Working Group on Innovative Solutions to Cross-Border Obstacles

Towards a Draft Report of the Working Group

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

Département de l'aménagement
du territoire

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

3

Finding innovative solutions to obstacles

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.

6

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

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

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?

10

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

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

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.

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

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 (2nd semester 2015)

➢ The Working group on Innovative Solutions to Cross-Border Obstacles (co-led by France and Luxembourg)

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE 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)

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

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*

15

If you have any feedback please send it to
thiemo.eser@mat.etat.lu

Thank you for your attention