

# Working Group on Innovative Solutions to Cross Border obstacles

## Luxembourg Presidency of the EU follow-up

8<sup>th</sup> meeting of the working group  
28<sup>th</sup> June 2018 – Brussels (Belgium)

## REPORT

### 1. Introduction

**Thiemo ESER (LU)** and **Christina BEZES-FELDMEYER (FR)** are chairing the group with the support of the Mission Opérationnelle Transfrontalière (MOT).

**Thiemo ESER (LU)** introduces this first meeting following the ECBM proposal. He reminds the structure of the WG which was set up as a platform of informal interinstitutional and intergovernmental exchange. He welcomes the Austrian colleagues who will chair the Council's Structural Measures Working Party (SMWP) where the draft regulations (including the ECBM) will be discussed. Moreover, the delegates of the SMWP were invited to participate and a number of them are taking part in the discussions today. We also host the Commission (DG REGIO) for an introduction of the ECBM, as well as representatives of the Parliament Secretariat and Council representatives.

He thanks CoR for hosting the WG.

The agenda of the meeting is validated.

The minutes of the 7<sup>th</sup> meeting are validated.

All documents are available on the MOT website.

### 2. Regulation on a mechanism to resolve CB obstacles, in the larger context of Cohesion policy

**Nathalie VERSCHELDE (DG REGIO)** gives an introduction of the present situation. The proposal was made on 29 May 2018. They are now moving to present and explain the proposal in the different EU Member States.

Main point: ECBM is a new tool completing the CB toolbox. Interreg is a financial tool, the EGTC is an institutional tool for governance; but a process, an EU tool to solve legal obstacles, was missing. Now all these tools are in place.

In the last meeting on territorial impact assessment of the ECBM regulation, the Council was convinced of the need of the new mechanism.

The Commission is attending today to give some clarification. They will no longer be able to take part in this Working Group from now on, as this could be interpreted as parallel negotiations to the official process. But they may come if they are invited to discuss other topics. She thanks the group for the input it provided to support the proposal.

**Dirk Peters (DG REGIO)** explains that the regulation is meant to set up a procedure; a legal mechanism to overcome legal obstacles that can also be used outside the Interreg context.

- ECBM may lead to a commitment (ECBC, self-executing), or a statement (ECBS, requiring a legislative procedure). It all depends on the constitutional internal structure of States.

-it applies in the limits of a well-defined case/project;

-it allows legal provisions from another MS to be implemented.

It is not:

- a new form of EGTC, but an additional tool. A link is made, by allowing EGTCs to be initiators;

- mandatory; but MS have the obligation to opt for an effective mechanism to overcome legal obstacles (other existing ways but the EC will evaluate if it is effective);

- a mere support for projects funded by the EU. Its legal basis is provided by the Treaty, Article 174 on territorial cohesion;

- a way to bypass national legislative powers. It is only the initiation of a procedure, allowing to make a proposal to the parliament which remains free to adopt it or not;

- applicable everywhere – CB regions NUTS3 only. So, it creates new legal borders.

Why is it needed?

- Article 174 TFEU pays attention to CB regions;
- Despite the Single Market, legal and administrative obstacles continue to hamper CB integration in the EU;
- If only 20% of obstacles were removed, CB regions GDP would increase by 2%.

What kind of obstacles?

- Legal and administrative provisions with regards to the planning, development, staffing, financing or functioning of a joint project;
- Many possible causes:
  - Not compatible administrative provisions;
  - Planning without taking into account situation in the neighbouring State;
  - Incompatible transposition of a Directive;
  - Different applicable technical standards.

Some illustrations (see PPT):

- 1) Extension of Strasbourg (FR) tramline to Kehl (DE);
- 2) Obstacles in emergency services;

- 3) CB triathlon;
- 4) CB headquarters (DE/ NE border): the building had to meet German as well as Dutch strictest requirements (technical norms).

Many more examples could be given, as CB cooperation faces multiple administrative and legal obstacles. As a result, CB projects take time and cost a lot of money. There is also a lack of legal certainty.

#### How does it work?

2 levels of decision (see *PPT*): MS have to decide on each border if they apply the ECBM or if they opt out (in case a mechanism already exists) (article 4) + one decision per obstacle (articles 8-20)

Members States have options depending on their internal structures, but also on their common decision to apply such internal norms across the border.

**Thiemo ESER (LU)** thanks Dirk Peters for the clear presentation of the proposal.

### Round table discussion

**Hannes NAGEL (Ministry of Finance, EE)** is satisfied by the presentation, but has some questions:

- Who from the Commission will evaluate the effectiveness of the existing mechanisms?
- What would be the evaluation criteria?
- What happens if the Commission concludes in the non-suitability of such a mechanism?
- It is a voluntary mechanism helping to overcome obstacles on internal borders, but what about maritime borders? Who decides which borders are relevant?
- Regarding the coordination point, which also deals with the existing solutions, the reporting process should not create an additional administrative burden...
- Article 9 "Content of the initiative document" is not clear
- Article 6, c): which database is concerned?
- Article 23: Commission database: who will keep it? What is its purpose, which interactivity with other databases? How will it be updated?

EE can send their questions by mail if required.

**Dirk PETERS (DG REGIO):** There is one coordination point already existing at the Commission level (border focal point at Nathalie's Unit).

What about criteria for suitability? – All existing mechanisms must be as effective as the one we propose to solve legal obstacles. If there is a doubt about the effectiveness, Mr. Peters could not give an answer at the moment, because we do not know, what kind of agreements will be concluded by the 2-3-4 States on the same border, and what kind of choices will be made regarding applicable rules. It's all about the application of the regulation which is submitted to the EU supervision.

A Member state can refuse to transfer its legal provisions outside its territory.

Maritime borders are also mentioned in the regulation (article 4). It is up to each Member states to decide on which border the mechanism is applicable.

The process of the ECBM is not detailed for external borders in the regulation, but States are free to apply it there if they wish so. Other tools such as the Madrid Outline Convention and its three additional protocols, international law tools etc. apply there.

The CB review has established an inventory of existing mechanisms.

To the question on the risk of additional administrative burden, D. Peters answers that it is a new procedure among others. The additional burden is nothing compared to obstacles continuing to hamper business and citizens' daily life on borders. In the end, bureaucracy will be reduced.

Details on the database managed by the EC and protection will be established later.

**Nathalie VERSCHELDE (DG REGIO)** reminds that an obstacle inventory already exists, coordinated by the Border focal point set up in January 2018.

The process will be built over time, meaning that it will be nourished by solutions given by States; it is only a facilitating mechanism.

**Dirk PETERS (DG REGIO):** Who can be initiator? Local authorities etc.; and also AEBR, MOT, CESCO, some initiatives could also be submitted jointly (a local authority with one of those organisations giving legal advice).

**Hannes NAGEL (Ministry of Finance, EE):** Is the "effectiveness" of national mechanism defined by the Commission?

Regarding the database, will there be 28 databases: the Commission one and 27 databases in the MS?

**Irina CRUCERU (Permanent Representation of Romania to the European Union)** asks which State, on what basis, will decide about derogations on a given border from internal rules?

**Diana HAASE (European Parliament)** asks what will happen when the regulation will be published (article 24).

At the beginning of the proposal, what is mandatory and what is voluntary – articles one, two and three? In both cases of infrastructure and a service of general economic interest, what should the authority include in its proposal? Some concrete provisions? Is there any obligation about the content of the proposal? If the joint project does not fit with the definition of a joint project in the regulation, is the mechanism mandatory?

**Dirk PETERS (DG REGIO):** Effectiveness means founding a solution to solve obstacles (within a certain deadline).

Regarding the issue of databases, yes, there will be 27 databases in the MS (possibly already existing) and one Commission database, but this should not be considered as additional burden. They will provide a description of possible solutions.

In which country should the obstacle be addressed? - it depends on the project (e.g. in the tram case, France exported its tram; in the Hospital of Cerdanya case, the legal obstacles could have been addressed in both French and Spanish countries, some applicable rules are coming from French law, others from Spanish law). The regulation proposal doesn't provide any fixed frame.

Who exactly should do what? Coordination point- visible part; what happens in the MS- hidden part.

It all depends on the choices made by each State concerning its own coordination point. Some coordination points would be able to do more than others (e.g. to sign the ECBC).

The ECBM is not limited to projects co-funded by Interreg.

**Nathalie VERSHELDE (DG REGIO)** stresses that it is wrong to believe that there would not be Interreg projects without adopting the new regulation.

**Dirk PETERS (DG REGIO):** What is voluntary/ mandatory about the regulation?

The ECBM allows States to opt for this mechanism or for an alternative solution.

When the ECBM system is chosen the Regulation applies *in toto* (e.g. the coordination point must be in place). After, it will work only if there are requests. The same happened for the EGTC regulation. Some States may not use the mechanism proposed by a European regulation and may opt to use a different mechanism.

**Alexander FERSTL (Permanent Representation of Austria to the EU – Austrian Presidency)** asks DG REGIO to give an example of an existing mechanism, which is effective in their view.

If no other mechanisms exist, the ECBM must at least reach the national Parliament discussion - is it a good comprehension of the matter? Can the mechanism be sectoral, e.g. applied to water issues?

**Hannes NAGEL (Ministry of Finance, EE)** asks who pays if there is a legal recourse.

Also, if States don't intend to apply the ECBM, how do they introduce it?

**Dirk PETERS (DG REGIO):**

He is not familiar enough with existing mechanisms. For example, the Benelux Convention allows decision-making process to be carried out independently of the Parliaments' position, in order to avoid blockages.

Perhaps such a facilitating procedure exists under the Nordic Council.

Who will pay is an issue covered by national law. If a complaint about the application of the ECBM is filed, the claimant may have recourse to the administrative court. In this case, the judge will also settle the question of who pays.

**Thiemo ESER (LU)** underlines that the situations covered are very different: For example, some Member States have trams, while others do not. The solutions will be practical and related to the specific border. There will never be an internal market regulation on trams for the entire EU as there will never be a tramline across the EU territory.

As to the additional administrative burden, the most important thing is how to make citizens' life easier.

**Auke VAN DER GOOT (Ministry of the Interior and Kingdom Relations, Netherlands):**

The tool is a holistic one, not a sectoral one.

What happens if the initiator's proposal is not accepted, e.g. if the national Parliament does not adopt the proposed statement?

What about a border with different competencies at different levels across the border, e.g. in case there is a Federal State (e.g. between Germany and Netherlands)?

If there is more than one mechanism available, which are the relevant articles of the regulation?

**Dimitrij PUR (Government Office for Development and European Cohesion Policy, Slovenia)** states that things are clearer now, and Slovenia may support the regulation. He asks how to assess effectiveness of existing mechanisms (e.g. veterinary inspection – horses crossing borders)?

**Jean-Louis VALLS (CTP)** refers to States possessing more than one border: When mechanism first applies at one border, what is the enforcement for the others?

**Dirk PETERS (DG REGIO):** States and Parliaments are sovereign. If a national Parliament does not adopt a ministerial proposal, it is entitled to do so. Nevertheless, it has to justify its decision; the process has to be as transparent as possible.

In case of a breach of European law, there is always an option to bring the case to the ECJ.

ECBM can be implemented differently; including in the case of Federal States (in this case we should address the appropriate level on both sides of the border).

Any alternative mechanism existing on a border shall be communicated to the Commission.

If a State has several neighbours, discussions are carried out separately with each country on each border. Every CB cooperation is unique, even though some discussions may be merged with others.

**Nathalie VERSCHELDE (DG REGIO)** explains that the challenge is to find a tailor-made solution on each border, taking into consideration differences between neighbouring States.

Furthermore, one State cannot apply the regulation alone.

When the mechanism will apply, it will be clearer.

**Thiemo ESER (LU)** reminds that solutions already exist, but procedures often take a very long time. Actually, the problem is the length or the lack of answer for the initiators. Also, a unique situation raises important questions at different levels (constitutional, parliamentary, administrative, etc.).

The draft regulation is valuable as it proposes a global solution. It consists in one procedure where people get involved in a discussion to find a solution. Certainly, it is up to the competent authorities to accept a solution or not.

**Stanislav RATAJ (Ministry for Regional Development of the Czech Republic)** mentions the Czech situation as the State shares borders with two German Länder. He asks if it is possible to adapt the mechanism, first adopted for one Land only, to the situation on the border with the other Land later. In other words, could the ECBM be introduced on a border where another mechanism was initially considered as more effective (as a substitute mechanism)?

**Christina BEZES-FELDMEYER (FR)** asks a question about time duration of the mechanism. Who will discuss the length of time for the ECBM to be applied (States or coordination points)? Can it be unlimited?

**Dirk PETERS (DG REGIO):** (answer to Mr Rataj) the decision has to be taken at the beginning of the application of the ECBM, once and for all. If the State opts afterwards for another mechanism, the regulation does not cover its replacing. But it doesn't prevent it.

(Ms Bezes): There is no limitation settled by the regulation. The ECBC/ ECBS will set out its own duration. In most of the cases (e.g. the tram case), there should be no time limit.

MS are free to apply different solutions on different places; the regulation says nothing on the matter.

**Thiemo ESER (LU):** The WG should be a platform to explain how the mechanism can be used, how it could function and how States perceive it. It will support incoming Presidencies through the legislative process.

### **Actions to be taken to support the regulation (questions to States)**

**Johannes ROSSBACHER (Austrian Presidency)** addresses Thiemo Eser, Jean Peyrony and Christina Bezes-Feldmeyer, and asks them what is their personal assessment of the regulation. Is it an instrument that can solve obstacles?

**Jean PEYRONY (MOT)** clarifies MOT's role on this point. In 2015, MOT supported Luxembourg (member of MOT) when they put this idea on the table. MOT supported the tool since the beginning and will continue to do so, acting on behalf of its members, including France, Luxembourg, etc.

**Thiemo ESER (LU)** has a positive assessment; the tool meets the concerns we have been discussing. It brings solutions, answers and a real added value to the CB toolbox.

The starting point was practical: obstacles and blockages. Then, the idea has emerged that status quo is not an option. Presently, ongoing solutions are case-by-case solutions.

At the same time, there is often no solution, because the existing ones don't fit all obstacles. The solution will be found on each border so the principle of subsidiarity is respected.

The ECBM is a sustainable solution and a continuous process. Now, the challenge is to know how the mechanism could work in practice.

As for the contact point's role about the commitment/ statement, if the contact point is a ministry, it will have a real power to initiate a new legislation. This way, we open up a very broad range of possible options to settle CB obstacles in a more effective way, inside the national system. Thus, the regulation should be implemented in the more pragmatic way.



Do not forget what the intention is, what we want to achieve with it. We should concentrate on making the mechanism user-friendly and applicable.

**Christina BEZES-FELDMEYER (FR)** stresses that existing tools (Interreg, EGTC etc.) are not sufficient. The ECBM is necessary, since it sets up a process. Every involved party in the member state and with neighbouring member state will have a clear role to play in the process in order to solve the remaining legal and administrative obstacles on each border.

In France, an inter-ministerial coordination to tackle CB issues is about to be put in place.

**Jean PEYRONY (MOT)**: the tool's added value has two dimensions:

-the possibility of the local authority to propose a solution to a CB obstacle;

-the overall European framework: it is the first time we recognize CB issues are not the responsibility of local actors or EU action alone, but also States' one. We need states coordinating between themselves. The new regulation makes clear that CB cooperation is a bottom-up multilevel process.

**Thiemo ESER (LU)**: The draft regulation is something tailored answering the needs of the people on borders, based on mutual learning; we should focus on an efficient way to implement it.

**Michael DEJOZE (Euregio Maas-Rhine)**: The regulation is something they were waiting for since years. Bureaucratic, administrative burdens often stop the Euregio action and the ECBM can clearly help them. It is built from CB experience.

They're confident and optimistic because a proposal with an alternative solution to the bureaucratic and administrative blockages is already a big step. They will make good things happen on this basis, and have already started to think how to apply the regulation.

**Katalin FEKETE (Ministry of Foreign Affairs and Trade, Hungary)** Hungary, a country with 7 borders, is pleased about the new tool.

People working in EGTCs do a tough job tackling CB obstacles. It is an expensive and time-consuming process.

Perhaps, we need more guarantees regarding lawmakers. This is a question of sovereignty, but she does not understand how the coordination point could settle it.

**Johannes ROSSBACHER (Austrian Presidency)** insists that the Austrian Presidency will work on the new tool but it is not in the heart of the negotiations of the Cohesion package (5 regulations). They will do their best not to leave it, even though the final regulation will not be adopted till the end of the year (i.e. the end of the Austrian Presidency)

**Thiemo ESER (LU):** Their ministry takes part in the Structural Measures Working Party, and in the Territorial Cohesion DG meetings, so they will follow the process.

**2.00 pm**

## Feedback on the B-solution project call

**Nathalie VERSCHELDE (DG REGIO):**

The evaluation is completed but they need some time to inform first the applicants. Then the results will be made public.

Context of the project:

Need for some pilot projects on border obstacles. The original idea was to feed the ECBM regulation.

The call was opened in February for three months. It targeted light projects, with an easy application process.

36 applications have been submitted, quite a low figure and below expectations.

Only 6 were rejected as being ineligible. 30 projects were examined. 10 have been declared successful. All project categories are represented. Different kinds of projects:

- Urban sustainability;
- Public transport;
- Geographic observation;
- Recognition of diplomas;
- Phytosanitary facilitations;
- Doctors movements' facilitations;
- Tax;
- Health care;
- Multilingualism in kinder gardens...

We should reflect on the unsuccessful ones.

A positive point is the good representativeness of European borders -but nothing from South and North of Europe.

Only half of the total budget was spent. Now, they will think about a new call or the money will go back to the Commission budget. Should they buy expertise and pinpoint obstacles? They will decide it in August.

**Dimitrij PUR (Government Office for Development and European Cohesion Policy, Slovenia):**

The call was on the website but it was not easy to understand what was exactly meant by the term “cooperation”.

The remaining budget could serve to extend the successful projects.

**Frederick-Christoph RICHTERS (LU):**

May be we should better distinguish these projects from Interreg ones. Legal aspects are not easy to pinpoint inside identified obstacles.

Also language was a problem for some applicants (English translation).

Often, views are diverging on the same border: some issues are more important on one side than on another.

For the remaining budget, the idea to go further with the successful projects is a good one; transfers of good practices between more and less advanced border regions could be supported, like in the Urbact transfer networks.

## **The Working Community of the Pyrenees’ experience with CB obstacles**

**Jean Louis VALLS (Director of the CTP)** presents Interreg VA Spain-France-Andorra Poctefa 2014-2020

After 30 years of cooperation, CTP is the only example of a structure managing both a cross border region and an Interreg program. CTP brings together 2 French regions, 4 Spanish regions and Andorra (bigger territory than Poctefa territory)

CTP was created in 1983, 3 years before Spain joined the EU and 7 years before the first Interreg projects.

It has 5 official languages.

Andorra does not get money from the programme, it only participates.

5 axis: innovation and competitiveness; adaptation to climate change, prevention and risk management; protection, development and sustainable use of local resources; goods and services mobility; vocational training, employment and social inclusion (the first three axis are the more important, they represent 50% of all funds)

Project examples:

- 1) Project PRINCALB: save forest from fire. Administrative arrangement between France and Spain, that Ministers of interior signed on 20<sup>th</sup> February 2017; but it took 5 years to make it. It allows bombers to cross the border on 15 km, to fight the fire;

- 2) Project HeliNET: reduce the response time to emergencies. Expected results:
- CB logistics network;
  - Operational network developing guides;
  - End with the lack of current administrative logistical and operational coordination to allow CB mutual help;

Obstacles and weaknesses they have to deal with are: lack of CB mobility and connectivity, aging of the population, language barriers, moderately innovative territory, difficulties in attracting companies, high level of unemployment among young people.

Why a Pyrenees Strategy? It acts as a macro-region (strategic framework for Poctefa, but also cooperation aspects of other programs); optimises the CTP governance tool; exploits favourable opportunities; develops its own activities; recovers the original spirit of CTP.

Its 3 axis for 2018-2020 period are:

- \*adapting to climate change and environmental protection;
- \*promoting local initiatives, attractiveness of the CB territory (CTP can act on it);
- \*CB accessibility, mobility, connectivity (CTP cannot act on it).

In the context of the b-solution call, CTP has proposed a pilot project: Health emergencies in the Pyrenees.

The legal obstacle identified consists in the fact that doctors are not registered within the Order of Doctors of the neighboring territory reduces their ability to work on all sides of FR-ES-AND borders in emergency situations.

The proposals, to be developed through the project, are:

- a local agreement for CB health cooperation between France, Andorra and Spanish border region;
- a legal agreement between professional Medical Orders (French department and Spanish provinces);
- establishment of technical pilot between emergency services of Perpignan Hospital and the Puigcerda CB Hospital on the Spanish side.

**Jean PEYRONY (MOT):** this presentation shows what we try to explain since many years – CB cooperation exists outside Interreg. CTP is a governance structure, now endowed with a strategy, managing Interreg but also CB cooperation outside this frame.

So, we have funding tools, we have governance tools...but still obstacles to solve. The presentation has shown that obstacles are not only legal, but also linked with lack of knowledge, etc... so we have to open the black box of obstacles.

**Nathalie VERSCHELDE (DG REGIO):** To give opportunities to people and to business is important.

In the future, every program shall spend 15% of its budget to improve governance and institutional, legal issues of cooperation.

The new tool enables further deepening of the existing cooperation.

**Jean PEYRONY (MOT):** the Working Group should explore such examples linking programmes, strategies and tools solving obstacles.

**Jean Louis VALLS (Director of the CTP):** it is important to share experiences.

**Thiemo ESER (LU):** possible issues for the next WG:

- What could be set up in States for the application of the ECBM? How it would look in practise?
- Evaluation of the B-solution projects: invite applicants to present real cases

**Jean PEYRONY (MOT)** proposes to add monitoring/ observation issues: different initiatives on different borders and at EU level, how they converge... (lack of knowledge, e.g. on geographic reality of the CB territories)

**Nathalie VERSCHELDE (DG REGIO)** reports about the project funded by DG REGIO on observation of CB employment (methodology). 3 types of data likely to be used: data of the European survey on the labor force (not very promising for this purpose); administrative data; mobile phone data.

The last two types are promising to understand labor mobility.

**Eniko NYERGES (CESCI, Hungary)**

In Hungary, they had a similar project but they had difficulties to involve the national statistical institute.

**Jean PEYRONY (MOT):** It is a question of synergies between technicians, funding tools and politicians of both sides of the border.

**Hannes NAGEL (Ministry of Finance, EE):** stresses a problem for mobile data to be reliable, because people are only moving for short distances inside their operator area.

**Thiemo ESER (LU)** closes the meeting.