A new legal tool to improve cross-border cooperation

ESPON Seminar

7-8 December 2016, Bratislava

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

Département de l'aménagement
du territoire

It all started with…

Action 3 *of the IT-LV-LU Trio Presidency:*

A tool for the attribution and application of specific provisions for the improvement of cross-border cooperation

Action 3

➢ **Key question of IT-LV-LU Presidency Trio**:

  How to strengthen territorial cohesion?

➢ Territorial cohesion is a major challenge, particularly in cross-border areas. Strengthening cross-border cooperation will contribute to territorial cohesion.

➢ Cross-border obstacles hamper the development of integrated cross-border areas.

➢ These obstacles are often related to diverging legal frameworks or a mismatch of standards.

➢ Basic idea: **Develop a tool to overcome legal obstacles in the implementation of cross-border cooperation projects.**

➢ Informal Meeting of Ministers responsible for Territorial Cohesion on 27 November 2015 in Luxembourg.

➢ Luxembourg Presidency Conclusions:

- (21) **Recognise the value and necessity of thoroughly exploring a specific tool** for the attribution and application of specific provisions for the improvement of cross-border.

- (23) **Recommend a follow-up** by the incoming Presidency Trio to further explore the existing opportunities for the efficient cooperation in border areas in Europe and to further analyse the necessity for developing adequate and complementary tools together with the European Commission […].

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

Working Group on Innovative Solutions to Cross-Border Obstacles

➢ Working group is an **intergovernmental platform** – in a **structured dialogue with the EU institutions** – dealing with obstacles to cross-border cooperation and solutions to overcome these.

➢ Particular focus on the **added value, feasibility and design of the legal tool** presented under the Luxembourg Presidency.

➢ Result should be an **input and starting point for a legislative process** at the EU level at the end of 2017.

Members

- Czech Republic
- Estonia
- **France (co-chair)**
- Germany
- Greece
- Hungary
- Latvia
- **Luxembourg (co-chair)**
- Netherlands
- Poland
- Slovakia

- Slovenia
- Switzerland
- Association of European Border Regions (AEBR)
- Central-European Service for Cross-Border Initiatives (CESCI)

- **Mission Operationnelle Transfrontalière MOT (partner)**

Working Group

➤ 1st First meeting 5 July 2016 in Vienna

➤ 2nd meeting 28 September 2016 in Brussels

➤ (3rd meeting 14 December 2016 in Brussels)

➤ Three objectives and work packages:

- Concrete examples of cross-border obstacles and their solutions (*what would be added value of tool*?)

- Establishing and mapping a toolbox of cross-border solutions (*which solutions are available*?)

- Framing and clarifying the legal aspects of the proposed tool (*how could the tool be used*?)

Working method

➢ In-depth consultation with stakeholders of cross-border cooperation projects (*Hospital of Cerdanya*)

➢ Description of existing procedures for overcoming cross-border obstacles (*Nordic Council - Procedure of the Freedom of Movement Council*)

➢ Feedback on the cases studies and the solutions proposed by the Cross-Border Review of the European Commission

➢ Consultation with the EU institutions:
  - European Commission
  - European Parliament
  - Committee of the Regions
  - European Investment Bank

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

3 ways to deal with cross-border obstacles that were identified:

1. "Somehow" national/regional/local authorities recognise the pertinence of an obstacle and bring it up on the political agenda to find a solution.

2. Cross-border actors encounter an obstacle in the implementation of a project (e.g. hospital) and they try to solve the issue in "one way or the other".

3. Individuals or organisations register an obstacle via a defined channel/procedure (e.g. Nordic Council) and the obstacle will be formally treated.

→ In the cases 1 and 2, the approach seems to be "muddling through" without the guarantee of finding a permanent solution that offers legal certainty.

Mapping the existing toolbox

1. Solutions that use funding to overcome obstacles: Interreg

2. Solutions for cross-border institutions to implement activities across borders:
   o Private sector: EEIG
   o Public sector: EGTC

Solutions beyond spending and legal structures

3. Solutions to overcome legal obstacles or a mismatch of standards:
   o General: change the legal framework, harmonisation, intergovernmental agreement
   o Specific: specific solution for a specific project in a specific area for a specific time (approach of the proposed new legal tool)

Which solution for which cross-border obstacle?

What are the limits of currents solutions and tools?

Towards a new legal tool

➢ Potential beneficiaries in both countries **identify a legal obstacle** to their CBC project and make a **proposal** (obstacle + solution) to the competent authorities. These decide whether the proposal is admissible.

➢ The potential beneficiaries and the competent authorities **draft the specific provisions** that should apply to the project. In the end, the competent authorities have to **approve** the specific provisions.

➢ **These specific provisions determine the application and implementation of legal provisions/rules (including technical standards)** for this specific project in this specific cross-border area for a specific period of time.

➢ These specific provisions can either contain:

1. 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).

2. a tailor-made set of legal provision/rules from both countries (*special case*). This means that countries A and B agree on a tailor-made set AB.

Principles

➢ Voluntarily applicable, bottom-up and tailor-made

➢ Legal certainty for beneficiaries

➢ Speedy process

➢ Safeguarding the sovereignty of competent authorities

➢ Limited application (specific project, specific area, specific duration)

➢ Not replacing other solutions (intergovernmental agreements)

➢ Not competing with other tools (EGTC) → hardware and software