

# Working Group on Innovative Solutions to Cross Border obstacles

## Luxembourg Presidency of the EU follow up

4<sup>th</sup> meeting of the working group  
16 February 2017 – Brussels (Belgium)

### REPORT

#### 10.00 a.m.: Participants introduce themselves

**Mrs. Lena ANDERSSON PENCH, DG REGIO**, Context: follow-up of the Cross-Border Review process: More needs to be done for border regions and many cross-border obstacles remain unsolved, despite the financing and institutional tools. The Commission is very interested in the WG work, which is helpful. They rely on the feedback of the WG and wait for the final report. They intend to include the ECBC tool in the toolbox that they will propose.

She presents the context of the Cross-border Review conducted by the European Commission. Many issues are still hindering the effectiveness of cross-border cooperation.

The Cross-border Review (CBR) consists of 3 pillars:

- 1) A **public consultation in 2015**; (600 answers)
- 2) A study, including an **inventory of critical border obstacles** along with examples **of how these obstacles have been addressed** at certain borders; the final report was submitted at the end of January; 240 legal and administrative obstacles are now documented;
- 3) **4 Workshops** with key stakeholders

The inter-service working group on territorial and urban issues of the Commission, involving various DGs (e.g. health etc.), has had a meeting addressing the Cross-Border Review. Whereas territorial aspects are of high importance for DG Regio, one issue is that “cross-border” is not understood in the same way by the different DGs.

The European Commission is now preparing a Communication, which will be adopted on 6 September 2017 (in accordance with the Commission Agenda). It will be drafted in March-April 2017, before an inter-service consultation in May 2017, with an expected finalization at the end of June 2017. The communication, necessarily short, may be accompanied by a Commission Staff Working Paper (no size limit). Commissioner Crețu is extremely interested in this Communication; a launch event will take place on 20-21 September 2017.

The European Commission’s draft exhibits many similarities with the WG one. When finalized, it will propose a multi-level toolbox linking the European Commission with the local level. It will cover various solutions that are based on the border depicted and on the specific obstacles dealt with (labour market, qualification and vocational training, spatial planning, transport, etc.).

The Commission will map the obstacles and the existing good practices. The more the border is integrated, the more obstacles become apparent and visible.

The Communication will recommend, in the context of the Better Regulation package, a border assessment of sectorial policies. Policy areas include: Single Digital Gateway, e-government Action Plan, multilingualism, increased social security coordination, healthcare, transportation, professional qualification and vocational training, etc.

Interreg Programs 2014-2020 are delivering: some of them could be used to test some of the solutions (without additional funding).

There is a need to set up platforms, but the question remains at which level.

**Mr. Thiemo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** emphasizes the added value of the CB Review, particularly the involvement of sectorial DGs: this is completing our work, which involves mainly territorial stakeholders.

**Mr. Peter JUNG, Federal Ministry of Transport and Digital Infrastructure (BMVI), Germany,** asks about the timeline for the development of the ECBC (European cross-border convention) tool.

**Mr. Dirk PETERS, DG REGIO,** talks about the complexity of such a legislative proposal: it will require many internal consultations (due to the “better regulation” context) and tough negotiations. It will perhaps take a year for a proposal and an additional year for the adoption.

**Mrs. Lena ANDERSSON PENCH, DG REGIO,** adds that the WG will help in this respect and that the tool must be flexible.

For **Dirk Peters**, contrary to the EGTC, which was developed in the context of Cohesion Policy , the ECBC will be a topic for the ministries of home affairs. He underlines the need for an extensive intergovernmental cooperation.

We need a tool that does not burden decision-makers too much and that also fits all 63 internal borders and their respective needs

**Mr. Thiemo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** asks which options the Treaty offers: Is this a case for enhanced cooperation and is there a possibility to deal with the ECBC as part of a package? He then proposes to the Task Force Grenzgänger 2.0 to present their case of a practical solution.

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** explains that they deal, for example, with social, tax and labour law cases, which have very different legal frameworks. There are too many administrative difficulties costing money and time to send workers from one State to another (e.g. from Germany to France). Therefore, companies often decide not to send workers.

France and Germany have different national/ local structures – too difficult to accommodate. There is an EU Regulation, but it does not reflect the reality in CB areas. While the Regulation protects workers that are being sent away on a long-term basis, it does not take into account workers returning on the same day.

Another example is the road toll that Germany is developing, which will be hindering shopping across borders; some politicians propose a toll-free area of up to 30 km.

**Mr. Thiemo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** notes that the Regulation impedes cross-border commuting.

**Mr. Dirk PETERS, DG REGIO,** reminds us of the beginnings of the EGTC when members were considering the choice of using the legal form of a directive. Due to the numerous difficulties with the transposition of the directives the legal form of a regulation, directly applicable, was selected. But regulation requires conventions and also needs adaptation over the years. It may be appear as a fake directive. The application is different from the theory. Commissioner Thyssen has proposed a better coordination of MS in the field of Social security, as regulation is not enough. Article 16 of the regulation on EGTCs involves coordination between MS, but it has not been applied so far.

**Mrs. Mélanie CHAROTTE, General Commission to the Territorial Equality (CGET), France,** asks a question regarding the Task Force Grenzgänger 2.0: How do they work, how do they compile obstacles? Is there a difference between perception and reality of obstacles? Do they liaise with other task forces? What is the relationship between the TaskForce and the Summit of the Greater Region, where the Executives from the respective Member States composing the Greater Region sit?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** We have project partners who work in the field and inform us. We work both with representatives of groups, and individuals, but we deal only with general problems, not with specific ones.

We work by conducting many phone calls, follow ups...

We have databases and publications on our results that we bring up to the competent authorities.

There is a meeting once a year with other task forces on German borders (Upper Rhine, Euregio Maas Rhine,...).

There is indeed a gap between reality and perception, a lack of information.

**Mr. Frederick-Christoph Richters, Ministry of Sustainable Development and Infrastructure, Luxembourg,** How long does it take between the identification of the obstacle and the solution?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** One to six years. Reasons for the delay are: identifying the competent authority (they have experience in identifying German authorities); sometimes, the competent authority does not consider the obstacle as a pressing issue; moreover, the task force cannot guarantee to provide a solution; also, trying to solve the problem before reporting it if a solution already exists...

**Mr. Thiemo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** asks how the competent authority is identified and whether the Task Force has a broker role?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** The Task Force tries to remain neutral as they are not assisted by an advocate. There is a legal analysis of the national EU legal framework. The Task Force is a mediator in the sense that it identifies the competent authority based on the legal analysis and deals with it, but it also makes a proposal (thereby engaging in agenda-setting).

**Mrs. Mélanie CHAROTTE, General Commission to the Territorial Equality (CGET), France,** What about the INTERREG funding of the Task Force Grenzgänger 2.0?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** Task Force INTERREG funding has been around 60%, since 2012.

We would try to get it on a permanent basis rather than be dependent on the programmes, but this issue has not been solved yet.

**Mr. Jean PEYRONY, Mission Opérationnelle Transfrontalière, France,** Is there a lack of European legislation? Do they explicitly report on the solution (or lack thereof) of the obstacles?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** Yes, sometimes there is no solution because of a EU legal void.

We work also with interest groups, which put pressure on politicians.

There are many exchanges with partners, e.g. with the Greater Region.

We act on a case-by-case basis; discussions with the competent authority on a particular issue. If we find a solution, it is published and we move on to the next issue.

**Mr. Dirk PETERS, DG REGIO:** Do you link with the Secretariat of the Summit of the Greater Region (EGTC)?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** It is going rather to the political representatives of the States, at the diplomatic level.

**Mr. Dirk PETERS, DG REGIO,** What about informing citizens? Are there “info-points”?

**Mr. Martin LENGYEL, Task Force Grenzgänger 2.0, Greater Region,** No, there is no instantaneous information of citizens. We do not deal with single issues, but only with general ones that require an intervention by a State. We can propose them to use Solvit. Another organization, MOSA in Forbach, gives information to French workers at the French-German border.

### 11.35 a.m. Draft Report Chapter 4 presentation by Mr. Thiemo ESER (refer to the ppt)

**Mr. Gyula OCSKAY, Central-European Service for Cross-Border Initiatives, Hungary,**

The tool is clearer now. 4 key comments:

- The future tool would be linked to the future cohesion policy, but there is the risk there will be no cohesion policy;
- The ECBC tool has to be connected to the development of a territorial impact assessment (TIA) process for the cross border context;
- DG Justice should be involved;
- Voluntary basis is not the solution: if a neighbouring State does not wish to adopt the ECBC even if its rules are the most appropriate for the solution of the case, the process is blocked.

About the content of the draft:

- The ECBC is not a national level solution, but a transfrontier one (it is not emphasized enough in the draft);
- How do we define the scope (area) of the tool’s application? (E.g. what about the spatial area of the recognition of diplomas?). The delimitation is relatively clear for projects, but not for services;
- “Establishing” the ECBC is not the appropriate term because we are not creating a new institution. Perhaps “applying” is the right term?
- The timeframe (4 months) is too ambitious. Finding the solutions will take a long time.
- Concertation between competent authorities must be mandatory instead of optional (like the draft states).

**Mr. Slaven KLOBUCAR, European Committee of the Regions,** proposes to better explain the distinction between EGTC and ECBC by a comparative approach (to be enclosed in the draft).

ESPON, DG REGIO, CoR, work on a TIA tool in the CB context.

The 2 scenarios need an identical and balanced approach with an equal number of steps (the 2<sup>nd</sup> scenario has more steps at the moment).

**Mr. Peter JUNG, Federal Ministry of Transport and Digital Infrastructure (BMVI), Germany,** The draft is too long and not clear enough.

Point 4.2. we need specific examples and the references need to be clearer. We need to specify what competent authorities should do, as well as to give them the opportunity to express the practical difficulties they experience; a “yes or no” answer is not a sufficient requirement (sometimes a good intent is not enough towards the real life practice).

**Mrs. Julija JAKOVLEVA, Ministry of Environmental Protection and Regional Development, Latvia** suggests to approach States, so that they could consult their legal services (She has already consulted their internal legal service which gave them a negative feedback).

She also suggests to present Interreg in a more positive manner (the current draft presents it too negatively).

In addition, Interreg is not the sole funder of cross-border regions; there are also regional programmes. The draft does not examine the second side of the situation (need to mention both sides: e.g. State A and State B)

Cross-border "project" is a term linked to INTERREG; perhaps "activity" is a more appropriate term.

The timeframe is too short; 4 months are not enough time to solve all issues.

What about the cost involved in using the tool and how to fund the national ECBC coordination point?

**Mrs. Margarita GOLOVKO, Ministry of Finance, Estonia**, What about the practical applicability of the new tool? We need to put obstacles into the tool to check if it works. Basically, the added value of the ECBC tool is to put States to work, and consider the cross-border cooperation topic at the national level. The problem is that border areas tend to be of low interest to the national authorities.

Also, what is the level of competent authorities? There are too many bureaucratic steps in the procedure. In the case of the Baltic and Nordic States, we don't use EGTC because we have other tools. By showing us the practice, the new tool will give us the opportunity to make a choice (to find the best adapted instrument to use in real life).

**Mr. Dirk PETERS, DG REGIO**, There is a preliminary issue of sovereignty to be discussed.

Two aspects of it:

-Could the EU take action? As the issue basically concerns 2 States, the use of the EU tool can only be voluntary.

-How would the domestic legal orders legislate in the field? At which level in the hierarchy of norms should the incoming rules be situated?

(Mr. Peters feels it is like an international convention)

EGTC is a legal body, ECBC is a method.

A real distinction has to be made between legal and material issues (In Dirk Peters opinion draft distinctions are not the right ones).

The future of the tool is linked to the future of Europe; which States are ready to do together in the future.

There will be a White Paper on the future of Europe in March. The starting point is the Single Market.

At the beginning we need to understand which States are prepared to accept as losses of sovereignty before defining the regulation that will be proposed. What are the fields where MS have already accepted limits of their sovereignty? On the question of enhanced cooperation: There is enhanced cooperation on the European prosecutor. In which areas are MS willing to cooperate?

The presentation of the tool is too complex.

**Mr. Thiemo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg**, We are working within the confines of our mandate.

At this level, we cannot solve all legal problems of the ECBC proposal, not just because they are extensive but also because we are not experts. This is a matter for the COM and the relevant Council WP. Competent authorities will receive the tool once it has been established. Our role is to find how far we can go.

Answer about the purpose of the tool if a State does not wish to adopt it: we have examples of unilateral recognition.

**Mr. Frederick-Christoph Richters, Ministry of Sustainable Development and Infrastructure, Luxembourg**, We are working on concrete examples to be included in the draft. E.g. on the EGTC Alzette-Belval on the FR-LU border.

**Mrs. Mélanie CHAROTTE, General Commission to the Territorial Equality (CGET), France,** We have already developed a matrix based on the obstacles, which identifies them as well as the competent authority along with any existing solution. Also, it is about determining the added value of the tool regarding the identified obstacles.

It would be interesting to develop how EGTC and ECBC could interact.

**Mr. Thimeo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** states the new regulation could provide for:

-The possibility to use existing tools that are already effective;

-The integration of the existing initiatives;

Moreover, EGTC may also be used; it is already implemented in different contexts.

**Mr. Jean PEYRONY, Mission Opérationnelle Transfrontalière, France,** we need to describe concrete examples.

1) Tram Strasbourg-Khel: it is important to point out that Germany does not have to accept French law in general. It's a limited issue: the point is to create a kind of fast-track with a limited scope (limited number of people and limited area). It would be applying a sort of a de minimis rule, which involves a limited sovereignty loss. In fact, limiting sovereignty already happens in many cases; there is just a need to explain it better.

2) Comparing EGTC and ECBC:

The EGTC is an existing tool.

The ECBC is a multilevel process. It's about connecting legal and technical competencies, within existing platforms, quicker: we need a European frame for it.

**Mrs. Mélanie CHAROTTE, General Commission to the Territorial Equality (CGET), France,**

Between France and neighbours, there are generally intergovernmental commissions dedicated to transfrontier issues: this is diplomacy, with its limits. Obstacles are often not being tackled in a timeframe corresponding to people's needs.

**Mrs. Margarita GOLOVKO, Ministry of Finance, Estonia,** Estonia has only 2 borders; the Intergovernmental commissions work on very practical terms; it is simpler than for big countries with many borders. There are several competent levels: local administrations, ministries, etc. That's why the identification of solutions is conducted at various levels.

Moreover, an agreement is necessary between all levels with various competencies. Only a compromise will lead to new legislation.

**Mr. Thimeo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** ECBC is a process; a tool which may help each State to put its own domestic procedures into effect.

Moreover, we have to integrate the existing solutions within it. The point is not to replace things that already work.

## Afternoon session

**Mr. Frederick-Christoph Richters, Ministry of Sustainable Development and Infrastructure, Luxembourg,** As a second step, we have to add the consultation of the other side of the border. It's about finding agreements, common rules.

**Mr. Dirk PETERS, DG REGIO,** We need a tool that makes citizens' lives easier.

A couple of legal issues to solve:

-Sovereignty

-Legal certainty and transparency

-Protection of persons and professionals crossing borders

The application of the rules has to be fixed in a transparent way even for three tram stops.  
We might recognize the law of a neighbouring State, but we may also imagine internal law exemptions (for example, by a parliamentary amendment): the ECBC could be a commitment to do so.  
Content must be more acceptable for Member States (That is what today's discussion is all about).  
The ECBC should allow both options: 1) a convention (changing the law) and 2) a commitment to solve the problem. The convention should remain an option among others.  
Reminder: EGTC does not entail transfer of competencies.

### 2.30 p.m. Draft Report Chapter 1, 2 and 3 presentation by Mr. Jean PEYRONY (refer to the ppt)

**Mr. Thimo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg**, it would be good to have a small summary describing the basic ideas at the beginning of the draft.

**Mr. Gyula OCSKAY, Central-European Service for Cross-Border Initiatives, Hungary**,  
-The term “transnational” is linked to the European programmes (e.g. EGTC was created on a transnational level); it would be better to use “international”;  
-Missing reference about “governments” in the tool.

**Mr. Thimo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg**, “international” evokes something beyond Europe; the term is too confusing.

**Mr. Jean PEYRONY, Mission Opérationnelle Transfrontalière, France**, Basically, the Interreg vocabulary could help. The term “transnational” is not geographic in scope, but represents an actor-based approach.

**Mr. Dirk PETERS, DG REGIO**, We could make a parallel with differences between European legislations on cross-border / transfrontier workers.  
In our case, who would be the source of the solution? 2 or more States. Therefore,, “bilateral” or “multilateral” may be better terms.

**Mr. Thimo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg**, A refer to governments is too broad (conventions are already signed by governments); in the same way, “international” is the broader term.

**Mr. Peter JUNG, Federal Ministry of Transport and Digital Infrastructure (BMVI), Germany**, Chapters 1 and 2 could be shorter. Regarding the typology, what are you trying to say? – We need a tool and this is something about the solution.  
We are overly scientific. Point 2.2. is not clear: what do you mean?

**Mr. Thimo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg**, The purpose of the typology is to identify various obstacles and various concerned regions.  
We need to go further on the typology of the legal problems, as well as on the legal solutions of concrete examples (so that applicable norms could be identified).

**Mr. Jean PEYRONY, Mission Opérationnelle Transfrontalière, France**, The purpose is to identify the substance of obstacles as well as to define a common matrix to make existing obstacle-solving tools interoperable.

**Mrs. Mélanie CHAROTTE, General Commission to the Territorial Equality (CGET), France,** Various processes of collecting obstacles exist in Europe. They are convergent, in terms of the most numerous obstacles (which are legal and administrative).

**Mr. Peter JUNG, Federal Ministry of Transport and Digitale Infrastructure (BMVI), Germany,** The draft may focus on the insufficiency of the existing solutions in the beginning.

Also, in the beginning of Point 3.1. it has to be underlined that it is not about the emergence of a new financial programme.

Generally, you should start with the conclusion: the existing solutions are limited, that's why we need a new tool.

**Mr. Dirk PETERS, DG REGIO,** The financial support by Interreg is reaching its limits because of the lack of efficient solutions for cross-border obstacles.

EGTC does not have the ability to solve legal and administrative cross-border obstacles. It is limited to its tasks; no transfer of Member powers shall be involved (one exception: the BENELUX EGTC Convention).

**Mrs. Mélanie CHAROTTE, General Commission to the Territorial Equality (CGET), France,** There sometimes is a discrepancy between cross-border cooperation programmes and real problems of border regions; e.g. CBC in the field of healthcare has a high added value, but is rarely a priority for the programmes.

**Mrs. Julija JAKOVLEVA, Ministry of Environmental Protection and Regional Development, Latvia,** In our regions CBC OPs do tackle the needs of the local level.

**Mr. Dirk PETERS, DG REGIO,** Interreg focuses on all types of obstacles (also legal and administrative ones) in various areas (transportation, education, etc.), but the more integrated border areas are, the more legal obstacles become apparent.

**Mrs. Margarita GOLOVKO, Ministry of Finance, Estonia,** We also need to take into account the more active regions, in particular in the field of European financing.

**Mr. Thiemo ESER, Ministry of Sustainable Development and Infrastructure, Luxembourg,** What about the term "convention"? Isn't it too heavy, official?

**Mr. Frederick-Christoph Richters, Ministry of Sustainable Development and Infrastructure, Luxembourg,** The term would be fixed after the output. We leave it up to the States to decide.

## Follow-up

March – draft revised;

Report presented to the DGs in Malta on 3/4

At the end of April – new meeting of the WG.

Pending questions:

3<sup>rd</sup> countries; D Peters: link with the participation to the Single market

How to coordinate the WG and the cross border review?: the Communication should mention the report of the WG; then the WG should react, during the EE presidency.