

Working Group on Innovative Solutions to Cross Border obstacles

July 2016 – July 2017

REPORT



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère du Développement durable
et des Infrastructures

Département de l'aménagement
du territoire



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INTRODUCTION

200 million people live in border areas all over the territory of the European Union. At the same time, territorial cohesion is an important EU objective whose implementation faces enormous challenges, particularly in border regions. Indeed, the fact that the European Single Market remains incomplete becomes particularly apparent in border regions where obstacles and gaps significantly impede the creation of integrated cross-border areas. The difficulties of common action, in particular harmonisation, at the EU level to address the remaining obstacles or gaps in many sectors of the Single Market means that **borders often still act as significant barriers to the free movement of goods, persons, services, and capital**. This, in turn, means that **the development potential of cross-border areas cannot be fully exploited**.

From a **social perspective**, the consequence is that – despite the free movement of persons – **citizens** living in border areas do not have full access to public infrastructure and services of general interest that are provided on the other side of the border. As the nearest hospital or preschool that these citizens are entitled to use is often located further inland, it is apparent that this lack of accessibility to public infrastructure and services of general interest leads to a lower quality of life.

From a territorial **perspective**, the consequence for the territory of the European Union is that the border situation reinforces the core-periphery divide and thereby weakens overall territorial cohesion. Reducing cross-border obstacles, therefore, means working towards reducing regional disparities and making border regions attractive living spaces.

From an **economic perspective**, one consequence is that – despite the free movement of goods and services – **businesses** cannot benefit from the proximity to businesses on the other side of the border and thus cannot make sufficient use of cross-border synergies, which restrains their competitiveness and economic growth in the cross-border area. Another consequence is that – despite the free movement of workers – cross-border labour mobility is still limited, which means that **job seekers** do not have full access to vacant posts on the other side of the border.

As the Cross-Border Review¹ and the CESCO study² point out, administrative and legal obstacles are the predominant reason why the development potential of cross-border areas remains largely untapped. The existing instruments providing either financial support or institutional structures face limits when it comes to solving administrative and legal obstacles. What is missing to enable border regions to exploit their full potential is an approach to overcome these obstacles in a systematic way.

Commissioned by the Directors-General responsible for Territorial Cohesion, a working group was officially set up in July 2016 to further investigate innovative solutions to overcome cross-border obstacles, with a particular focus on the added value, feasibility and design of the tool presented under the Luxembourg Presidency in 2015³. **The Working Group on Innovative Solutions to Cross-Border Obstacles is co-chaired by Luxembourg and France, with the support of the Transfrontier Operational Mission (MOT)**, and brings together experts from Member States and partner countries (e.g. CH), as well as representatives from local/regional authorities and stakeholders from the local level. The Working Group is also engaged in a structured dialogue with the EU institutions.

The results of the Working Group are formulated as proposals and can be found in this Report as well as in a complementary Background Report together with concrete examples of cross-border obstacles and their potential solutions.

¹ [Cross-Border Review by the European Commission](#)

² [Report on Legal Accessibility by CESCO](#)

³ [Input paper for the Informal Ministerial Meeting on Territorial Cohesion under the Luxembourg Presidency](#)

THE PROPOSALS

The **results obtained** by the Working Group on Innovative Solutions to Cross-Border Obstacles indicate that there are, in principle, instruments available in the EU for addressing financial and institutional obstacles, but the predominant reason why the development potential of cross-border areas – in particular those with a high level of interaction – remains largely untapped are administrative and legal obstacles. As no appropriate and structured procedure or instrument exists to solve these types of obstacles, the Working Group proposes two initiatives to overcome administrative and legal obstacles to cross-border cooperation and activities, which should be laid down in EU legislation:

1. Proposal to create the **European Cross-Border Convention (ECBC) procedure and tool** that would allow local/regional authorities and stakeholders to initiate a fast-track process for addressing administrative and legal obstacles, and would commit the competent authority to support the actors in finding a solution to overcome these obstacles.
2. Proposal to set up a **European multilevel platform to exchange problem-solving methods** from different parts of Europe and foster the exchange of experiences and best practices.

These initiatives would complement, enforce and support already existing decentralised initiatives at the national, local and regional level. The proposed procedure and tool would also contribute to the Better Regulation initiative by facilitating problem solving for citizens in an efficient and effective way.

1) Proposal to create the European Cross-Border Convention (ECBC) procedure and tool that would allow local/regional authorities and stakeholders to initiate a fast-track process for addressing administrative and legal obstacles, and would commit the competent authority to support the actors in finding a solution to overcome these obstacles.

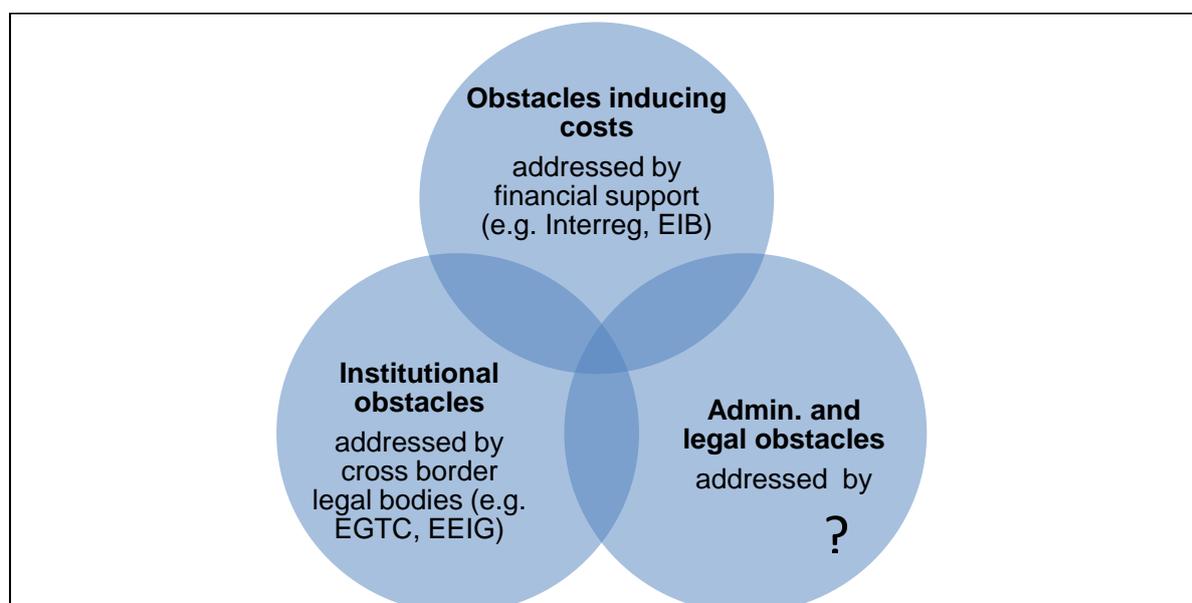
The investigation of cross-border activities and cooperation reveals that there are three basic types of solutions and instruments to address cross-border obstacles. The three different types are:

- **Financial solutions and funding instruments:** These instruments, for example the Interreg programmes or EIB instruments, try to overcome obstacles in border regions by providing financial support to cooperate across the border, thereby complementing national investment sources by providing the cross-border element. However, administrative and legal obstacles prevent the optimisation of EU or national funding in these areas. In addition, under the current legal framework and its eligibility rules, Interreg programmes can only in a limited way support projects that directly aim at overcoming such obstacles.
- **Institutional solutions and instruments:** These instruments, for example the European Grouping of Territorial Cooperation (EGTC)⁴ for the public sector or the European Economic Interest Grouping (EEIG) for the private sector, try to overcome obstacles by allowing the establishment of legal bodies to manage funding and implement projects. However, these legal bodies do not have policy-making competences and are, therefore, generally not able to solve administrative and legal obstacles. In particular, EGTCs are not allowed to carry out powers conferred by public law or regulatory powers. They, therefore, cannot change the legal framework applicable to their activities; EGTCs may just define the terms and conditions of the use of an item of infrastructure that the EGTC is managing, or the terms and conditions subject

⁴ Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19), as amended by Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (OJ L 347, 20.12.2013, p. 303).

to which a service of general economic interest is provided, including the tariffs and fees to be paid by the users.⁵

- **What becomes evident is that there is a need for another solution to complement what can be done with the existing solutions and instruments. They can offer funds and solve institutional obstacles to cross-border cooperation, but reach their limits in cases where different administrative and legal norms – in the sense of rules and provisions – inhibit the realisation of cross-border activities or hinder the provision of services across borders.**



There are top-down solutions to address administrative and legal obstacles, such as harmonisation, mutual recognition or intergovernmental agreements. The problem with harmonisation is that the process is often too burdensome and only applicable to selected aspects of national law. The problem with mutual recognition is that it is generally limited to the production of goods as well as the provision of services. The problem with intergovernmental agreements is that the negotiation process is too protracted and that the result is often too far removed from the reality on the ground, as local actors are generally not involved in the centralised process.

There are also a **number of bottom-up initiatives in cross-border areas**, which often involve the identification of administrative and legal obstacles and the search for individual solutions to overcome them. However, in the majority of cases (with the exception of the systematic approach of the Nordic Council), these approaches lack legal certainty and could be described as **'muddling through'**, with a lot of factors determining the success of the solution. What is missing is a well-defined, systematic and structured procedure that brings the obstacle up to the level of the competent authority and encourages the common search for a solution. Trying to find a solution can be a challenge in itself, especially if the competent authority cannot even be identified and if there is no fixed timeframe for dealing with an obstacle.

It is in this context that the Working Group proposes the **European Cross-Border Convention (ECBC) as a systematic bottom-up procedure and concomitant tool** allowing the local/regional authorities and stakeholders of one Member State – in the context of an obstacle to a cross-border activity (or project) or to a service of general interest – to **apply the administrative or legal rules and provisions that are applicable in the neighbouring Member State in a geographically defined area of application along the border**. In comparison to the existing approach, the proposed procedure and tool offer a **fast-track process** to overcome cross-border obstacles by **checking whether solutions**

⁵ See Article 7(4) of Regulation (EC) No 1082/2006, as amended.

already exist and – if not – offering a new solution. The obligation for competent authorities would be to **support the actors in finding a solution or at least state why no solution could be found** within a certain period of time.

CASE STUDIES:

Case study of an obstacle at the FR-DE border: diverging security standards on rolling stock equipment of a tramway

Municipalities of Strasbourg (FR) and Kehl (DE) decided to achieve a 2,7 km extension of the tramline D running in Strasbourg to Kehl on the German side of the border. The problem was that the French tram standard in use in Strasbourg was not fitted with all equipment required by the applicable German Federal Regulations to a tram to be authorized to run in Germany.

By a bilateral agreement French authority agreed to equip the tram in line with the German regulation requirements, but the process of negotiations was long and costly, and the cost of the rolling stock even heavier since it had to be adapted (22 trams have been newly equipped).

The launching of an ECBC procedure by the French together with German local authority over a project of transborder extension of the French tramline could have allowed the border Municipalities and the German Federal level to agree on the “exportation” of the French standards on the German side, only for this tramway line, within a limited time frame. This could have taken into account that the French standards are considered compliant in the light of the “CE marking” directive.

Case study of an obstacle at the FR-BE border: diverging national regulations on the erection of wind turbines

French and Belgian regulations over the distance between wind turbines and houses are diverging, and the consultation process is unsatisfying: wind turbines have been built on Belgian territory at 200m of French houses, when the French regulations forbids it under a 500 m distance, causing tensions among the citizens towards the Belgian municipalities (especially between Menin (BE) and Halluin (FR)).

The launching of an ECBC procedure over a project of wind turbine could allow the Walloon/Flemish Region and the French national level to agree on a consultation process involving the stakeholders and to sign a convention, defining that the Walloon/Flemish Region is accepting to use French norms on the territory of the project. Therefore, the use of the ECBC could prevent the delay in erecting the wind turbine because of law suits against the project, and would increase citizen participation and acceptance of the wind turbine project.

More details about these examples, and more examples can be found in the support document : “Factsheets with examples illustrating the use of the European Cross-Border Convention”.

The rationale behind the ECBC procedure and tool is that they would improve cross-border cooperation from the bottom up by allowing the local actors who are experiencing obstacles on the ground to find a **tailor-made solution, in the sense of border-specific and issue-specific**, that would:

- i. allow to address the obstacle step-by-step as in certain cases solutions are there but are just not known;
- ii. allow to **implement activities and projects more quickly and efficiently** (in comparison to intergovernmental agreements), and
- iii. provide **administrative and legal certainty** (in comparison to the approach of “muddling through”).

As the **use of the procedure of the ECBC** would depend on the identification of an obstacle at the local/regional level and the expressed intention to overcome this obstacle by the actors on the ground, its use would always be **voluntary**.

The **use of the ECBC tool to establish such a convention** would also be **subject to the validation by the competent authority**, which means that the capacity of the competent authorities to control the process and the outcome is safeguarded. Moreover, the application of “neighbour” administrative or legal rules and provisions would be **limited to a geographically defined area for as long as the project exists** or the obstacle persists.

ECBC PROCEDURE AND TOOL

The systematic bottom-up procedure for addressing administrative and legal obstacles and for using the tool to establish an ECBC would consist of a five-step process⁶:

Step 1: Identifying the obstacle and preparing an ECBC proposal

The initiators, either local/regional authorities or any stakeholder with legal personality, would identify an administrative or legal obstacle to the implementation of a cross-border cooperation activity (or project) or to the delivery of service of general interest, and prepare an ECBC proposal that is to be submitted to the competent authority.

Step 2a: Analysing the ECBC proposal and deciding on go/no-go

The competent authority would analyse the ECBC proposal and determine whether the obstacle is real or based upon a lack of information or a misunderstanding. The result of this analysis would inform the competent authority's decision to proceed and find a solution (*go* or *no-go*).

Step 2b: Finding an existing solution or adopting the ECBC proposal

The competent authority would further analyse the ECBC proposal and determine whether it is feasible to use an existing instrument or solution to overcome the obstacle. If no existing instrument or solution could be used and if the ECBC proposal is admissible, the competent authority would adopt the ECBC proposal and work together - where possible - with the initiators as well as the competent authority on the other side of the border on the final version of the ECBC with specific provisions.

Step 3: Approving the ECBC

The competent authorities of the Member States concerned, potentially together with the initiators, would approve and sign the ECBC. In that ECBC, they would commit themselves to accept that the rules and provisions of Member State A apply in Member State B (and/or vice-versa) or that one Member State commits itself to adapt its legal framework within a given time framework.

Step 4: Applying the ECBC

The competent authority and the initiators would apply the ECBC, i.e. implement the activity (or project) or deliver the service of general interest in accordance with the rules and provisions set out in the ECBC.

Step 5: Following up

A national ECBC coordination point would include the ECBC in a national database and send it to the ECBC platform at the EU level to be included in a European ECBC database. The competent authority in conjunction with the national ECBC coordination point would monitor the application of the ECBC. The competent authority would also analyse whether a more comprehensive bilateral or multilateral solution could be found (see also ad 2 below).

The **proposed ECBC procedure and tool are meant to complement existing instruments and solutions**. As such, the ECBC procedure and tool are a new element in the general 'toolkit' designed for improving cross-border cooperation.

The proposed ECBC procedure is flexible, as it does not automatically lead to a predetermined outcome and does not prescribe the use of the tool of the ECBC. For instance, the competent authority could decide that an existing instrument or method is more appropriate for overcoming the obstacle than the

⁶ See also annex 1.

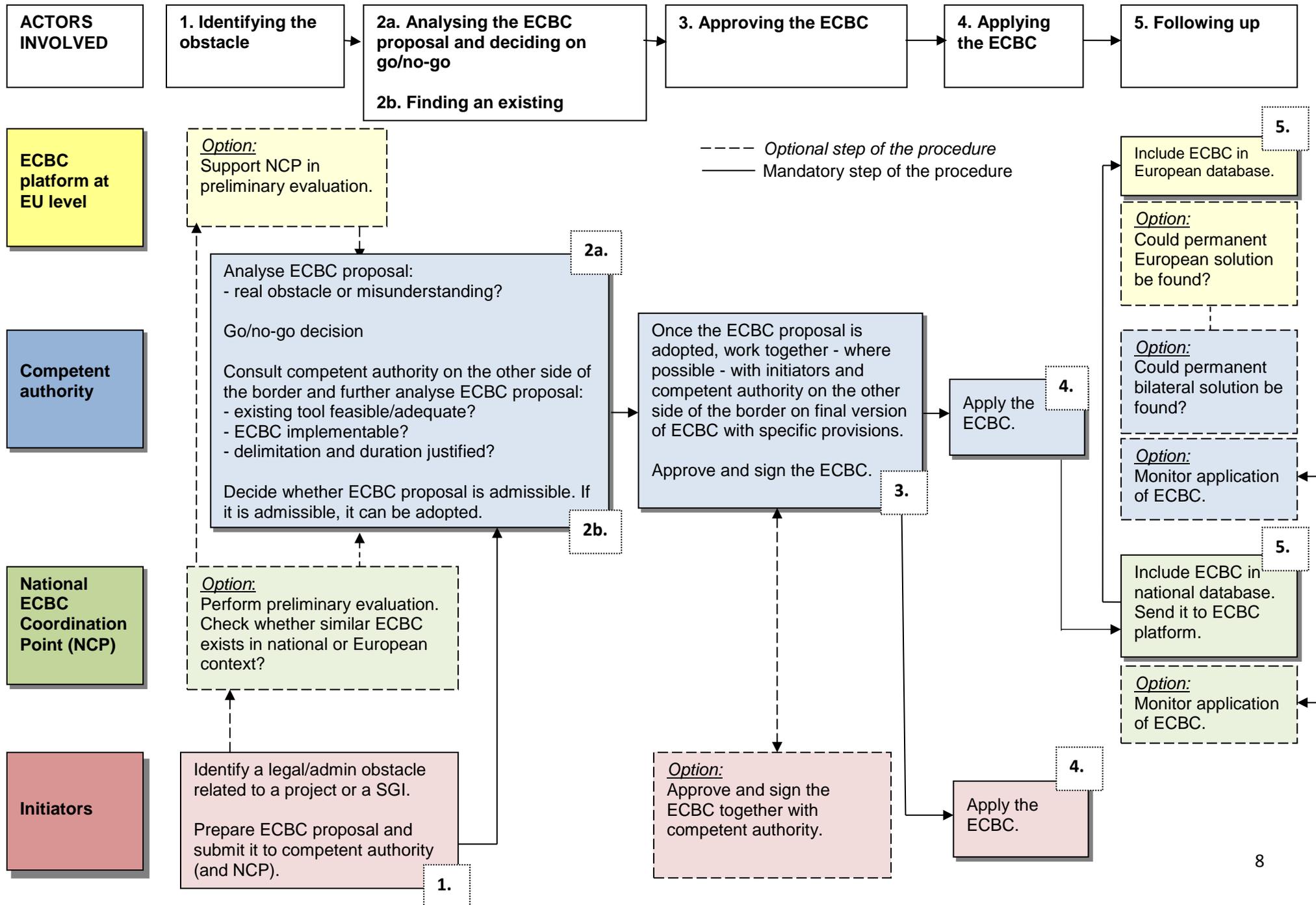
ECBC tool. The proposed procedure would also facilitate the integration of and create synergies with existing instruments or solutions, in particular when it comes to identifying obstacles and addressing the competent authorities. For instance, the Latvian-Estonian Intergovernmental Commission for Cross-Border Cooperation or the German-France Task Force for Cross-Border Commuters could be integrated into the procedure for establishing an ECBC. The ECBC as the result of the entire process should be seen as a quick-fix solution until a more comprehensive bilateral or multilateral solution, potentially also on a larger scale, could be found.

In particular, the **proposed ECBC procedure and tool go beyond the scope of the EGTC Regulation**. While the EGTC Regulation allows public authorities, most notably local/regional authorities, to set up an institutional structure with a set of tasks and objectives that are defined in an EGTC convention, it specifies that the regulatory and policy-making powers of local/regional authorities cannot be subject of such a convention. This is where the new procedure and tool link in: the ECBC would offer local/regional authorities a process to find a solution in the form of a voluntary convention between the competent authorities on the limited application of “neighbour” rules and provisions in a domestic context.

How could the procedure and tool of the ECBC be legally established? Considering parallels with the EGTC Regulation where a legal framework is defined at the EU level but the application and implementation are left to national and regional authorities defined by Member States, a similar legal architecture could be imagined for the creation of the ECBC procedure and tool through a European Regulation. This would comply with the idea that the procedure should be voluntary and the use of the tool to establish an ECBC should require the approval of the competent authorities.

2) Proposal to set up a European multilevel platform to exchange and coordinate problem-solving methods from different parts of Europe and foster the exchange of experiences and best practices

Studies and testimonies demonstrate that there is a need for a permanent exchange on obstacles, solutions and best practices, both at the national and at the European level. The respective experiences and procedures presented in the Working Group on Innovative Solutions to Cross-Border Obstacles could be made inter-operable, in complementarity with the proposed ECBC procedure and tool. This would allow to take action at each border in support of local/regional players, in synergy with ESIF programmes; exchange experiences and best practices concerning the removal of obstacles on different borders; raise awareness of the remaining obstacles at higher levels of government; support the national level (national ECBC coordination points) in the removal of obstacles; facilitate concertation between neighbouring countries; support the intergovernmental process (follow up of the European Working Group on Innovative Solutions to Cross-border Obstacles); and support the European level (EU ECBC platform) to manage an EU database of obstacles and solutions.



Supporting documents

Background Report of the Working Group on Innovative Solutions to Cross-Border Obstacles

1. Achievements and challenges of cross-border cooperation

2. Mapping obstacles

2.1. Some pioneer processes

2.2. The nature of cross-border obstacles: towards a European matrix

3. Mapping the cross-border toolbox: financial and institutional tools do not solve administrative and legal obstacles

3.1. Tools providing financial support - a) At the EU level, b) At the bi/multilateral and national level, c) Where are the limits of these tools?

3.2. Tools providing institutional solutions - a) At the EU level, b) At the bi/multilateral and national level, c) Where are the limits of these tools?

3.3. Tools/strategies providing legal and administrative solutions - a) At the EU level, b) At the bi/multilateral and national level, c) Where are the limits of these tools?

4. Finding innovative solutions to cross-border obstacles

4.1 Completing the toolbox: Proposal for the European Cross-Border Convention (ECBC) procedure and tool

4.2 Completing the toolbox: The need for a multilevel process for dealing with cross-border obstacles and proposal for a European multilevel platform

Factsheets with examples illustrating the use of the European Cross-Border Convention

1. The example of medical certificates for athletes
2. The example of rolling stock equipment
3. The example of regulation on the erection of wind turbines
4. The example of cross-border retail of local products
5. The example of cross-border regional public transport

All the information and documents of the Working Group can be found on the Mission Opérationnelle Transfrontalière (MOT)'s website:

<http://www.espaces-transfrontaliers.org/en/european-activities/working-group-on-innovative-solutions-to-cross-border-obstacles/>



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