



Towards the design of a tool to overcome legal and administration obstacles in cross- border cooperation

3rd Meeting of the Working Group on
Innovative Solutions to Cross-Border Obstacles

14 December 2016, Brussels



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DU GRAND-DUCHÉ DE LUXEMBOURG
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Reminder: Why do we need the tool ?



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- Financial instruments and tools are touching the limits where legal and administrative obstacles are impeding the realisation of projects;
- Institution related tools such as EGTC focus on the institutional set-up across border and do not address legal and administrative obstacle related to implementation projects;
- Undeniably solutions are found to legal and administrative obstacles in some cases, however, 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 cost for find a solution are often too high and the probability to get stuck somewhere in the process without a real result (which can be yes or no) is high and there imposes a high risk for any project.



- **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 specific proposal or specific provisions. The latter would be defined in the ECBC proposed by the → Beneficiaries and agreed by the → Competent authorities. The approach would be similar to the EGTC Regulation.
- **Potential beneficiaries (actor)**: The potential beneficiaries are the local/regional authorities on either side of the border together with the project operator (which can take the form of an EGTC or EEIG) benefiting from the specific provisions.



- **Competent authorities (actor)**: The competent authority could either be situated at the national/federal level or at the regional level. The ECBC coordination point would identify the competent authority on a case-by-case basis in accordance with the objective and specific provisions of the proposed ECBC.
- **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 period of time.



- **ECBC proposal**: The potential beneficiaries prepare an ECBC proposal that includes a description of the legal obstacle, a proposal for a solution and a proposal – specific provisions - for the competent authorities in both countries.
- **Draft ECBC**: After receiving feedback from the national ECBC coordination points and the competent authorities on the ECBC proposal, the potential beneficiaries draft the ECBC. This draft ECBC contains the specific provisions and is submitted to the competent authorities.



- **National ECBC coordination points (actor)**: Every Member State would designate an ECBC coordination point (within a ministry, department or agency) that would act as a gatekeeper for the ECBC proposals submitted by the potential beneficiaries. The ECBC coordination point could either be situated at the national/federal level or at the regional level.
- **ECBC platform at the EU level (actor)**: The ECBC platform at the EU level will maintain a European database on all ECBCs across Europe.

Towards a procedure for establishing an ECBC



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Five steps 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 potential beneficiaries 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 potential beneficiaries submit an ECBC proposal to their respective national ECBC coordination points.

Step 2. Finding a solution



- The national ECBC coordination points in both countries:
 - 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 coordination points should contact the ECBC platform at the EU level.
 - assess whether this obstacle could potentially concern other cross-border cooperation projects on the same border.
- The coordination points also identify the competent authorities in their respective countries in accordance with the objective and the proposed solution.
- Subsequently, the coordination points submit the ECBC proposal to the competent authorities in both countries.

Step 2 cntd. Finding a solution



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- The competent authorities in both countries 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 should 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 potential beneficiaries draft the ECBC with the specific provisions and send it back to the competent authorities.
- 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.
- The specific provisions also specify the area and duration of application.

Step 3. cntd: Establishing the ECBC



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- If necessary, the competent authorities propose amendments.
- If the potential beneficiaries approve the amendments, then the competent authorities agree to the ECBC.
- Subsequently, the competent authorities and the potential beneficiaries sign the ECBC.

Step 4. Applying the ECBC



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

Step 5. Following up



- The *national ECBC coordination points* in both countries include the new ECBC in a national database.
- The *national 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 assess whether a permanent intergovernmental solution could be found.
- The *ECBC platform* at the EU level assesses whether a permanent European solution could be found.



- Voluntarily applicable, bottom-up and tailor-made
- Legal certainty for beneficiaries
- 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 potential beneficiaries 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?



Thank you for your attention