

The “Cross-Border Metropolitan Regions” Initiative

// Position paper on the draft of a “mechanism to resolve legal and administrative obstacles in a cross-border context”

Obstacles to cross-border cooperation

In its “EUROPE 2020 A strategy for smart, sustainable and inclusive growth” communication, the European Commission already drew attention to the obstacles in cross-border cooperation in 2010. Even eight years later, the spatial planning and regional development in border regions still present a particular challenge: they follow the logics of legal and planning systems that are anchored on a national level. Different administration and planning cultures clash in border locations as a result. This emerges on all levels of the planning practice – from the identification of common aims in cross-border spatial development through to the coordination of specific planning projects. Various competences and regulatory powers, non-harmonized data bases, scarce human resources and a lack of experience, language skills and integrated (planning) approaches often characterize the day-to-day cooperation across borders.

“Every day businesses and citizens are faced with the reality that bottlenecks to cross-border activity remain despite the legal existence of the single market. They realise that networks are not sufficiently interconnected and that the enforcement of single market rules remains uneven. Often, businesses and citizens still need to deal with 27 different legal systems for one and the same transaction. Whilst our companies are still confronted with the day-to-day reality of fragmentation and diverging rules, their competitors from China, the US or Japan can draw full strength from their large home markets.” (European Commission 2010: 18)

Luxembourg and France as initiators of new cross-border solutions: ECBC and platform

Luxembourg deliberately delved into this issue in the second half of 2015 in the course of its EU Presidency. A new tool for handling legal issues in cross-border cooperation was suggested with support from the Mission Opérationnelle Transfrontalière (MOT). To also continue these ideas after the presidency, Luxembourg and France established a “Working Group on Innovative Solutions to Cross-Border Obstacles” (hereafter referred to as the “working group”).

In a report about its activities presented in July 2017, the working group confirmed that a number of good solutions were already underway for specific problems in a cross-border context. The EU is for example offering financial assistance (e.g. on a EU level through the INTERREG programme or loans from the European Investment Bank) or tools for institutional solutions, such as the European Grouping for Territorial Cooperation (EGTC), already relied upon in a number of border regions. All these tools have one thing in common: Their effectiveness ends where different legislations and administrative regulations come into play (WG 2017a: 8 ff.).

In very concrete terms, the working group's report suggested two initiatives for removing administrative and legal obstacles (WG 2017a):

1. Creation of a “**European Cross-Border Convention (ECBC) procedure and tool**”: This comprises a systematic bottom-up process and/or tool permitting local/regional authorities and actors to also apply administrative or legal rules and regulations of the neighbouring country in a defined territory on their side of the border – and vice versa. The ECBC procedure and tool are meant to enable a simplified and accelerated process for cross-border projects and legally binding plans.
2. Establishment of a “**European multilevel platform to exchange problem-solving methods**”, i.e. a multi-level platform serving the Europe-wide exchange of experiences and good examples, thus drawing attention to the existing problems at the borders. The platform is also to be used for collecting data about cross-border obstacles and solutions for the whole of Europe.

These initiatives were picked up on by the Commission and turned into a draft regulation for the Parliament and Council, which was submitted on 29 May 2018, taking a great number of suggestions and concerns from the stakeholder process into account (European Commission 2018).

The draft regulation suggests a **voluntary mechanism to resolve legal and administrative obstacles in a cross-border context** (or European Cross-Border Mechanism, ECBM, for short) (European Commission 2018: 5, 13f.). This very specifically concerns two measures:

1. The ratification and agreement of a **European Cross-Border Commitment** largely corresponds to the previous European cross-border convention and enables partners in cross-border projects to voluntarily and mutually agree on the applicability of just one legal system for a spatially and functionally defined cross-border project. “The Commitment should be self-executing, meaning that pursuant to the conclusion of the Commitment certain legal provisions of one Member State are to be applied on the territory of the neighbouring Member State.” (European Commission 2018: 13).
2. The ratification of a **European Cross-Border Statement** would additionally enable countries to formally agree on changes of the normal regulations in connection with a specific cross-border project. The statement calls for a legislation process in the member state. “The authority concluding the Statement should make a formal statement that it will trigger by a certain deadline the legislative procedure necessary to amend the normally applicable national law and to apply, by way of an explicit derogation, the law of a neighbouring Member State.” (European Commission 2018: 13).

What are the benefits of the European Cross-Border Commitment and/or Statement?

The working group illustrated the benefits of the ECBC tool suggested in 2015 with several concrete examples, also including the new tram connection between Strasbourg (FR) and Kehl (DE). Although this tool has undergone further development in the meantime, it is still able to highlight the benefits of a voluntary mechanism to resolve legal and administrative obstacles:

Strasbourg's tram line D has been crossing the Rhine to Kehl since April 2017, connecting the two centres with one another. But to get to this point took a major effort, also including the resolving of legal difficulties. The problem: Germany and France have different technical standards and requirements for the equipment of rail vehicles. The project partners agreed to use the French Citadis rail vehicles that serve Strasbourg's rail network for the cross-border route. The customary Citadis model with French technical standards does not meet the German requirements, however. Trams in Germany for example need to be equipped with a third light in the upper area and/or reflectors along the entire length. To meet these requirements, the parties agreed to retrofit the French vehicles for line D, with 22 trams adapted to the German standard altogether. The consequence were considerable extra costs in the project (source: WG 2017b)

The direct project realization was the responsibility of the municipal level. But as the difficulties with the different standards arose from legal requirements on a higher level, the way to simpler and faster solutions can only be paved by political decisions on a federal level (e.g. of the Federal Ministry of Transport and Digital Infrastructure BMVI in Germany). The German federal level could for example agree to the French regulations in the project area for tramline D. Another possibility would be for the competent ministries in France and Germany to establish a governance structure for cross-border transport projects with the involvement of the local authorities.



In front of the main train station, the first stop of the Strasbourg tram on land belonging to Kehl can be found. Trams arrive every 12 minutes. (Picture: Stadt Kehl)

The current solution for the tram, which has been running since 2017, is based on an agreement between the project parties. The French partners agreed to adapt the standard Citadis trams to the German requirements on this basis. The clear advantage: No laws had to be changed because the project parties agreed on a binding framework in a specific territory where the standards need not be so strict – but still strict enough for the European CE label¹. The downside: A long and difficult negotiation process until the line could be taken into service. The project costs were considerably increased by the retrofit required for the French trams by German law.

So what could the added value of the Commission's suggested mechanism look like in a concrete case? The ratification and agreement of a European Cross-Border Commitment and/or European Cross-Border Statement would have helped the local authorities near the border and the German federal level to either agree to an "export" of the French technical standards for the German route section of line D or initiate a legislation process more quickly. The additional costs of the French rail vehicles' retrofit would not have arisen, and the project could have been realized more smoothly. A formally established mechanism on an EU level would ensure clear legal framework conditions.

The IMeG supports the proposal for a new voluntary mechanism to resolve legal obstacles

The IMeG partners have been campaigning for cross-border cooperation for decades and found again and again that the cooperation across borders is complicated by many "stumbling blocks". The IMeG therefore supports the Commission's endeavour to supplement the existing toolset for cross-border cooperation by a cross-border commitment and/or statement and thus enable more customized solutions for administrative and legal obstacles between two neighbouring states. The IMeG partners

- represent the position that an **improvement of the border regions' economic situation** is essential for these regions to better perform their "motor function" in the economic, societal and social development. The cross-border commitment and/or statement would enable the advantages of the spatial proximity to the neighbouring country to be exploited more effectively, create synergies, and contribute to the economic growth.
- support the **mobility of cross-border commuters and employees** in the labour market and hope that a cross-border commitment and/or statement will serve to simplify the current conditions and legal obstacles.
- are of the opinion that well-developed **local public transport across borders** is essential for metropolitan border regions. The example with the tram development between Strasbourg and Kehl is not an isolated case and illustrates the consequences of different legal systems this and that side of the border. They lead to greater personnel deployment and additional costs. The cross-border commitment and/or statement would most of all enable cheaper and faster solutions here, and provide new stimuli in local cross-border rail transport.

1 Note: According to Regulation (EC) No. 765/2008, the manufacturer, distributor etc. indicates with the CE label "that the product is in conformity with the applicable requirements set out in Community harmonization legislation providing for its affixing."

- also welcome the working group's second proposal of establishing a **multi-level platform for pan-European exchange**. This could promote the exchange between neighbouring states and raise awareness for problems that are still unsolved, partly also after decades of cooperation. The IMeG would like to involve itself in the development of this platform and offers to support the development process with its experience.
- welcome the fact that representatives of the federal regional planning have involved themselves in the further development process of the ECBC tool and/or cross-border commitment and statement. They are confident that the mechanism to resolve legal and administrative obstacles in a national context can greatly **contribute to the realization of the Conference of Ministers for Spatial Planning's guiding principle "enhance competitiveness"** (MKRO 2016). This guiding principle decisively contributes to the further development of metropolitan regions, but also to a better cooperation and networking of spaces, and acknowledges that regional structures and developments need to be considered in a wider spatial context – and thus also across borders. Amongst others, the guiding principle's action approaches also include "supporting the metropolitan regions by taking greater account of them in national and EU sectoral policies and the EU Structural Funds", "Strengthen cross-border cooperation with the immediately adjacent neighbouring states, e.g. in the sector of regional planning", and also "support integrated and cross-sectoral regional development policies also by networks and partnerships at different levels". A further central aspect of the guiding principles is safeguarding the competitiveness of regions and sub-regions by good linkage and networking. The initiative to establish a mechanism to resolve legal and administrative obstacles in a cross-border context is supported by Luxembourg, France, the Greater Region, the land of Rhineland Palatinate, the European Ministerial Conference and the Federal Republic of Germany's Conference of Ministers for Spatial Planning.



(Picture: agl, Saarbrücken)

Literature and further information

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Spokesman region

Regionalverband Mittlerer Oberrhein
Prof. Dr. Gerd Hager, Verbandsdirektor

Ministerium des Innern und für Sport
Rheinland-Pfalz
Martin Orth, Leiter Abteilung 7 – Landesplanung

Further Members of the IMeG

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Administrative office

agl Hartz • Saad • Wendl
Landschafts-, Stadt- und Raumplanung
www.agl-online.de

Andrea Hartz, Lydia Weber
info@metropolitane-grenzregionen.eu

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