



*Towards the design 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

## Reminder: Why do we need the tool ?

---



- Financial instruments and tools have reached the point where legal or administrative obstacles are impeding the realisation of projects;
- Institution-related tools such as EGTC focus on the institutional set-up across borders and do not address legal or administrative obstacles related to the implementation of projects;
- Undeniably in some cases there are solutions to legal and administrative obstacles, but in practice this is mostly a result of a „muddling through“ by motivated actors and depends on a number of “coincidental” positive constellations;
- Basically the transaction costs for finding a solution are often too high. The probability to get stuck somewhere in the process without a real result (which can be *yes* or *no*) is high and thus imposes a high risk for any project.



- **The movants (actor)**: The movants are the local/regional authorities on either side of the border, potentially together with the project operator (which can take the form of an EGTC or EEIG), who identify a legal obstacle and prepare an ECBC proposal.
- **National ECBC coordination points (actor)**: Every Member State would designate an ECBC coordination point, at the appropriate level, that would maintain a national ECBC database and liaise with the ECBC platform at the EU level. The ECBC coordination point could also support the movants, where requested by them, in identifying the competent authority.



- **Competent authorities (*actor*)**: The competent authority shall decide on the admissibility of the ECBC proposal and the final content of the proposed ECBC. The competent authority, at the adequate level, should be determined on a case-by-case basis in accordance with the objective and specific provisions of the proposed ECBC. If requested by the movants, the ECBC coordination point could support the aforementioned in identifying the competent authority.
- **ECBC platform at the EU level (*actor*)**: The ECBC platform at the EU level will maintain a European database on all ECBCs across Europe.



- **Regulation**: The EU level would set up a “**Regulation on a European Cross-Border Convention (ECBC)**”, as regards the establishment and functioning of the ECBC. The Regulation itself would not include any ECBC proposal or specific provisions. The latter would be defined in the ECBC proposal of the movants. The approach would be similar to that of the EGTC Regulation.
- **ECBC proposal**: The movants prepare an ECBC proposal that includes a description of the legal obstacle and a draft of the specific provisions. This proposal is submitted to the competent authorities in both countries.



- **Specific provisions**: The specific provisions under an ECBC determine the application and implementation of specific legal provisions and rules (including technical standards and norms) for a *specific project* in a *specific cross-border area* for a *specific duration*. These specific provisions can either contain:
- the legal provisions/rules from only one of the countries (***standard case***). This means that country A recognises the rules of country B (and “pulls” the rules over the border).
  - a tailor-made set of legal provisions/rules from both countries (***special case***). This means that countries A and B agree on a tailor-made set AB.

# Towards a procedure for establishing an ECBC

---



## Five-step approach:

1. Identifying the obstacle
2. Finding a solution
3. Establishing the ECBC
4. Applying the ECBC
5. Following up

## Step 1. Identifying the obstacle

---



- The movants from both sides of the border identify a legal obstacle to the implementation of their cross-border cooperation project.
- This legal obstacle could stem from diverging legal frameworks or a mismatch of standards.
- Then the movants prepare an ECBC proposal and submit it to their respective competent authorities. If requested by the movants, the national ECBC coordination points could also support the aforementioned in identifying the competent authorities. This process is optional.



## Step 2. Finding a solution

---



- After the submission of the ECBC proposal to the competent authorities, the ECBC coordination points in both countries could, where requested by the competent authorities,
  - check whether a similar ECBC exists in the national context (on a different national border).
  - check whether a similar ECBC exists in the European context (on a different border across Europe). For this reason, the competent authorities could contact the ECBC platform at the EU level.
  - assess whether this obstacle could potentially concern other cross-border cooperation projects on the same border.
  
- This preliminary evaluation is optional.

## Step 2 cntd. Finding a solution

---



- After a potential preliminary evaluation, the competent authorities in both countries would analyse the ECBC proposal and take a decision on whether the proposal is admissible.
- The analysis should take into account whether the proposed ECBC is legally implementable, creates a win-win situation for both countries and offers the best solution in terms of timing.
- In this phase, the competent authorities from both countries shall endeavour, where possible, to closely cooperate with each other.

## Step 3. Establishing the ECBC

---



- If the competent authorities in both countries have decided that the ECBC proposal is admissible, the competent authorities shall endeavour, where possible, to work together with the movants on the final version of the ECBC with the specific provisions.
- If all relevant parties have approved the terms of the ECBC, the ECBC is signed.

## Step 4. Applying the ECBC

---



- The movants apply the ECBC to implement the cross-border cooperation project.

## Step 5. Following up

---



- The ECBC coordination points in both countries include the new ECBC in a national database.
- The ECBC coordination points also inform the ECBC platform at the EU level about the new ECBC.
- The ECBC platform at the EU level includes the new ECBC in a European database.
- The competent authorities in both countries could assess whether a permanent intergovernmental solution could be found.
- The ECBC platform at the EU level could assess whether a permanent European solution could be found.



- Voluntarily applicable, bottom-up and tailor-made
- Legal certainty for movants
- Speedy process → *timeframe to be determined*
- Safeguarding the sovereignty of competent authorities
- Limited application (specific project, specific area, specific duration) → *not meant to create permanent legislation or creating new borders*
- Not replacing other solutions (intergovernmental agreements)
- Not competing with other tools (EGTC) → *relationship between computer hardware and software*



- What is an appropriate timeframe for establishing an ECBC?
- What is the appropriate scale? Is it sufficient to stipulate that the movants from both countries need to have the relevant competences?
- What is the appropriate time limit for the application of the ECBC? Should it become invalid once the project is implemented? Should there be an exit option?
- What about an ECBC on a border with a third country? What about outermost regions?
- What about law suits in relation to the specific provisions of an ECBC?