Working Group on Innovative Solutions to Cross-Border Obstacles

Towards a Draft Report of the Working Group
Process so far

- On initiative of FR, LU with support of MOT - four meetings of the Working Group (WG): 05/07/2016, 28/09/2016, 14/12/2016, 16/02 2017
- Consultations with EU institutions: European Commission, European Parliament, Committee of the Regions, European Investment Bank on
  • National, transnational, and cross-border institutions/solutions addressing obstacles
- Timing of the WG adapted to the process of the COM regarding the preparation of an official Communication on its Cross-Border Review
- Enough evidence and elements compiled to draft a report
- First draft of the report discussed at the last WG meeting
- Revision of the draft on-going within the WG
- The wish expressed to submit a final draft report of the WG to the attention of DG meeting in April 2016 in time for the Commission’s Communication.
Elements of the Draft Report of the WG

- Executive summary
- Achievements and challenges of cross-border cooperation
- Mapping obstacles – the need to become active
  i. Some pioneer processes
  ii. The nature of cross-border obstacles: towards a European matrix

- Mapping the cross-border toolbox
  i. Tools providing financial support
  ii. Tools providing institutional solutions
  iii. Tools/strategies providing legal and administrative solutions

- Finding innovative solutions to obstacles - completing the toolbox
  i. Proposal for a new legal tool, the European Cross-Border Convention
  ii. A multi-level process for identifying & solving cross-border obstacles
  iii. A network of European expertise

→ Due to limited time for this presentation a focus is set on the last part
Proposal for a new legal tool, the European Cross-Border Convention

ECBC as “a new European legal instrument that would allow one country – in the context of a cross-border cooperation project or a service of general interest – to apply the legal rules and provisions of another country in a defined area of application along the border”

➢ Rationale

• Improve cross-border cooperation: implement operational projects more quickly and efficiently (e.g. projects related to infrastructure, services of general economic interest, conditions for commuters).
• Enable those actors who are experiencing obstacles to cross-border cooperation on the ground to find a quick solution that provides legal certainty – subject to the validation by the competent authority at the appropriate level.
• Great possibility to strengthen the potential for cooperation and the economic/social/territorial cohesion of cross-border areas.
Finding innovative solutions to obstacles

Elements of a proposal for European Cross-Border Convention

Principles

- Voluntarily applicable and bottom-up.
- Find tailor-made solutions that are both border-specific and issue-specific.
- Provide legal certainty to the actors and allow them to gain time compared to finding individual solutions (“muddling through”).
- Preserve autonomy of the competent authority and safeguard its capacity to control the outcome.
- Application limited to a defined area for as long the project exists or the obstacle persists.
- Solution offered by the tool does not replace other solutions (intergovernmental agreements) and is not meant to create new regulation that circumvents the ordinary regulatory/legislative procedure – it supposed to be complementary.
Finding innovative solutions to obstacles

Elements of a proposal for the European Cross-Border Convention

- Procedure for establishing an ECBC a five-step approach
  1a) Identifying the obstacle
  1b) Deciding on go/no-go
  2) Finding a solution
  3) Adopting the ECBC
  4) Applying the ECBC
  5) Following up

- Main difference with regards to EGTC

The EGTC is a cross-border legal body which can implement initiatives/projects, but an EGTC convention cannot include any provisions to solve an administrative or legal obstacles of an initiative/project.
Elements of a proposal for the European Cross-Border Convention

- **Initiators**
  The initiators identify a legal obstacle, prepare an ECBC proposal and thereby initiate the procedure.

Two categories of initiators:
- local/regional authorities, potentially together with the project operator (e.g. tram operator, hospital)
- stakeholders, i.e. any institution, organisation or group of actors with legal personality (e.g. Association of cross-border commuters)

- **National ECBC coordination point**
  Every Member State would designate an ECBC coordination point, at the appropriate level, to maintain a national ECBC database and liaise with an ECBC platform at the EU level.
Finding innovative solutions to obstacles

Elements of a proposal for the European Cross-Border Convention

➢ **Competent authority**

The competent authority, at appropriate level, should be determined on a case-by-case basis with the objective of deciding on the admissibility of the ECBC proposal and the final content of the proposed ECBC.

➢ **ECBC platform at the EU level**

The role of the platform would be to maintain a European database on all ECBCs across Europe.

➢ **The ECBC proposal**

The initiators prepare an ECBC proposal that includes:

• description of the legal/administrative obstacle and the wider context
• a rationale for solving the obstacle through an ECBC
• a draft of the specific provisions
• a justification for the proposed delimitation of the area of application as well as the foreseeable duration
Elements of a proposal for the European Cross-Border Convention

- **Specific provisions to be adopted in the form of an ECBC**
  - Specify the unilateral or multilateral recognition of one country’s legal provisions/rules (including technical standards/norms) by another (→ “pulling” the rules over the border).
  - As such, the specific provisions determine
    1) the derogation from certain domestic legal provisions/rules
    2) the application and implementation of certain foreign legal provisions/rules
  - Define area of application (following a functional approach).
  - Specify duration of application
  - Specify conditions for triggering an exit procedure
  - Specify absorption of the costs linked to the application
Finding innovative solutions to obstacles

Elements of a proposal for the European Cross-Border Convention

- **Feasibility of an ECBC legislation / regulation**

  Possible arguments against such regulation:
  
  - It might be felt that this would have an impact on sovereignty, which is, in fact, not the case as it implies voluntary decision-making.
  - It might be seen as a bureaucratic burden, which is not the case as currently effective solutions are being inhibited by the bureaucracy.
  - Some groups of countries may claim that they already have a mechanism for their internal borders, which, in fact, could be supported by such mechanism (complementarity – non concurrence)
  - Countries with less integrated borders may claim that they don’t need such an instrument for their borders.

  **Possible way out to move forward:**
  
  - In the case of fundamental differences in the perception of the need for such a regulation, is there a case for enhanced cooperation of a limited number of countries in the EU?
Finding innovative solutions to obstacles

Proposals of a multi-level process for identifying and solving cross-border obstacles

➤ At national level

Be aware and ensure inter-ministerial steering and coordination of cross-border cooperation in order to overcome legal/administrative obstacles through changes in the law or intergovernmental agreements

➤ At cross-border level

Be aware and ensure collaboration between local/regional actors on both sides of the border in order to overcome legal/administrative obstacles that stem from a lack of knowledge, concertation or coordination
Proposals of a network of European expertise

A European platform bringing together different organizations from all over Europe (MOT, CESCI, Nordic Council, Greater Region, Upper Rhine, Euregio Maas Rhine, AEBR) to:

• Exchange experiences and best practices concerning the removal of obstacles on different borders.

• Raise awareness of the remaining obstacles at the national or EU level; support the national level in the removal of obstacles; facilitate concertation between neighbouring countries; follow up on the intergovernmental process.

• Support the European level: manage an EU database of obstacles and solutions, fed by the network of organizations quoted above.
Achievements and challenges of cross-border cooperation

- The dimension of Territorial Cohesion
- The dimension of the Common Market
- The dimension of common use of infrastructures
- The Cross-Border Review of the Commission
- The Luxembourg Presidency of the Council (2\textsuperscript{nd} semester 2015)
- The Working group on Innovative Solutions to Cross-Border Obstacles (co-led by France and Luxembourg)
Mapping obstacles – the need to become active

Some pioneer processes

- Obstacles identified by the Council of Europe
- Obstacles identified in MOT survey for Luxembourg Presidency
- Cross-Border Review: Legal/administrative obstacles ranked № 1
- Example: The systemic nature of cross-border obstacles in the case study on the Hospital of Cerdanya

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

- Existing typologies: ISIG, CESCI, MOT, Cross-Border Review

- Border(s) concerned
- European programme(s)
- Type of geographic area
- Nature of the obstacle
- Level of the solution
- Perimeter of action
- Topic(s)
Mapping the cross-border toolbox

- Tools providing financial support
  - a) At the EU level: Interreg
  - b) At transnational and national level
    -> *Where are the limits of these tools?*

- Tools providing institutional solutions
  - a) At the EU level: EGTC, EEIG
  - b) At the transnational & national level: Madrid Outline Convention 1980
    -> *Where are the limits of these tools?*

- Tools/strategies providing legal and administrative solutions
  - a) At the EU level
  - b) At the transnational level: The Nordic Council
    Coordinated approaches at border level: Franco-Belgian border, Euregio Maas-Rhine
    At the national level: France, Hungary, Germany
    -> *Where are the limits of these tools*
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Thank you for your attention