

Working Group on Innovative Solutions to Cross Border obstacles

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Draft Final REPORT



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

Département de l'aménagement
du territoire



cgnet



The perception, confirmed by several studies conducted at both the European¹ and the national² level, is that **cross-border areas possess development potential that is not fully exploited** due to administrative and legal obstacles caused by the border situation. **The fact that the Single Market is not completed**, in particular the free movement of workers (e.g. cross-border commuters) and of services, is most visible along the borders and still affects the daily life of citizen and companies in cross-border areas.

A particular case in that context is that citizens living in border areas do not have full **access to infrastructure and services of general interest**, as often infrastructure such as the nearest hospital or vocational training facility is located just across the border – so much closer than the one they are entitled to use. In territorial terms, **obstacles to cross-border activities and cooperation** and the incompleteness of the Single Market reinforce the core-periphery divide in many countries by preventing that the full potential of integrated functional cross-border areas is used. Therefore, it can be argued that strengthening cross-border cooperation is necessary for achieving further **territorial cohesion in Europe**.

Commissioned by the Directors-General responsible for Territorial Cohesion, a working group was officially set up in July 2016 to further investigate solutions to overcome obstacles, with a particular focus on the added value, feasibility and design of the legal tool presented under the Luxembourg Presidency in 2015.³ **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 (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 formulated as proposals are noted this **Report** and a complementary **Background Report** accompanied by a note on examples for cross-border obstacles and possible solutions (in preparation).

¹ [Cross-Border Review by DG Regio](#)

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

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

THE PROPOSALS

The **results obtained so far by the Working Group on Innovative Solutions to Cross-Border Obstacles** indicate that instruments addressing financial and institutional obstacles are in principle available in the EU, however, **the limiting development factors for cross-border areas**, in particular those with a high level of interaction across borders, **are administrative and legal obstacles**. As no appropriate and systematic instruments are available, the Working Group proposes two initiatives to overcome legal and administrative obstacles to cross-border cooperation:

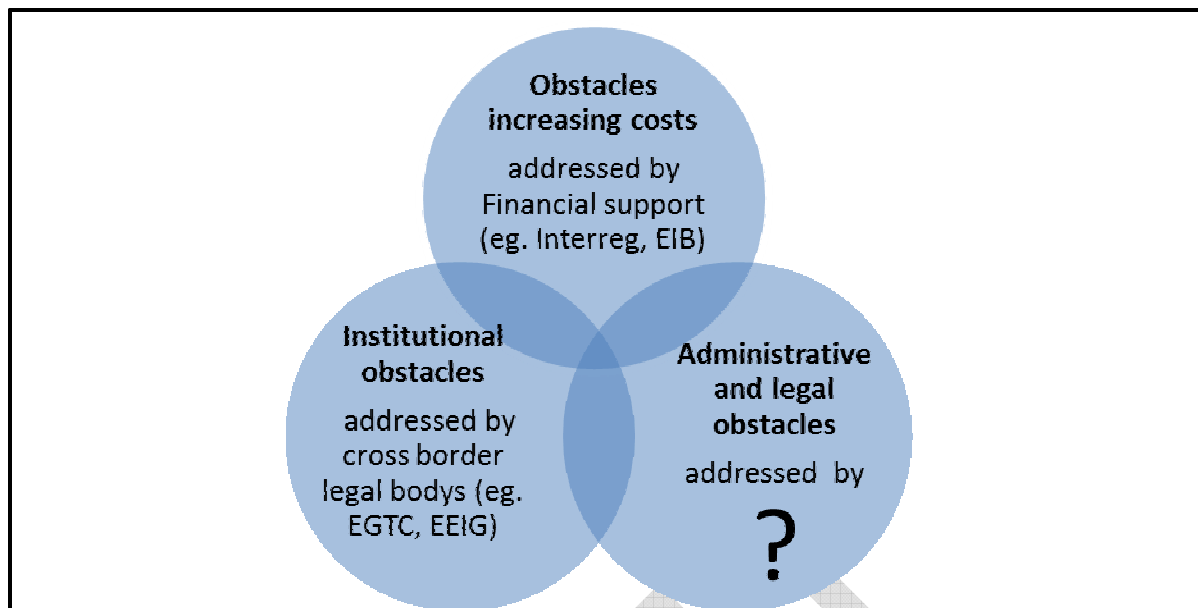
1. Proposal to create a **voluntarily applicable new legal tool addressing administrative and legal obstacles – European Cross-Border Convention** - that would allow local/regional authorities to initiate a procedure for solving these obstacles and encourage the competent authority to address them.
2. 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, support and enforce already existing scattered or decentralised regional and local initiatives, which mostly do not go beyond the provision of information to affected actors.

Ad 1: The proposal to create a voluntarily applicable new legal tool addressing administrative and legal obstacles that would allow local/regional authorities to initiate a procedure for solving obstacles and encourage the competent authority to address them.

The investigation of cross-border activities and cooperation reveals three basic types of obstacles that occur to a different extent but often simultaneously and that, in principle, are or should be dealt with by different types of solutions:

- **Many obstacles can be overcome by providing financial support** as this is done by e.g. Interreg programmes and the EIB, even if the importance of investment needs across borders is not recognised by the national sources leading to an underperformance along the borders. Moreover, INTERREG/national funding could sometimes not be optimized, hindered by legal or administrative obstacles.
- Furthermore, it was recognised that a number of cross border developments are hampered because institutional solutions were not available to manage funding and carry through projects such as cross border public services (as hospital, transport) by partners stemming from different countries. In this respect, **institutional solutions are already available allowing to set up legal bodies** for the public (EGTC) and the private (EEIG) sphere aside of other more regional solutions.
- **Whereas administrative and legal obstacles are the most significant issues, financial support and institutional solutions are reaching their limits in cases where different administrative and legal norms inhibit the realisation of activities and projects** or hinder the provision of services as well as free movement across borders.



In line with the conclusions of the public consultation conducted in the context of the Cross-Border Review, **administrative and legal obstacles are becoming one of the main issues for activities across borders and cross-border cooperation.**

A **number of bottom-up initiatives in cross-border regions exist** whose missions include identifying such administrative and legal obstacles and finding individual solutions to overcome them. However, in the majority of cases (with the exception of the Nordic Council, where reported cross-border obstacles are systematically treated and can reach the Ministerial level) these approaches could be described as **'muddling through'**, with a lot of factors determining the success of the solution. What is missing is a well-defined and systematic 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 when the competent authority cannot even be identified and 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 new European legal tool** that would allow one country – in the context of any obstacle to cross-border activity, cross-border cooperation project or a service of general interest – to apply the administrative or legal rules and provisions of another country in a defined and limited area of application along the border.

The rationale behind this bottom-up tool is that it 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. enable activities or allow **implementing activities and projects more quickly and efficiently** (in comparison to intergovernmental agreements), and
- ii. provide **administrative and legal certainty** (in comparison to the approach of “muddling through”).

As the tool of the ECBC would be **voluntarily applicable** and the use of the tool would be subject to the validation by national the competent authority, the capacity of the competent authorities to control the process and the outcome is safeguarded. Moreover, the application of foreign norms and administrative or legal rules and provisions would be limited to a defined area for as long as the project exists or the obstacle persists.

The procedure for establishing an ECBC would consist of five steps⁴:

Step 1a: Identifying the obstacle

The initiators, either local/regional authorities or any stakeholder with legal personality, would identify a legal or administrative obstacle to a cross-border cooperation 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 1b: Deciding on go/no-go

The competent authority would analyse the ECBC proposal and determine whether the obstacle is real or based on a misunderstanding. This analysis would inform the competent authority's go or no-go decision.

Step 2: Finding a solution

The competent authority would further analyse the ECBC proposal and determine whether an existing tool or solution could be used to solve the obstacle. If no existing tool or solution could be used and if the ECBC is admissible, the competent authority would work together - where possible - with the initiators and 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 authority, potentially together with the initiators, would approve and sign the ECBC.

Step 4: Applying the ECBC

The competent authority and the initiators would apply the ECBC, under the reserve that the ECBC might have to be mediated into national law.

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 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 permanent bilateral solution could be found (see also ad 2 below).

The **proposed tool is not competing with existing approaches tools or solutions**, but should be seen as a complementary 'toolkit' for the general toolbox to improve the conditions for activities across borders and as a toolkit that would facilitate the integration of existing problem-solving methods, in particular when it comes to the identification of obstacles and addressing those competent authorities which could contribute to a solution. For instance, the Latvian-Estonian Intergovernmental Commission for Cross-Border Cooperation or the Greater Region's Task Force for Cross-Border Commuters could be integrated into the procedure for establishing an ECBC.

Furthermore, the **proposed tool goes 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 tool links in: The ECBC would offer local/regional authorities a procedure to find a solution in the form of a voluntarily-applicable convention with the competent authority on the limited application of foreign rules and provisions in a domestic context.

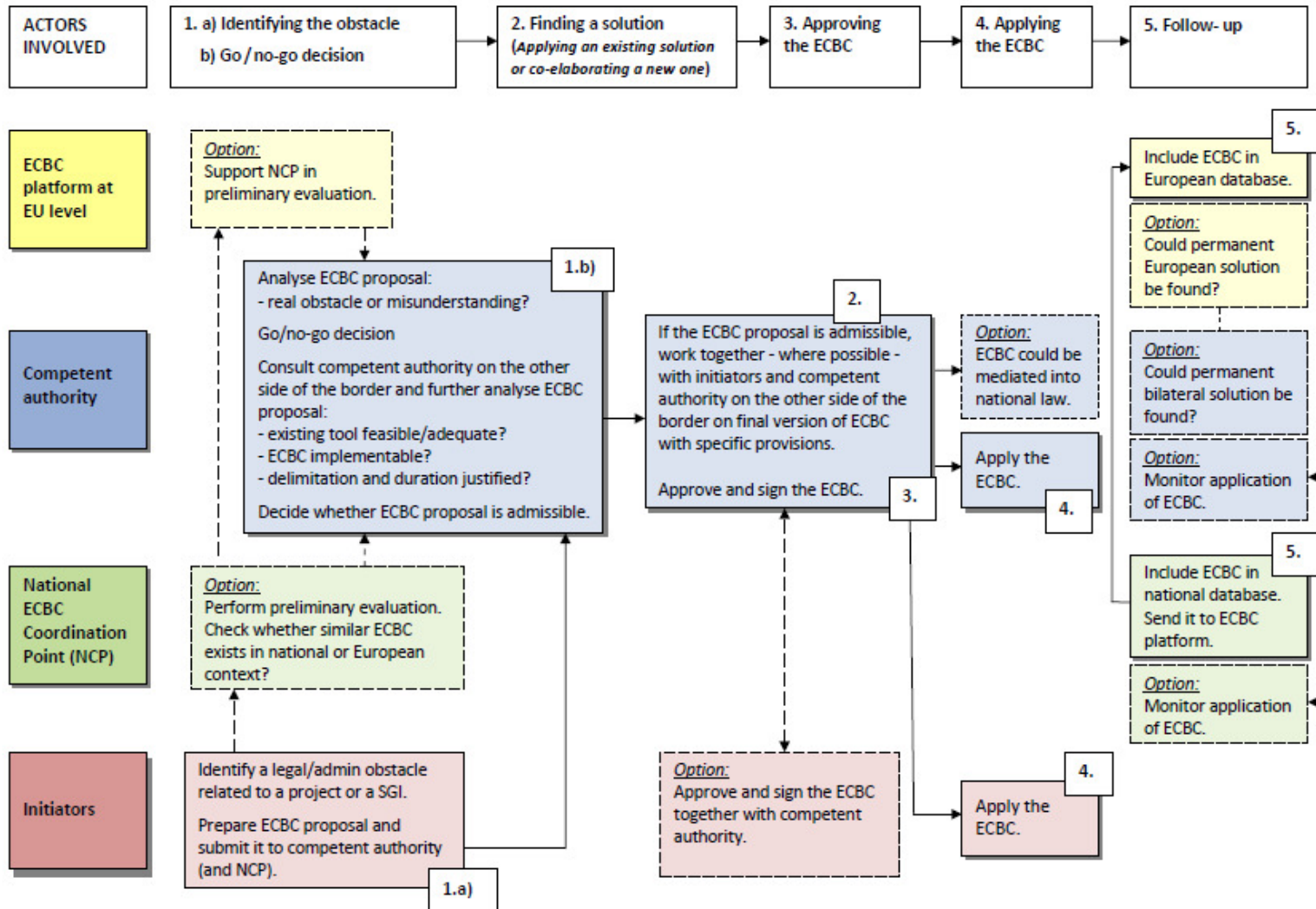
⁴ See also annex 1.

How could the tool be established? Without the Working Group disposing the means of an in depth juridical analysis parallels for such an instrument of an ECBC can be drawn with the EGTC regulation, where a legal framework is defined at the EU level but the application and implementation is left to national and regional authorities defined by Member States. This would comply with the ideal that such instrument shall be voluntarily applicable and should depend on the initiatives taken by the actors concerned and the approval by the concerned competent authorities in each country.

Ad 2: The proposal to set up a European multilevel platform to exchange 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 permanent exchanges on obstacles, solutions and best practices both a national and 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 ECBC process proposed above. This would allow to take action at each border in support of local/regional players, in synergy with ESI funds 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.

Annex 1: Scheme on the procedure for establishing an ECBC



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 to facilitate their removal

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

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

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

4. Finding innovative solutions to cross-border obstacles by completing the toolbox

4.1 Completing the tool box: Proposal for a legal tool for obstacle solving, the “European Cross-border Convention” (ECBC)

4.2 Completing the tool box: The need for a multilevel process for dealing with cross-border obstacles and proposal for a European multilevel platform for the removal of obstacles to cross-border cooperation

Factsheet on examples illustrating the use of the European Cross-Border Convention

1. the example of (tbc)

2. the example of (tbc)