

Preparation of the Luxembourgish Presidency of the EU Council



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

Département de l'aménagement
du territoire

Cross-border Cooperation: Obstacles to Overcome

Luxembourg, May 19th, 2015



Presentation outline

Introduction –Obstacles to Overcome

A. Methodology: Questionnaire to CBC Stakeholders

B. Results: Selection of Main Topics

C. Recommendations: European Legal Tool

Conclusion – Issues Faced by a European Legal Tool

Introduction – Obstacles to Overcome

Since 1990, 25 years of Interreg and ETC:

Local initiatives have been taken within functional cross border territories (Euroregions, CB agglomerations, ...). Their integration already happens:

- with political support of stakeholders (AEBR, MOT,...)
- with legal support of CoE (Madrid Outline Convention) and EU (EGTC).

But results still not sufficient: impediments hampering CB development; unleashed potential in border areas.

Macro regional strategies have raised awareness:
EU legislation + funding is not enough.

EU legislation transposed without interoperability across borders
=> vertical and horizontal coordination is needed.

LU wants to promote territorial cohesion through an EU legal tool 2020 +

Presentation outline

Introduction – Obstacles to Overcome

A. Methodology: Questionnaire to CBC Stakeholders

B. Results: Selection of Main Topics

C. Recommendations: European Legal Tool

Conclusion – Issues Faced by a European Legal Tool

Questionnaire Replies: Geographic Diversity



© Mission Opérationnelle Transfrontalière 2015 - moi@mot.asso.fr - +331 55 56 80

Methodology: Typology of Obstacles to CBC

- Possible typologies of CBC obstacles:

- Policy fields: health, employment, transport,...;
- Nature of obstacles: institutional, administrative, economic, expertise, cultural, propensity to cooperate) (ISIG for CoE)
- Level of resolution (local, national, EU).

- Our focus: **legal solutions provided by a European legal tool to overcome CBC obstacles, aiming to:**

- Ensure the compatibility of two national systems without additional law:
 - on a specific CB area/issue;
 - on a specific project (time limit);
 - to run a CB facility/shared service;
- Bring a new legal solution to apply the same law on each side of the border
- Bring legal certainty to existing ad hoc solutions;
- Relax European rules (outermost regions with third states).

- Other solutions besides a legal tool (not addressed here):

- Improve existing European rules or creating new ones (EU competency).

Presentation outline

Introduction – Obstacles to Overcome

A. Methodology: Questionnaire to CBC Stakeholders

B. Results: Selection of Main Topics

C. Recommendations: European Legal Tool

Conclusion – Issues Faced by a European Legal Tool

Compatibility of national systems

→ Lack of compatibility of national healthcare systems in cross-border areas

- **Concerned cross-border areas (9 different replies):**

IE/UK, DE(Brandenburg)/PL, DE/FR + CH, FR/LU

- **Obstacles encountered:**

- Emergency cares are planned nationally, as if each country were an island
- Patients of border areas sometimes have to go far away in their state to get scheduled treatments available closer on the other side of the border;
- Complex administrative procedure for patients (prior medical authorization);
- Complex administrative work for clinicians (two jurisdictions).

- **Desired final situation:**

- Ability to get health care on each side of the border for all cross-border area inhabitants, for emergency care and scheduled treatments;
- Simplified administrative process for health practitioners and patients;
- Coverage by public and private insurance companies.

=> generalize the FR/BE “ZOAST” or “Organized Zones of Access to Cross-Border Healthcare”, through a new EU legal tool

Compatibility of national systems

→ CBC projects of local authorities (within their joint competences) cannot be implemented because of different legal frames

- **Concerned cross-border areas and obstacles encountered**
 - **EE/LV (cities of Valga, Valka)** : would like to develop as “one city”, but 2 different legislations make that impossible (transportation, healthcare, environment).
 - **FR/UK** → Problem of application of law for firefighters in the Dover Strait. No legal possibility for FR to respond to fires at sea in UK waters and vice versa, even if a CB project trained a CB team of firefighters.
 - **PT/ES (Alentejo, Algarve, Andalucía)**: different processes of approval for CBC projects in the two countries, which create a difficulty in being efficient.
 - **HU/RO (Gate to Europe EGTC)**: administrative processes not coordinated -> impossible to have the same timeline on each side of the border for a CBC project.
- **Desired final situation:**
 - address the inhabitants' needs, improve efficiency of public action

=>a new EU tool to provide the same administrative process or even the same legal frame for a specific project in a limited cross-border area.

Legal certainty

→ Lack of legal certainty for cross-border facilities/shared services

- Concerned cross-border facility:

- FR/ES: cross-border hospital of Puigcerdà (EGTC)
- Potentially other CB facilities all over European borders (including 3rd states)

- Obstacles encountered:

- The EGTC solves major problems, but do not change applicable law.
- The guiding principle of establishing the CB hospital, located in Spain, was to choose and apply the better existing legislation (FR or ES). Applying French law in Spain: no legal certainty, for French administration or Spanish courts. The penal responsibility of French practitioners is especially in question.

- Desired final situation:

Develop a solid legal framework providing legal certainty to complex legal arrangements, around the set-up of cross-border facilities

=>develop a new EU tool making possible the coordination of MS, without international agreement.

Legal certainty/New legal solution

→ Distortion of national framework conditions, differentiated economic development: strongly experienced in cross border areas

- **Concerned cross-border areas (3 different replies):**

- FR/DE, all the border + CH (third country);
- Potentially other European borders

- **Obstacles encountered:**

- Distortion of framework conditions between France and Germany (+ Switzerland) for economic activities; development only in one side of the border, where available land is lacking;
- Euroairport (FR CH): apply CH law for workers in some parts of the CB airport located in FR, where activity grows: difficulty to find legal certainty

- **Desired final situation:**

“European Economic Zone”? Legal framework composed by a mix of the law of the 2 states

=>EU tool to create a local zone, where a different law could apply (law of the other side of the border, or European framework).

Relaxing European rules

EU standards as obstacle to cross-border economic development in outermost regions

- **Concerned cross-border areas (2 different replies):**
 - France/Brazil/Suriname (French Guiana Region, land borders)
 - France/Comoros/Madagascar (Mayotte, maritime borders)
 - France/Caribbean states (Guadeloupe & Martinique, maritime borders)
 - Potentially other outermost regions (France, Portugal, Spain)
- **Obstacles encountered:**
 - Difficulties for importing and exporting goods and services between the EU and a third state within a cross-border area;
 - Third states do not have a sufficient level of development to compete with EU standards.
- **Desired final situation:**
 - Facilitate Cross-border economic development in a cross-border area, benefiting European and third state economy.
 - Take into account specific situation of European outermost regions , as provided for in article 349 of the TFEU.

=>EU tool for Outermost regions, to ensure a legal framework relaxing EU rules for specific projects of CB economic development

Other obstacles

→ Obstacles to overcome with other actions than a European legal tool

- Obstacles broader than a CB area: solution not only local, national or European action is required:

- FR/DE: German “minijobs” not compatible with keeping French insurances for French working in Germany;

FR/DE:

dependency insurance which exists only in Germany;

- All Schengen area: necessity to strengthen networking of prosecution authorities

- At EU borders (Bosnia and Herzegovina, Kaliningrad region of Russia, Turkey): specific CB cooperation to facilitate free movement of non EU citizens

- Obstacles outside the competence of the EU:

- Lack of European law on severely disabled people;
- Statutory duty to communicate new planning documents to local authorities on the other side of the border: EU competency if environmental impact, duty to inform already exists; not mandatory if it is not about environment; however some local cooperation already exist voluntarily.

Presentation outline

Introduction – Obstacles to Overcome

A. Methodology: Questionnaire to CBC Stakeholders

B. Results: Selection of Main Topics

C. Recommendations: European Legal Tool

Conclusion – Issues Faced by a European Legal Tool

Recommendations: European Legal Tool

→ Define a new European legal tool to overcome CBC obstacles, which would allow:

- **To focus on an identified geographic area;**

The tool is voluntarily used by competent authorities, to overcome the identified obstacle in the concerned cross-border territory.

- **To overcome a *local* obstacle;**

The identified obstacle should be linked with a specific cross-border infrastructure or project of local interest. If the obstacle is identified as national, the tool would not be the proper way of intervention, or should be experimental.

- **To ensure legal certainty.**

Implementation of the tool on a local territory to be approved by all relevant authorities (at the European, national, regional or local level, depending on the involved competencies) -> actions taken under this specific legislation are legal and under control of the competent authority having jurisdiction.

Presentation outline

Introduction – Obstacles to Overcome

A. Methodology: Questionnaire to CBC Stakeholders

B. Results: Selection of Main Topics

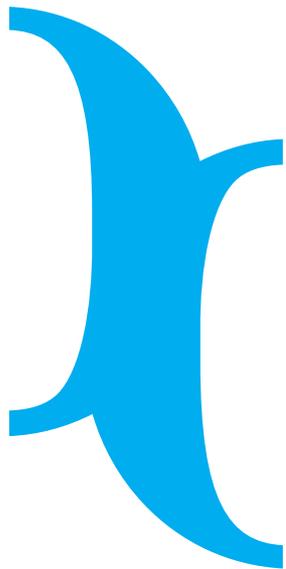
C. Recommendations: European Legal Tool

Conclusion – Issues Faced by a European Legal Tool

Conclusion – Issues Faced by a European Legal Tool

The elaboration of a European legal tool to overcome an obstacle should take in consideration that:

- Legislative or regulatory experimentation already exists in some member states (FR, DE, SE). In these countries, the new law has to be assessed, then generalized or abandoned. Experimentation appears then to be a deadlock;
- The EU has competency on territorial cohesion (art. 174 TFEU), but not on all obstacles (e.g. EGTC: created by the EU, exercising its tasks within the common competencies of its members).
- Having a different legislation on a border territory implies a specific control (mutual control, training of civil servants, court facilities, ...);
- The tool should not move the border further: the problem has to be solved, but not at the expense of other inhabitants;
- It has to bring new possibilities and improve existing tools, like the EGTC, and has to be easier to carry out at short notice than an international agreement.



THANK YOU FOR YOUR ATTENTION

More information:

www.espaces-transfrontaliers.eu

Contact

38, rue des Bourdonnais
75001 Paris – France
jean.peyrony@mot.asso.fr
Tél. : +33 (0)1 55 80 56 80

Transfrontier Operational Mission