

Dr. Estelle EVRARD

AAG session “Towards a post-humanistic
understanding of borders” 06.04.2021

COVID-19, legal geography and spatial
justice: exploring multifaceted borders

MAISON DU SAVOIR

COVID-19, legal geography and spatial justice: exploring multifaceted borders

Structure of the presentation

1. Context: EUropean borderlands are shaped by two contradictory territorial logics
2. Theoretical background: legal geography and spatial justice
3. Empirical material : mobilising legal geography in EUropean borderlands
4. Conclusion: Perspectives for EUropean borderlands & legal geography

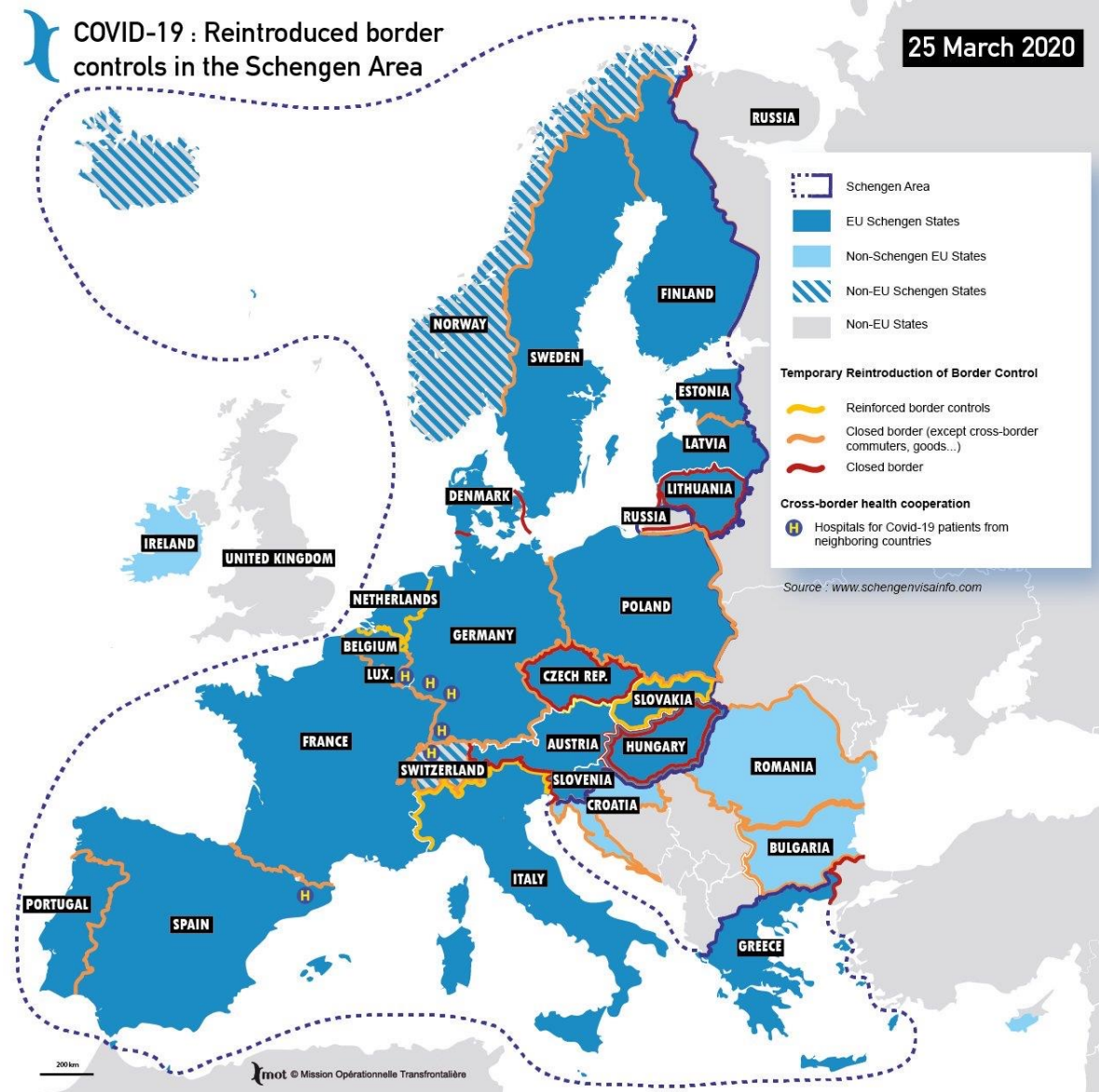


Spring 2020, Germany - France © Marco Kany

1. Contradictory territorial logics come to the fore as crises

FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES

- The EU reveals easily challenged in managing borders' functions in an orderly manner when a number of Member States competences are considered priority over the Single Market:
 - Security (e.g. terror attacks, 2015)
 - Migration policy (e.g. high influx of migrants, 2015)
 - Public health (e.g. Covid19, 2020)
- Asymmetric reintroduction of border controls impedes movement and contradicts the EU smooth ideational territoriality



1. Cross-border mobility: the illusion of fluidity and seamlessness

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES



“Border regions are places where the European integration process should be felt most positively - studying, training, working, caring and doing business across borders are all daily activities that should be possible regardless of the existence of an administrative national border [...]

Border regions generally perform less well economically than other regions within a Member State. [...] Navigating between different administrative and legal systems is often still complex and costly.

EC Communication, 2017: Boosting growth and cohesion in EU border regions, p. 3-4

1. Cross-border mobility: the illusion of fluidity and seamlessness

FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES

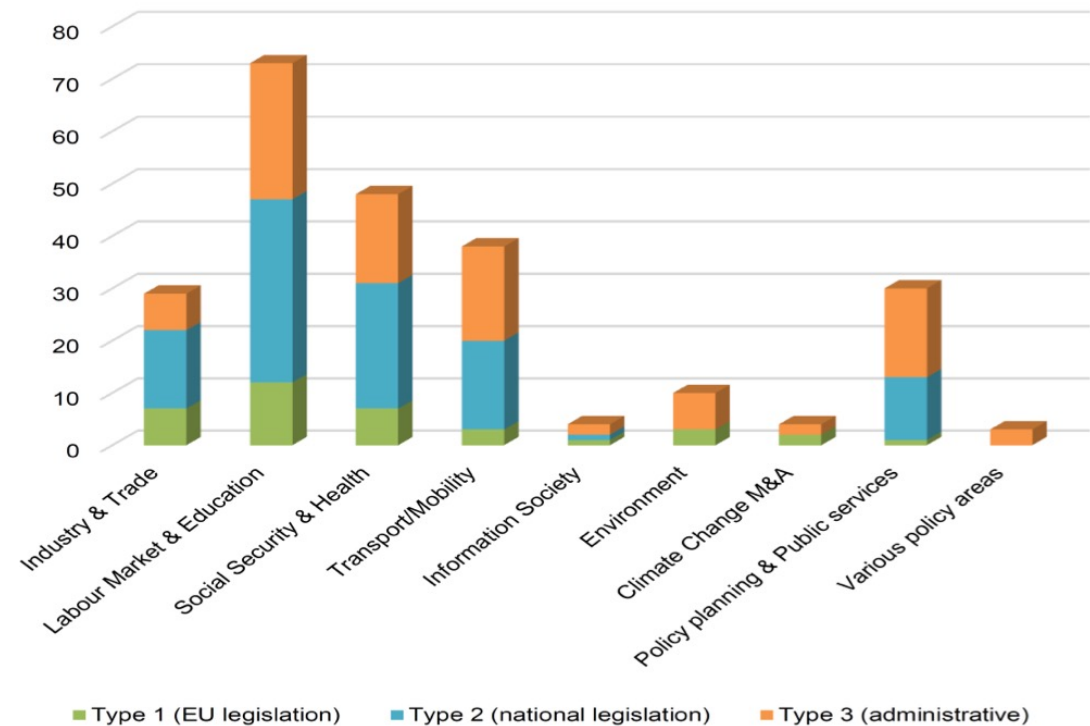


“Border regions are places where the European integration process should be felt most positively - studying, training, working, caring and doing business across borders are all daily activities that should be possible regardless of the existence of an administrative national border [...]

Border regions generally perform less well economically than other regions within a Member State. [...] Navigating between different administrative and legal systems is often still complex and costly.

EC Communication, 2017: Boosting growth and cohesion in EU border regions, p. 3-4

Types of legal and administrative barriers by policy area (absolute figures).



METIS (2017): Easing legal and administrative obstacles in EU border regions, Final Report, p. 35.

2. Legal geography at a glimpse

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES



Legal geography investigates “the co-constitutive relationship between people, place and law (...) examining law’s materialisation within space.” (Bennett & Layard, 2015)

*“Legal geographers contend that in the world of lived social relations and experience, aspects of the social that are analytically identified as either legal or spatial are conjoined and co-constituted. **Legal geographers note that nearly every aspect of law is located, takes place, is in motion, or has some spatial frame of reference. In other words, law is always “worlded” in some way. Likewise, social spaces, lived spaces, and landscapes are inscribed with legal significance.**” (Braverman et al., 2014)*

“It is a way of examining law’s materialisation within space” (Bennett & Layard, 2015).

2. Using the concept of lawscape (Philippopoulos-Mihalopoulos, 2010 & 2015)

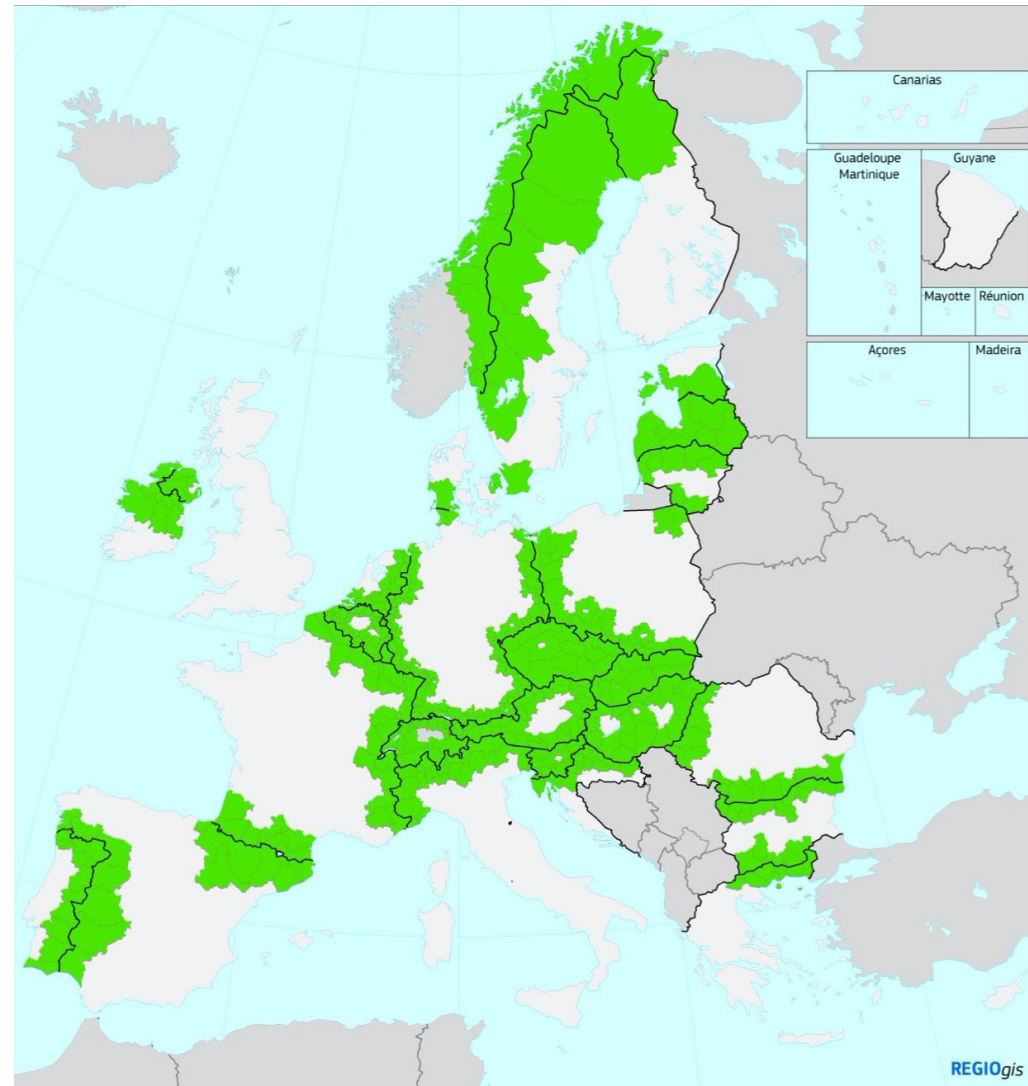
□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES

- *"Space is not just the question 'how would this decision be formed over there?' but significantly, 'why is the decision expected to be formed in this way here?' [...] The result is a law that keeps on questioning itself, [...] in continuous acknowledgment of its own limitations. [...] Spatiality is an ethical position" (Philippopoulos-Mihalopoulos, 2010a:9).*
- *"Law and space cannot be separated from each other. They are constantly conditioned by each other, allowing one to emerge from within its connection to the other. The lawscape is the way the ontological tautology between law and space unfolds as difference".*

3. European law defines the geographical scope of border areas

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES

- Local administrative units are used to define the spatial scope of EU regulations,
 - thus defining the spatial scope of financial support (i.e. eligibility)
 - Institutionalising “European borderlands” that become specific categories in EU regional policy and EU law.



Terrestrial border regions along internal EU28 and EFTA borders

3. Law can impede activities in border areas that would have been allowed in national context

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES



There is a “correlation between the frequency of border crossing and the obstacles perceived when interacting across the border. The more often a person crosses the border, the less likely he/she is to mention a lack of trust as an obstacle. The same applies to language barriers and sociocultural differences. On the contrary, the more often a person crosses the border, the more likely he/she is to mention legal and administrative barriers as obstacles. One possible explanation is that the frequency of travel multiplies the opportunity to encounter such obstacles; in other words, obstacles of this nature are more strongly felt when mobility across the border is higher and more frequent” (European Commission. 2017b: 13-14).

3. Law can impede activities in border areas that would have been allowed in national context

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES



There is a “correlation between the frequency of border crossing and the obstacles perceived when interacting across the border. The more often a person crosses the border, the less likely he/she is to mention a lack of trust as an obstacle. The same applies to language barriers and sociocultural differences. On the contrary, the more often a person crosses the border, the more likely he/she is to mention legal and administrative barriers as obstacles. One possible explanation is that the frequency of travel multiplies the opportunity to encounter such obstacles; in other words, obstacles of this nature are more strongly felt when mobility across the border is higher and more frequent” (European Commission. 2017b: 13-14).

- The act of moving is never quite the same. It changes and transforms progressively in European borderlands, especially as interactions grow and diversify.
- When the legitimate expectation towards conducting an activity across border falls short, the law appears as the obstacle. There is an asymmetry between law and space.
- The effectiveness of law is questioned. The situation appears to be unjust as the law is not effective in repeated cases in European borderland.
- The situation reveals to be **unjust** as there is uncertainty in the application of law & unequal access to rights.
- What mechanisms would allow equitable application of law in European borderlands? Which lawscape?

3. Attempts to articulate a lawscape fit to European border specificities

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES

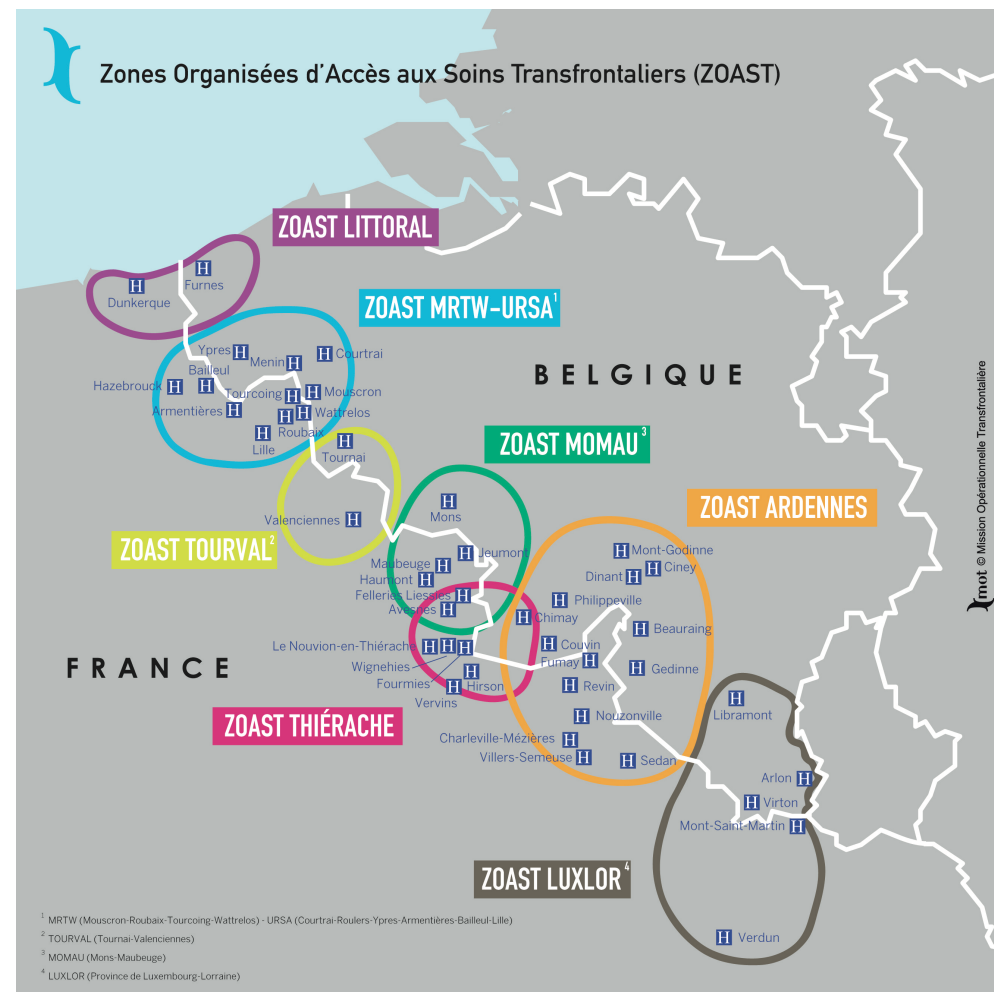
- Normative attempts to adapt space and law to cross-border specificities:

- Convention cadre de Madrid, Council of Europe, 1980
- EGTC, 2007
- ZOAST (map)
- "place-based approach" (ITI, CLLD)

- Academic conceptualisations

- MLG II (Hooghe & Marks, 2003)
- FOCJ (Eichenberger, 2006)
- Mandatsraum/Vertragsraum (Chilla et al, 2012)
- Soft space (Allmendinger & Haughton, 2009)
- EGTC as "melting law" (Perrier & Levrat, 2015)

Organised areas of access to cross-border care (France-Belgium), MOT



4. Conclusion

□ FACULTY OF HUMANITIES, EDUCATION AND SOCIAL SCIENCES



- Understanding EUropean borderlands as a spatio-legal category, a lawscape, thus going beyond the “separation/othering” function of the border, helps us to understand how the border contributes to driving injustices.
- Even though interactions and exchanges are at the heart of the EU project and of its law, movements are more likely to be impeded in EUropean borderlands. The more cross-border integration expands, the more people, businesses and public authorities are exposed to border obstacles, to unequal access to rights. The ECBM mechanism is an attempt to provide a tool to spatialise legal provisions in EUropean borderlands. It aims at ‘capacitating’ EUropean borderlands.
- Legal geography and spatial justice provide conceptual ground to
 - think the articulation of EU-national territorialities, and the (limits) of the EU integration process
 - Problematise the articulation between law and space, and what they produce (access to right, spatial mobility/disparities, power relationships)

Key references

- Bennett, L., & Layard, A. (2015). Legal Biography: Becoming Spatial Detectives. *Geography Compass*, 9(7), 406–422.
- Braverman, I., Blomley, N., Delaney, D., & Kedar, A. (Sandy). (2014). Introduction. In *The Expanding Spaces of Law: A Timely Legal Geography* (Legal studies, pp. 1–29).
<https://doi.org/10.11126/stanford/9780804787185.003.0001>
- European Commission. (2017b). Commission Staff Working Document. Accompanying the Document “Communication from the Commission to the Council and the European Parliament on Boosting Growth and Cohesion in EU Border Regions.” {COM (2017) 534 final}. SWD (2017) 307 final.
http://ec.europa.eu/regional_policy/sources/docoffic/2014/boosting_growth/swd_boosting_border_en
- Philippopoulos-Mihalopoulos, A. (2010a). Law’s spatial turn: Geography, justice and a certain fear of space. *Law, Culture and the Humanities*, 7(2), 187–202.
<https://doi.org/10.1177/1743872109355578>

Thank you for your attention

Please do get in touch using the chat or via email for discussing further

Dr. Estelle EVRARD

Research scientist / Maître assistante
Department of Geography and Spatial Planning
UNIVERSITE DU LUXEMBOURG
Campus Belval – Maison des Sciences Humaines (E02-N203)
11, Porte des Sciences
L-4366 Esch-Belval
T +352 46 66 44 95 78
estelle.evrard@uni.lu