functioning of North Sea Port.¹ One conclusion of this report was indeed that often there is a mismatch and collision of national legislation. This is true for a wide range of topics, from taxation and social security issues to cross-border work to the legal powers of the captains and to the cross-border transport of nitrogen and waste. For the then Flemish and Dutch governments, the insightful border obstacles in the North Sea Port area (Ghent - Terneuzen - Vlissingen) prompted an assignment to Ms Berx (governor of the province of Antwerp) and Mr Donner to work out an approach in an administrative working group.

The report of the administrative working group was published in October 2020.² The main conclusions were twofold: applying a specific method and installing a structured mechanism.³ Regarding the method, it was not recommended to make new general rules or adapt existing regulations, but to deviate from them in a targeted manner for specific cases (do not adapt, but deviate). Where harmonisation or legal amendments would be possible for differences that significantly affect the national economy as a whole, political support is less likely for more regional cross-border issues. The working group thus assumed that a solution to a concrete, weighty, bottleneck may be more acceptable and appropriate if legislation in one or both countries does not need to be adapted but targeted deviations on regional level are foreseen. This rationale of targeted deviations is not entirely new. Indeed, it somewhat echoes the idea of the earlier ECBM-proposal, to which the Belgian and Dutch governments were sceptical.

The diversity of obstacles and targeted solutions requires time and expertise. Therefore, in addition, the final report of the working group recommended strengthening the administrative organisation of the Flanders-Netherlands cross-border cooperation

1 Büttgen, N., Schneider, H., Unfried, M., & Ter Vrugt, P. (2019). *Inventarisatie grensoverschrijdende knelpunten North Sea Port: Final report 2019*. ITEM, Maastricht University.

2 Vlaanderen & Rijksoverheid. (2020). *Niet aanpassen, maar afwijken. Verslag van bestuurlijke werkgroep grensbelemmeringen*.

3 See also: Mertens, P., & Unfried, M. (2022). *ITEM Reflection Advice Administrative working group on border barriers ‘Not adapt, but deviate’*. ITEM.

by supporting a professional secretariat in the form of the Coordination Point (schakelpunt). The mechanism of dealing with cross-border obstacles should be professionalised. The Dutch and Flemish governments thus recognised the regional and national importance of better cross-border cooperation and gave concrete issues in our border regions more priority. At the political top meeting of January 2023, the Dutch and Flemish governments decided to follow-up on the advice of the administrative working group and declared ministerial cooperation in the process of finding solutions to border obstacles.

It is important to note, that the Flemish-Dutch Schakelpunt does not mean a change in the current Flanders-Netherlands cross-border governance structure. It also does not substitute existing bodies or overlaps with their tasks. This was a frequent criticism with respect to the recent attempts of the European Commission to establish cross-border coordination points in the Member States. In fact, the Schakelpunt is an additional and complementary instrument to the existing coordination bodies and political structures that have been established during the last decade.

Who works together and how?

The partners

The Schakelpunt Flanders - Netherlands is a cooperation between on the Flemish side the Flemish government (Department of Chancellery and Foreign

Affairs), the Province of East Flanders (Department of Governor East Flanders), the University of Hasselt and on the Dutch side the Ministry of the Interior and Kingdom Relations, the Province of Zeeland and ITEM – the cross-border institute of Maastricht University. It is thus a diverse consortium in which different governmental levels and knowledge institutions in the Netherlands and Flanders are working together to intensify the knowledge capacities regarding (solving) border obstacles. The European Union is contributing to the costs via Interreg Flanders-Netherlands. After three years, the project will be evaluated and the governments will decide whether it will be continued. Therefore, it is the clear intention of the Interreg project to function as a pilot and development trajectory.

The Schakelpunt is meant to be an institution that collects and analyses bottlenecks with respect to cross-border activities. Its core business is to inventory, identify, analyse and prioritise border obstacles. With the help of the academic institutions, it will investigate whether the problems at the border are administrative, legal or practical and how they can be solved. Then, officially, through direct contacts with the responsible ministries or other institutions, the removal of these border barriers will be examined. In order to succeed, the cross-border coordination point will work together with local and regional governments in the border region, Euroregions, cross-border information points, advocacy

organisations, confederations, and ministries, international organisations like the Benelux and the EU, and others. There is a special position for the Commissioner of the King in the Province of Zeeland on the Dutch side and the Governor of the Province of East-Flanders on the Belgian side. They act as administrative border coordinators and have the mandate from the Dutch and Flemish governments to address prioritised border obstacles and solutions to the relevant ministries. Following the political declaration of January 2023, there is an obligation for ministries to cooperate and react.

The submission

The first step in the project was the development of a practical and functional process with respect to border obstacles. Also in this respect, the final steps are close to the process described in the recent Facilitation tool proposal.

Local or regional authorities in the border region can submit border obstacles experienced by residents, businesses or authorities to the Schakelpunt. This means that private stakeholders have to channel their request via a public authority. This is deviating from the Facilitation Tool proposal, where the submission was also open to private stakeholders. During the preparation of the Schakelpunt method, this was done based on two main arguments. First, existing cross-border information points and local authorities have their role in answering

questions of private stakeholders when it comes to cross-border issues. They act as the front office and channel pressing border obstacles to the Schakelpunt. Secondly, it is meant to limit the number of submissions. The idea is that if there is a very serious border obstacle, a private stakeholder will also do the effort of addressing them via a public authority.

The actual submission can be done via a submission form on the webpage (Schakelpunt.eu). The initiator of a request is asked to give information about the nature, geographical area and possible reasons for the border obstacles. However, potential stakeholders can also contact the Schakelpunt in order to discuss whether and how certain border obstacles could be addressed. Furthermore, it is also the Schakelpunt that will stay in contact with stakeholders to identify possible border obstacles. This is the both proactive and reactive approach within work regarding inventorying and identifying border obstacles.

To be as transparent as possible, the Schakelpunt will work with a database and report frequently on the border obstacles that were submitted and what the analysis has shown. The objective of this is twofold: first, showing transparency with respect to all submitted problems, meaning that stakeholders and the broader public can monitor the work of the Schakelpunt. A side effect could be that public authorities will probably detect that one of their problems has been already submitted by another body. The second

reason is to establish a comprehensive database of obstacles and possible solutions. This could also enable a sort of policy learning in the wider border regions and for the Schakelpunt itself.

The different steps of the process

As already mentioned, the first phase of the Interreg Project was to develop a consistent process for the submission, analysis, political assessment and problem solving attempts. After a public body has submitted a case where they detect a subsistent border obstacle, different steps follow:

Quick Scan

The partners in the Schakelpunt will conduct a Quick Scan based on a joint method with structured questions. The objective is to briefly indicate the cause and nature (administrative, legislative, country etc.), the scope and stakeholders (citizens, businesses, governments, geographical etc.) that are confronted with a certain border obstacle. In the first place, the Quick Scan should also detect whether it concerns a border obstacle that can be processed by the Schakelpunt and thus is eligible. Therefore the Schakelpunt works with a definition and certain conditions.

“Border obstacles are obstacles in a specific interaction, service or project, which result - directly or indirectly - from a legal or administrative provision or usage in a national system or from conflicting differences between systems.”

This means for instance, that the Schakelpunt is not dealing with individual problems of cross-border workers. They can refer to other bodies that deal with cross-border problems such as Solvit, the cross-border information points or other national helpdesks. In this sense, the Schakelpunt will not deal with obstacles that refer only to individuals. However, it will look into a certain problem if there is a negative impact on an entire group of cross-border workers. The question of telework is a case in point, where bilateral tax agreements matter for an entire group.

There is in addition a geographical requirement that determines whether an obstacle is accepted by the Schakelpunt. The obstacle has to have – at least – an impact in the Flemish-Dutch border area. With respect to this geographical definition, the Schakelpunt is also an interesting pilot for future coordination points. According to the Facilitation tool proposal, the Member States are free to establish coordination points in the Member state or together with another Member State. They could do it at the national or regional level, or even as in the Dutch-Flemish case between a national and a regional government. Hence, the shape of this first “coordination point” could also be a blueprint for further coordination points with Dutch participation, meaning that other bilateral coordination point could be established together with the German Land Nordrhein-Westfalen or Niedersachsen.

If the Quick Scan shows that:

- the problem/obstacle occurs in the Flemish-Dutch border region,
- there is a persistent border obstacle that meets the criteria of the Schakelpunt,
- there is a clear legal or administrative problem and that there is a realistic chance that the obstacle could be removed by the competent bodies,

an in-depth analysis will be done which leads to a comprehensive report of the problem. In this respect, the Schakelpunt incorporates elements of the b-Solution project where experts from ITEM and Hasselt University gained experiences by making a series of analysis on specific border obstacles. As in the base of b-solution, the Schakelpunt reports describe in detail the nature of the problem, the competent authorities and different recommendations on how to solve the problem. The reports are written with the expertise of a wider network, namely in permanent contact with the submitter, competent ministries, other public authorities, international organisations (like the Benelux Union) and other experts or knowledge institutions. This could also mean that an expert from another university with a specific expertise is asked to help the Schakelpunt team with the report.

Advice and selection by the Border Committee (Bestuurlijk Grens Overleg)

As already said, the Schakelpunt is embedded into the existing border governance. The Flemish and Dutch

governments have regular high-level talks with the Prime Ministers on border issues. Below this level, there is a regular border committee with Dutch and Flemish politicians, where for instance the Governor/King's Commissioners on both sides play a leading role. This body is permanently informed about the different cases submitted to the Schakelpunt via the Quick Scan results. On the basis of the in-depth reports, the political body has to decide whether the detected border obstacle will be taken to the higher political level. Here, the Schakelpunt will provide advice with prioritisation according to objective indicators, such as legal, financial and political feasibility, the amount of people, businesses and/or authorities affected, etc. If prioritised, there will be a decision on who will be responsible for approaching the competent authority and which recommendation of the report will be pursued in the following political process to solve the problem. This means for instance that ministries have to be approached, or other competent bodies on both sides of the border. In this sense there is a clear division of labour: the Schakelpunt is responsible for detecting and analysing of the border obstacle, and the political border committee for the political process that should lead to a solution. Nevertheless, the Schakelpunt will offer its expertise during the political process and assist in the communication and consultation with competent authorities.

Follow-up and progress monitoring

Border obstacles are often rather complex, and a quick fix is very often

not possible. Hence, the Schakelpunt will also monitor the process of obstacles that cannot be solved in the short term. In this case, monitoring and reporting the state of affairs is a crucial task. This is especially important for the stakeholders who submit border obstacles. They should always be informed about the different steps and the state of play with respect to their border obstacle.

The “Flemish-Dutch Schakelpunt” as a pilot for the Facilitation tool

While the initiative for the Schakelpunt came bottom-up as a result of decades of cross-border cooperation and the desire to address border obstacles more effectively, there are many similarities to the Facilitation tool proposal and its cross-border coordination points. The rationale and processes are very much in a similar vein. Even more, the proposed method of deviation instead of adaptation is also in line with the initial spirit of the ECBM-proposal. The experiences from the Schakelpunt project could be very important for the future debate and perception of the concept of cross-border “coordination points”.

In the first place, the Flemish-Dutch initiative contradicts the reasoning of some Member States who are of the opinion that the regulation is not necessary, since their own cross-border governance framework would already have this type of coordination

point. This argument was for instance communicated by Member States that belong to the Nordic Council. Whereas the Dutch and Belgian governments were also sceptical about the initial proposal for a European Cross-Border Mechanism, they were open to the recent Facilitation tool proposal. The reasoning of the sceptics is that especially in border regions with already existing comprehensive cross-border governance structures, the coordination points would be a duplication of structures and would not mean a real added value. The understanding of the Flemish and Dutch governments is very different. Despite the already existing robust structures with the different bilateral political and administrative bodies, there is the perception that a body that is dedicated to the structured collection, analysis and problem solving of border obstacles was missing and excellently fits into the existing governance structure. While the Schakelpunt was initiated even before the European proposal, in their first assessment the Dutch and Belgian governments clearly refer to the Schakelpunt as ‘their’ possible coordination point. There is thus no duplication in place.

The lack of coordination point in Flanders and the Netherlands is in particular interesting, since the border regions in question are also covered by the Benelux Union, which offers, in addition to bilateral treaties and EU legislation very special cross-border bodies and instruments. It is already obvious that the toolbox of the Benelux

Union will be very beneficial if it comes to the question of how to solve certain border obstacles. Therefore, the assumption is that the problem-solving capacity of a coordination point is even higher in a cross-border situation where comprehensive governance structures exist. This is even more the case because the new Facilitation proposal does not establish any legal instrument that could assist the Member States in overcoming obstacles related to a mismatch of legislation. Whereas the old ECBM proposal provided a legal tool according to which one Member State could accept certain rules from the neighbouring country on its own territory, the Facilitation tool proposal only offers the institutional setting of a coordination point and a process. There is thus a clear shift from the legal instrument to a governance process. Hence, the Flemish-Dutch pilot coordination could be perhaps more effective than coordination points in other border areas with the EU. In the first place, problem solving will be promoted by already existing bilateral cross-border bodies. And, with the Benelux Union, there is even a possible legal framework where the idea of “deviation” from national legislation in case of a very specific border project is possible in certain policy areas. The authors have been involved in the development of a structured working method of the Schakelpunt and are currently dealing with the first submitted cases. The expectation is that after the first year, they can already report on the experiences made with the working

method and indicate whether there was a way from analysis to problem solving.

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