Working Group on Innovative Solutions to Cross Border obstacles

July 2016 - July 2017

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



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

Département de l'aménagement du territoire







Medical certificates for athletes

(1) Border that is concerned

Franco-Luxembourgish border (in fact, all French borders)

(2) Exact localisation of the obstacle on the border

Territory of the EGTC Alzette-Belval

(3) Type of territory

Urban

(4) Policy field

Intersection of healthcare and sports

(5a) Nature of the obstacle

Legal obstacle

(5b) Legal basis

i. Context

By delegation from the French Minister of Sports (Ministerial Order of 31 December 2012), the French Athletics Federation was commissioned to define the technical and safety-related rules concerning outdoor athletic disciplines and related competitions in accordance with the French *Sports Code*. Therefore, the *Regulation on Outdoor Events* has legal force and effect – in conjunction with the *Sports Code*.

ii. Sports Code (Code du sport) – Article L231-2-1 : Medical certificate

"In the absence of a [licence issued by a sports federation], the registration [to participate in a sports competition] is subject to the presentation of a medical certificate that has been issued within the last year and attests to the ability to engage in sports or take part in a related sports competition."

iii. Regulation on Outdoor Events (Réglementation des Manifestations Hors-Stade)

"Foreign participants must provide [the organisers] with a medical certificate attesting to their ability to engage in athletics or take part in a running competition, even if they hold a licence from an athletics federation that is affiliated with the International Association of Athletics Federations (IAAF). This medical certificate must be written in French, be dated, be signed and allow the authentication of the doctor regardless of whether the latter's office is in France or not. If the medical certificate is not written in French, the athlete must provide a French translation."

(5c) Who is affected by this obstacle?

Citizens

(6) Description of the obstacle

The obstacle manifests itself in the context of cross-border runs. One example is the 2016 edition of the cross-border run "<u>La Transfrontalière d'Alzette Belval</u>" that was co-organised, among others, by the EGTC Alzette-Belval, the City of Villerupt (FR) and the City of Esch-sur-Alzette (LU). The route started in the French city of Villerupt, crossed the border into Luxembourg and then crossed the border back into France to finish in Villerupt.

What is important to point out is that cross-border runs are regulated in accordance with the legal provisions of the country in which the run is organised and in which it officially starts – notwithstanding

the fact that certain rules of the neighbouring country may apply once the race crosses the border. This example specifically concerns those races that start on French territory and thus fall under Rules 1-1 and 2 of the *Regulation on Outdoor Events*. In accordance with the provisions of the *Regulation on Outdoor Events*. In accordance with the provisions of the *Regulation on Outdoor Events* of the French Athletics Federation (FFA), it is compulsory for foreign athletes wishing to participate to provide the organisers with a medical certificate attesting to their ability to engage in athletics or take part in a running competition. This provision also applies to foreign athletes holding a licence from an athletics federation that is affiliated with the International Association of Athletics Federations (IAAF). This means that, for a run whose route crosses the border from France to Luxembourg, runners holding a licence from the Luxembourgish Athletics Federation (FLA) or any other athletics federation have to undergo a full medical examination in order to be issued with a medical certificate. This medical certificate must either be written in French or be accompanied by a French translation.

The underlying issue is that these athletes have already undergone a full medical examination in order to be issued with their national licence. This obviously puts a burden on foreign runners to provide the organisers with a new medical certificate considering the costs and time involved. The consequence is that a number of foreign runners are discouraged from competing and foreign running clubs refuse or are reluctant to co-organise runs with their French counterparts.

(7) Level of the competent authorities to deal with the obstacle in the respective countries

The competent authorities for dealing with this obstacle are to be found at the national level: Ministry of Sports or French Athletics Federation.

(8) Level at which action will be taken to solve the obstacle

National level.

(9) Type of action that is required to resolve the obstacle

There is the possibility of unilateral or bilateral action.

Unilateral action could be taken in two ways:

- i) The Regulation on Outdoor Events enacted by the French Athletics Federation is changed to the effect that foreign athletes who are in possession of a valid licence issued by an athletics federation that is affiliated with the IAAF do not have to provide the organisers with a medical certificate. This amounts to the unilateral recognition of foreign licences by France.
- ii) The French Minister of Sports orders a derogation from the above-mentioned *Regulation*, either for a single competition or for all cross-border runs.

Bilateral action means that the governments of France and Luxembourg sign an intergovernmental agreement that athletes who are in possession of a valid licence issued by any of the two national athletics federations can participate in runs organised on and starting on either side of the border.

(10) Framework of cooperation

The framework of cooperation in this context is structured governance (Intergovernmental Council France-Luxembourg, EGCT Alzette-Belval).

(11) Experiences concerning this obstacle (internal and external)?

The obstacle was experienced on at least two occasions in the Upper Rhine Region, namely the Strasbourg-Ortenau Marathon and the Cross-Border Race Wissembourg-Bad Bergzabern.

(12) Existing tool, mechanism or solution that could be or has already been applied to the obstacle?

The current solution only consists of translating the procedure of the medical examination into German and English to provide foreign runners and their doctors with additional information.

The French Minister of Sports was informed about this obstacle in 2016. In his reply, the Minister has acknowledged the obstacle and has instructed his departments to examine the proposition of a derogation from the *Regulation*. So far, no action has been taken.

(13) Advantages and disadvantages of the existing tool, mechanism or solution in this case?

<u>Advantages</u>: While the translation somewhat simplifies the procedure of the medical examination itself, it is *per se* not a solution.

<u>Disadvantages</u>: There are still considerable costs involved in terms of money and time. It has also happened that races were cancelled due to either the low number of foreign participants or the inability of French clubs to find foreign co-organisers. While this may not seem like a big issue, it proves that a border can have a strong influence on the smallest activities in people's daily lives.

(14) Feasibility and added value of the ECBC?

The specific provisions of the ECBC proposal would allow a derogation from French law to the effect that athletes who are in possession of a valid licence issued by one of the athletics federations can participate in runs organised on and starting on either side of the border.

This would be a transitional solution until the provisions in the *Regulation on Outdoor Events* could be changed on a permanent basis.

(15) Is the geographical area covered by ETC Programmes?

Yes.

(16) If the answer to (15) is yes, is the policy field of the obstacle covered by a priority axis in one or several of the ETC programmes (mostly Interreg)?

Interreg V A Grande-Région – Priority Axis 3: Improve the quality of life

(17) If the answer to (15) is yes, are there any projects who have specifically dealt with this obstacle (mostly Interreg)?

There is the Interreg project "ABENS! - Alzette Belval, vivons ensemble!" with the EGTC Alzette-Belval as lead partner. As part of the project, the EGTC Alzette-Belval re-launched a cross-border race between France and Luxembourg.

Rolling stock equipment

(1) Border that is concerned

Franco-German border

(2) Exact localisation of the obstacle on the border

From Strasbourg (FR) to Kehl (DE)

(3) Type of territory

Urban/ Urban periphery

(4) Policy field

Transport, Security

(5a) Nature of the obstacle

Legal obstacle

(5b) Legal basis

iv. French Code des transports: Book 2, of the Legislative Part, Interoperability, Security and Safety of Railway and track-guided transport, Article L2211-1

"(...) the definition of the essential requirements on the interoperability and the placing on the market rules which must be met by the constituents and the subsystems are determined by regulations". The requirements must conform to objectives of "CE marking" directives. The regulation was enacted by Decree of the President of the Republic (Decree n°2003-425 of 9 May 2003). This Decree was modified by Decree of the Prime Minister (n° 2017-440 of 30 March 2017).

French Decree on the Security of track-guided public transports (STPG) n°2003-425 of 9 May 2003 repealed by the Decree n° 2017-440 of 30 March 2017 (entered into force on 1st April 2017)

In accordance with the Decree, a track-guided public transport system includes all elements contributing to its running and to its use, especially infrastructure, technical and safety installations, vehicles, operating and maintenance principles and rules. In particular, trams represent such a system (Article 2 of Decree n°2003-425).

The Minister of Transports shall approve qualified experts or bodies for the evaluation of the conception, realisation and exploitation safety (Article 3-1 of Decree n°2003-425).

The evaluation is based on several files, since they are submitted by public transport Authorities to the Prefect of the Department where the system should be located.

The following files have to be provided: safety definition file, preliminary safety file, safety and commercial commissioning file.

The content of these files was determined by ministerial arrêtés.

vi. French Arrêté of 23 May 2003 on Safety files of track-guided public urban transport systems modified by the Arrêté of 30 March 2017

The Arrêté of 23 May 2003 on Safety files of track-guided public urban transport systems was adopted by the Minister of Interior and the Minister of Transport with the aim of defining the content of the required safety files.

vii. German Federal Regulation on the construction and operation of light rail transit systems (Verordnung über den Bau und Betrieb der Straßenbahnen (BOStrab)

This Regulation sets out technical standards and requirements relating to the rolling stock equipment for trams to be operated in Germany.

(5c) Who is affected by this obstacle?

Citizens

(6) Description of the obstacle

The obstacle manifests itself in the operation of line D of the Strasbourg tramway network that crosses the FR-DE border in direction of the German town of Kehl. Concretely, the obstacle concerns the existence of different technical standards and requirements relating to the rolling stock equipment in France and Germany. As was agreed between the project partners, the rolling stock to be used for the cross-border line is the French Citadis tram that is currently in use on the Strasbourg network. The problem is that the standard Citadis tram model, while complying with the French technical standards, does not fully comply with the equivalent German technical standards because additional equipment is required. For instance, the German technical standards additionally require a third light situated high on the tram and retro-reflectors positioned on the entire length of the tram. To comply also with the German technical standards and requirements, the project partners agreed to retrofit the standard model of the Citadis tram for line D. In total, 22 trams were specifically retrofitted for this project, which increased the cost of the rolling stock and thus the overall cost of the project.

(7) Level of the competent authorities to deal with the obstacle in the respective countries

The competent authorities for dealing with this obstacle are to be found at the municipal level: Municipalities, public transport authorities in the field of urban transports.

(8) Level at which action will be taken to solve the obstacle

National level:

In France: Ministry of Interior, the Ministry of the Environment and Secretary of State for Transport. In Germany: Federal Ministry of Transport

(9) Type of action that is required to resolve the obstacle

- The German Federal level could agree to respect the French regulations on the project territory only for this tramline.
- The Ministries of Environment, of Interior and of Transport of France and the Federal Ministry of Transport of Germany could establish a structure for the governance of cross-border transport projects involving local authorities.

(10) Framework of cooperation

Structured governance

(11) Experiences concerning this obstacle (internal and external)?

No.

(12) Existing tool, mechanism or solution that could be or has already been applied to the obstacle?

The current solution (adopted for the tramway that operates since April 2017) only consists of an agreement between the stakeholders. Thus, the French side agreed to retrofit the standard Citadis tram model in line with the technical standards and requirements of the German regulation.

(13) Advantages and disadvantages of the existing tool, mechanism or solution in this case?

<u>Advantages</u>: There is no legislative change as stakeholders have agreed on a more binding framework in a territory where less stringent standards would have been sufficient in light of the "CE marking" directive.

<u>Disadvantages:</u> It was a long and burdensome negotiation process of negotiation. The additional equipment in line with the requirements of the German regulation significantly increased the cost of the rolling stock as the standard Citadis tram model had to be retrofitted, which in turn increased the overall cost of the project.

(14) Feasibility and added value of the ECBC?

The launching of an ECBC procedure and the use of the ECBC tool by the German local authority over the project of the cross-border extension of the French tramway line would have allowed the border municipalities and the German Federal level to agree on the "exportation" of the French technical standards to the German side. This would have saved the project operators the costs of retrofitting the Citadis trams and would have been a simpler solution.

(15) Is the geographical area covered by ETC Programmes?

Yes.

(16) If the answer to (15) is yes, is the policy field of the obstacle covered by a priority axis in one or several of the ETC programmes (mostly Interreg)?

Interreg V Upper Rhine

(17) If the answer to (15) is yes, are there any projects who have specifically dealt with this obstacle (mostly Interreg)?

Regulation on the erection of wind turbines

(1) Border that is concerned

Franco-Belgian border

(2) Exact localisation of the obstacle on the border

For example between the municipalities of Menin (BE) and Halluin (FR)

(3) Type of territory

Urban-rural/ urban periphery

(4) Policy field

Energy

(5a) Nature of the obstacle

Legal obstacle

(5b) Legal basis

- French Law on energy transition and green growth n°2015-992 of August 17th 2015: Wind turbines have to be built at a minimum distance of 500m to housing.

- Reference Framework for building wind turbines in the Walloon Region of February 21st 2013, modified on July 11th 2013: Wind turbines have to be built at a minimum distance to housing, equal to 4 times their height (concerning wind turbines between 1m and 190m high). Considering that a conventional wind turbine is about 80m high, the minimum distance would be 320m.

(5c) Who is affected by this obstacle?

Citizens, companies erecting the wind turbines

(6) Description of the obstacle

The obstacle manifests itself in the context of erecting wind turbines in the border area. Concretely, the obstacle concerns the existence of different national provisions regulating the minimum distance between wind turbines and houses. It has happened, for instance in the case of of Menin (BE) and Halluin (FR), that wind turbines erected on Belgian territory were located at an adequate distance to Belgian houses (in accordance with the Belgian provisions), but not at an adequate distance to French houses on the other side of the border. This means that the Belgian authorities did neither consider the location of the French houses in the planning process nor take into account the French provisions on the minimum distance between wind turbines and houses. This has caused tensions in the border area and has led to law suits. In addition, it can be said that the consultation process between Belgian and French authorities regarding the erection of wind turbines in the border area is not satisfying.

(7) Level of the competent authorities to deal with the obstacle in the respective countries

Municipalities, which are responsible for the planning process and issue the building permits for wind turbines.

(8) Level at which action will be taken to solve the obstacle

Ministry of Environment in France (national level); Ministry of Environment of the Walloon/ Flemish Region (regional level).

(9) Type of action that is required to resolve the obstacle

- The Walloon Region could agree to respect the French provisions regarding the minimum distance to French houses.
- The Ministries of Environment of France and of the Walloon Region could establish a structure for consultation over cross-border energy projects involving local authorities.

(10) Framework of cooperation

Ad-hoc cooperation.

(11) Experiences concerning this obstacle (internal and external)?

The obstacle was experienced on several occasions on the Franco-Belgian border and was reported in a survey on obstacles to cross-border cooperation on that border in 2007 and 2012. It was also experienced on the Franco-Swiss border.

(12) Existing tool, mechanism or solution that could be or has already been applied to the obstacle?

The European Commission provides Member States the possibility to « create a common structure in charge of consultations in the case of a cross-border project », but it is optional and has so far not been applied.

(13) Feasibility and added value of the ECBC?

The launching of an ECBC procedure over a project of a wind turbine would allow the Walloon Region and the French national level to agree on a consultation process involving the stakeholders and to approve an ECBC, defining that the Walloon Region accepts to respect the French provisions regarding the minimum distance to French houses. Therefore, the use of the ECBC prevents law suits against the erection of a wind turbine and increases public acceptance of the project.

(14) Is the geographical area covered by ETC Programmes?

Yes.

(15) If the answer to (15) is yes, is the policy field of the obstacle covered by a priority axis in one or several of the ETC programmes (mostly Interreg)?

Interreg V A France-Wallonia-Vlaanderen.

(16) If the answer to (15) is yes, are there any projects who have specifically dealt with this obstacle (mostly Interreg)?

Cross-border retail of local products

(1) Border that is concerned

Every Hungarian border

(2) Exact localisation of the obstacle on the border

For example Sopron, Komárom, Makó, Sátoraljaújhely, etc.

(3) Type of territory

Urban-rural

(4) Policy field

Agriculture (local products)

(5a) Nature of the obstacle

Legal obstacle

(5b) Legal basis

<u>At EU level:</u>

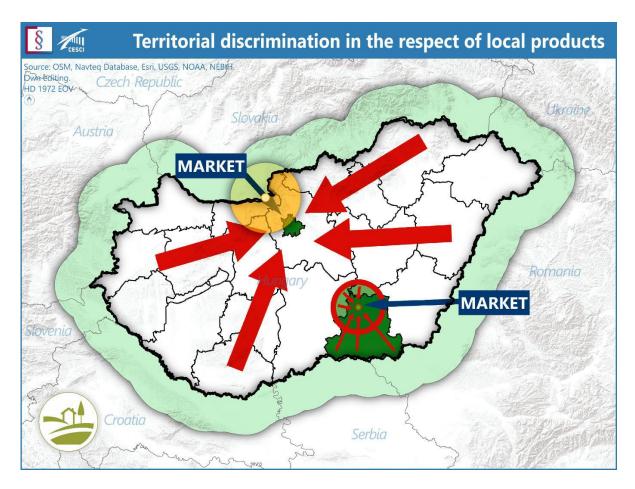
- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs
- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin

The referred regulations state that the rules governing small producer activities (the direct supply of small quantities of primary products for either the final consumers or local facilities that directly supply the final consumer) are set by the Member States in accordance with the national legislation.

At national level:

• Agricultural and Rural Development Minister Decree of 52/2010 (IV. 30.) on the preconditions for the production, processing and selling of food by small producers

According to Paragraph (1) of the small producer decree, a small producer is an entity which supplies in small quantities with their primary products and food products processed from their primary products either the final consumer directly, or the retail and catering establishments that are located within the county or within 40 km as the crow flies from the farm of the small producer. The definition "within the region" is specified in Paragraph (2): in the county of the location of the small producer's farm or the place of manufacture, or of Budapest.



• Act CLXIV of 2005 on Trade

A local farmers' market is a market where a small producer shall trade their agricultural products and foodstuffs that were produced in the county in which the market is located or in an area within a radius of 40 km from the market, or in the case of a market in Budapest, products that were produced in the territory of Hungary. In accordance with this definition, only domestic products shall be traded on such markets, and foreign producers are excluded.

• Government Decree No 210/2009 (IX. 29.) on the conditions governing commercial activities

The regulation provides for commercial activities that are subject to registration, for their conditions, and for the products that may be only sold in store.

• Government Decree 55/2009 (III. 13.) on fairs, markets and shopping centres

The regulation lays down the rules for the creation and operation of local farmers' markets.

(5c) Who is affected by this obstacle?

Citizens, farmers, local producers.

(6) Description of the obstacle

The obstacle manifests itself in the context of small producers selling their agricultural products and foodstuffs on farmers' markets in Hungary. Concretely, the obstacle concerns the provision that – due to hygiene rules and the territorial limitation for the sale of products – only agricultural products and foodstuffs that were produced by small producers in Hungary can be sold on Hungarian farmers' markets. This means that while citizens living in the centre of Hungary are provided with local products from a range of suppliers, citizens living in border areas face territorial discrimination as their choice of

local products is more limited due to the fact that local producers from the border regions of the neighbouring countries are excluded.

(7) Level of the competent authorities to deal with the obstacle in the respective countries

Ministry responsible for rural development and agriculture; ministry of finance.

(8) Level at which action will be taken to solve the obstacle

Ministry of Agriculture, Prime Minister's Office

(9) Type of action that is required to resolve the obstacle

1) Enlargement of the effect of the Hungarian law (40 km distance) to the neighbouring countries' territories (amendments of the relevant Hungarian regulations);

2) bilateral agreements on mutual recognition of food safety and food hygienic rules.

(10) Framework of cooperation

Bilateral agreements.

(11) Experiences concerning this obstacle (internal and external)?

There are many LEADER LAGs in the border areas in Hungary which started building up local product markets and local branding. Some of them also initiated cross-border partnerships with neighbouring LAGs, and in the case of the Ister-Granum EGTC (at the Hungarian-Slovak border) a cross-border label was initiated. The integration of local product markets is included in development plans of several EGTCs, but the current legislative framework does not allow them to realise these plans.

(12) Existing tool, mechanism or solution that could be or has already been applied to the obstacle?

There are no such tools.

(13) Feasibility and added value of the ECBC?

By the launching of an ECBC procedure and the use of the ECBC tool (by local/regional authorities from neighbouring countries), the Hungarian authorities would allow the small producers from the border regions of the neighbouring countries to sell their local products on farmers' markets in Hungary – provided that these markets lie within 40 km from their farms. That is to say, Hungary approves internal standards of the local producers' country of origin (standards governing production and sale of agricultural products).

The specific provisions of the ECBC could also foresee a system on a mutual basis that allows small producers from Hungary to sell their products abroad on farmers' markets in the neighbouring countries – provided that these markets lie within 40 km from their farms

(14) Is the geographical area covered by ETC Programmes?

Yes.

(15) If the answer to (15) is yes, is the policy field of the obstacle covered by a priority axis in one or several of the ETC programmes (mostly Interreg)?

Since the problem falls under the effect of EAFRD and not ERDF, the cross-border programmes can reflect on this subject only in an indirect way. The Slovakia-Hungary and Romania-Hungary INTERREG V-A programmes address the issue within the framework of employment development; while the Hungary-Serbia IPA programme or the Hungary-Croatia INTERREG V-A programme concentrate on SME level cooperation where agricultural SMEs can be taken into account.

Nevertheless, no direct priority axes can be mentioned.

(16) If the answer to (15) is yes, are there any projects who have specifically dealt with this obstacle (mostly Interreg)?

Cross-border regional public transport

(1) Border that is concerned

Slovakia-Hungary, Hungary-Romania

(2) Exact localisation of the obstacle on the border

For example, Győr (HU) and Veľký Meďer (SK); Biharkeresztes (HU) and Oradea (RO)

(3) Type of territory

Urban-rural

(4) Policy field

Transport

(5a) Nature of the obstacle

Legal obstacle

(5b) Legal basis

Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services:

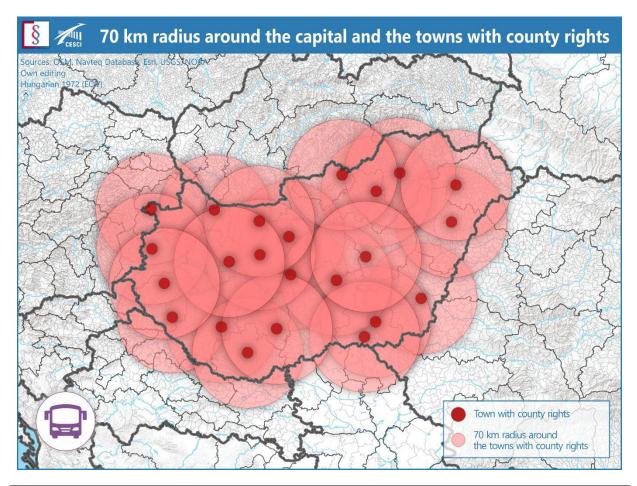
- ban on cabotage (regular transport services between two points within a country, carried out by an international operator).
- "Where regular services are concerned, only regular services provided as part of a regular international service, excluding urban and suburban services, should be opened up to nonresident carriers, subject to certain conditions, and in particular to the legislation in force in the host Member State."

Hungarian Act XLI of 2012 on Passenger Transport Services:

- cross-border passenger transport services (regular services between border cities and conurbations) are considered urban and suburban services, and are therefore not permitted to perform cabotage operations
- suburban passenger services are passenger services carried out in the capital or county town and in their functional area covering a radius of 70 km.

(5c) Who is affected by this obstacle?

Borderlands' citizens, companies hiring employees from the other side of the border.



(6) Description of the obstacle

The obstacle manifests itself in the context of international passenger transport services crossing the border from the neighbouring countries into Hungary. While the EU Regulation does not include urban and suburban passenger transport services in the exemption from the ban on cabotage (which means that urban and suburban services should not be opened up to foreign carriers), the relevant Hungarian law identifies cross-border passenger transport services as suburban in nature. This provision stems from the fact that the borderlands in the neighbouring countries generally lie within the functional urban area of a Hungarian county town. Consequently, international passenger transport services crossing the border from the neighbouring countries into Hungary cannot be operated by non-Hungarian carriers.

(7) Level of the competent authorities to deal with the obstacle in the respective countries

Ministries responsible for transport.

(8) Level at which action will be taken to solve the obstacle

Ministry of National Development of Hungary; ministries responsible for transport of the neighbouring countries.

(9) Type of action that is required to resolve the obstacle

An exemption from the ban on cabotage should be allowed in a special zone (e.g. 50 km) around the Hungarian border in order to make it possible and profitable for foreign carriers to operate cross-border passenger transport services into Hungary.

(10) Framework of cooperation

Bilateral agreements.

(11) Experiences concerning this obstacle (internal and external)?

The obstacle was identified several times along different Hungarian border sections. In the case of the Győr - Veľký Meďer bus line, the obstacle resulted in the bankruptcy and elimination of the service itself. Cars were not allowed to pick up passengers at the intermediate stops, which made the service extremely unprofitable.

(12) Existing tool, mechanism or solution that could be or has already been applied to the obstacle?

Bilateral agreements can give exemptions but it is not in the interest of the domestic service providers.

(13) Feasibility and added value of the ECBC?

The launching of an ECBC procedure and the use of the ECBC tool by local/regional authorities from Hungary would allow them to derogate from the Hungarian provisions on cross-border transport services and potentially adopt the rules of neighbouring countries so that these services are no longer considered to be suburban in nature. This means that foreign carriers could operate cross-border passenger transport services into Hungary.

(14) Is the geographical area covered by ETC Programmes?

Yes.

(15) If the answer to (15) is yes, is the policy field of the obstacle covered by a priority axis in one or several of the ETC programmes (mostly Interreg)?

Slovakia-Hungary INTERREG V-A

Romania-Hungary INTERREG V-A

(16) If the answer to (15) is yes, are there any projects who have specifically dealt with this obstacle (mostly Interreg)?

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-solutionsto-cross-border-obstacles/



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

Département de l'aménagement du territoire





