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COM(2023) 790 final

2018/0198 (COD)

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on a mechanism to resolve legal and administrative obstacles in a cross-border context**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

This proposal amends the Commission's proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context<sup>1</sup> ('the ECBM proposal') including amending the title for a Regulation on Facilitating Cross-Border Solutions.

The Commission adopted the ECBM proposal in May 2018, but no agreement was reached between Parliament and Council on the file, due to the two co-legislators taking different stances. Parliament adopted its first reading position on 14 February 2019. Overall, this position was very supportive of the Commission proposal and proposed a few additions to give greater flexibility in implementation. The Council did not adopt a formal position, as Member States raised several concerns with the proposal at working group level, and discontinued work on the file.

On 14 September 2023, Parliament adopted an own-initiative legislative resolution with recommendations to the Commission on amending the ECBM proposal, in accordance with Article 225 of the Treaty on the Functioning of the European Union ('the Treaty').

This amended proposal from the Commission takes due account of the concerns, comments and recommendations from the two co-legislators, while maintaining the original focus of the ECBM proposal on resolving the obstacles that hamper the lives of cross-border communities.

Since the Commission adopted the ECBM proposal in 2018, the need to unlock the potential of EU cross-border regions by proposing a legal framework to resolve cross-border obstacles has become even more pressing. Legal and administrative cross-border obstacles pose significant challenges for the daily lives of 150 million citizens who live in cross-border regions, as well as for businesses and institutions, hindering their activities and adversely affecting economic performance. It is estimated that removing 20% of the obstacles would boost GDP by 2% and create over one million jobs in cross-border regions<sup>2</sup>. Beyond macroeconomic impacts, access to public services such as transport, hospitals and universities is generally more difficult in cross-border regions. Navigating between different administrative and legal systems is often complex and costly.

In a survey conducted by the Commission in July 2020<sup>3</sup>, 44% of the citizens in EU cross-border regions identified legal and administrative differences as the most important obstacles to cooperation. The impact of cross-border obstacles in the development of cross-border regions has been documented in the Cross-Border Review, including the Commission Communication on "Boosting Growth and Cohesion in EU Border regions"<sup>4</sup>.

Furthermore, cross-border regions risk being disproportionately affected at times of crisis. For example, during the COVID-19 pandemic, the economic impact for cross-border regions of

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<sup>1</sup> COM(2018) 373 final, 29.5.2018.

<sup>2</sup> European Commission, Directorate-General for Regional and Urban Policy, Caragliu, A., Capello, R., Camagni, R. et al., *Quantification of the effects of legal and administrative border obstacles in land border regions – Final report*, Publications Office, 2017, <https://data.europa.eu/doi/10.2776/25579>; COM(2017) 534 final, 20.9.2017 "Boosting growth and cohesion in EU border regions", p. 6.

<sup>3</sup> [https://ec.europa.eu/regional\\_policy/sources/policy/cooperation/european-territorial/survey-2020/cross-border-survey-2020-report\\_en.pdf](https://ec.europa.eu/regional_policy/sources/policy/cooperation/european-territorial/survey-2020/cross-border-survey-2020-report_en.pdf).

<sup>4</sup> Communication from the Commission to the Council and the European Parliament 'Boosting growth and cohesion in EU border regions' - COM(2017) 534 final, 20.9.2017.

border-related measures taken by Member States was more than double the average impact on all EU regions<sup>5</sup>.

To pioneer work to overcome cross-border obstacles, the Commission launched in 2018 *b-solutions*<sup>6</sup>, an innovative initiative providing legal support to public authorities in cross-border regions to identify the root causes of legal or administrative obstacles affecting their cross-border interactions and to explore potential solutions. As of the end of November 2023, 154 cases have been selected by the initiative, of which 90 have been concluded by finding the cause of the obstacle. These 90 cases covered 27 cross-border regions in 21 Member States and tackled obstacles mainly in employment, public transport, health care and institutional cooperation. In over a third of those cases, the root cause has been divergent legal and administrative norms on either side of the border requiring Member States to get involved in finding a solution. The experience of the *b-solutions* initiative has been instrumental to analyse and identify legal and administrative cross-border obstacles and has revealed the potential of a new tool, established at EU level, to help resolve these obstacles. While *b-solutions* has been helping in identifying obstacles, that initiative is not sufficient to offer a tool as such, that Member States can use and rely on for their corresponding processes, should they wish to eliminate an obstacle.

The current financing and legal instruments available at EU level do not provide a comprehensive and effective response to the obstacles affecting cross-border regions. In particular, while European groupings of territorial cooperation (EGTCs)<sup>7</sup> are effective in facilitating cross-border cooperation by creating legal entities that straddle national borders, they lack regulatory powers to resolve obstacles in cross-border cases. Similarly, while Interreg programmes provide effective financial support for cross-border projects that help to bring regions and citizens closer on both sides of the border, they cannot alone tackle the legal and administrative barriers as they require decisions outside of the scope of programme and project management structures.

The amended proposal therefore provides a legal framework applicable to all Member States to help find solutions to legal and administrative obstacles that potentially undermine cross-border interaction and the development of cross-border regions. The scope encompasses items of infrastructure with an impact on a cross-border region or a public service provided in a cross-border region. This proposal only covers obstacles stemming from national law, including where Member States transpose EU directives correctly but in a diverging way. Obstacles involving a potential breach of Union law are out of the scope of this amended proposal, given that there are other specific instruments tailored to resolving these issues, such as SOLVIT. Cross-border coordination points may cooperate with national SOLVIT centres to carry out potential transfer of files where appropriate.

The amended proposal requires setting up cross-border coordination points in all Member States for reporting cross-border obstacles and assessing files submitted by “initiators”. Initiators are public law or private law entities or natural persons who prepare a cross-border file by setting out the cross-border interaction and describing the obstacles for the consideration of coordination points. Member States may identify current or new bodies and they may choose to set up one or several coordination points, including joint bodies with neighbouring Member

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<sup>5</sup> European Commission, Directorate-General for Regional and Urban Policy, Capello, R., Caragliu, A., *Analysis of the economic impacts of border-related measures taken by Member States in the fight against COVID-19 – Final report*, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2776/973169>.

<sup>6</sup> <https://www.b-solutionsproject.com/>.

<sup>7</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19).

States, in line with their institutional framework and preferences.

The cross-border coordination point is tasked with assessing the cross-border obstacle described by the initiator. If it concludes that there is an obstacle, it looks at what cooperation structures are available to resolve the identified obstacle. If there is no institutional structure for cross-border cooperation to resolve the obstacle or if the existing ones are not sufficient to solve it, Member States may opt to use the Cross-Border Facilitation Tool set up under this Regulation. At any procedural step, the cross-border coordination point may choose not to resolve the obstacle, even if it concludes that the obstacle exists. If so, it will inform the initiator accordingly and explain why the obstacle described in the file will not be addressed. After assessing a cross-border file, the cross-border coordination point must forward the conclusion of the assessment to the initiator within a reasonable timeframe.

The Cross-Border Facilitation Tool consists of a single procedure to tackle obstacles of a legislative or administrative nature. After assessing the obstacle and identifying the nature of the provision at the origin of the obstacle, the cross-border coordination point is responsible for contacting the competent authority to first verify the interest and feasibility of resolving the obstacle through the identified administrative or legal provision(s) and for informing the initiator and the cross-border coordination point of the neighbouring Member State accordingly. For cross-border obstacles that would require an adaptation of the current legislation, the position taken by the cross-border coordination point to suggest to the national government to launch a legislative procedure is in no way binding on the competent legislative body. The decision as to whether to resolve an administrative or legal obstacle remains voluntary and rests with the competent national authorities.

This amended proposal has multiple benefits. It gives Member States a standard procedure for resolving obstacles and ensures that EU citizens living in border areas receive a (positive or negative) response from their Member State within a reasonable timeframe on the scope to overcome the identified obstacles. It gives Member States that lack sufficient cooperation structures a new tool to resolve these obstacles. In addition, cross-border coordination points in each Member State will create an efficient network to share knowledge and strengthen capacities, in liaison with the Commission. More broadly, the amended proposal can play an important role in enabling the functioning of the single market and fostering the economic, social and territorial cohesion of the EU. The proposal can have a direct impact on the daily life of people living in cross-border regions by improving their access to services and economic opportunities.

Compared to the 2018 ECBM proposal, this amended proposal has been adapted to take into account concerns about subsidiarity and proportionality. The Cross-Border Facilitation Tool is optional and should be used only if no other tools from existing cooperation structures are available or able to satisfactorily resolve the obstacle.

While Member States will have to analyse whether an obstacle exists and can be resolved, they can decide, after analysing the file, whether to resolve the obstacle, taking account of the assessment made by the cross-border cooperation point. The amended proposal is therefore fully based on the principle of subsidiarity, respecting Member States' legislative prerogatives.

Compared to the 2018 ECBM proposal, the amended proposal simplifies the procedures for assessing cross-border files submitted by initiators. Under the Cross-Border Facilitation Tool, one single procedure is established, with limited requirements for Member States and applicable to both legal and administrative obstacles. In addition, the amended proposal includes limited administrative requirements, as Member States can nominate an existing body as a cross-border coordination point and can decide how best to organise their resources. Member States can also nominate joint cross-border coordination points along their common borders, thus optimising

their resources.

- **Consistency with existing policy provisions in the policy area**

Interreg is the main funding instrument of Cohesion Policy to support cross-border cooperation programmes in EU cross-border regions, including those with bordering EFTA countries and Andorra. These programmes help to bring regions and citizens on both sides of the border closer to each other. Under Interreg VI (2021-2027)<sup>8</sup>, the European Regional Development Fund (ERDF) may support the Interreg-specific objective of ‘a better cooperation governance’ with the aim of boosting efficiency of public administration by promoting legal and administrative cooperation and cooperation between citizens, civil society and institutions, in particular with a view to resolving legal and other obstacles in cross-border regions<sup>9</sup>. Some Interreg programmes may use this option to fund the creation of structures that can function as cross-border coordination points. Where this support is not already included in the Interreg programmes concerned or where the allocation is not substantive enough, Member States and programme partners may consider re-programming the ERDF for the creation and the functioning of cross-border coordination points. Beyond this complementary support and the provision of EU funding, Interreg programmes cannot alone tackle the legal and administrative cross-border obstacles as they require decisions outside of the scope of programme and project management structures.

The amended proposal therefore provides the legal framework applicable to all Member States to find solutions to legal and administrative obstacles as a complement both to the financial support provided under Interreg, and to institutional support such as EGTCs, as those groupings lack the legislative powers needed to overcome legal obstacles<sup>10</sup>.

- **Consistency with other Union policies**

Cohesion Policy and the single market are mutually reinforcing. The mechanism created under this Regulation would contribute to the objectives of the single market, in particular by boosting the economic potential of cross-border regions, which is partially untapped due to differing legal and administrative systems.

In 2017, a study contracted by the Commission on the economic impact of cross-border obstacles on GDP and employment in internal land cross-border regions estimated that even removing only 20% of existing obstacles would boost GDP in cross-border regions by 2%<sup>11</sup>. A legal framework applicable to all Member States to find solutions to legal and administrative obstacles in cross-border regions is therefore also a necessary complement to the proper functioning of the internal market, a core EU objective (Article 3 TEU and Article 3(1)(b) of the Treaty)<sup>12</sup>.

The material scope of the amended proposal does not affect the exercise of other competences

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<sup>8</sup> Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94).

<sup>9</sup> Article 14(4), point (b), of Regulation (EU) 2021/1059.

<sup>10</sup> See the first subparagraph of Article 7(4) of Regulation (EC) No 1082/2006.

<sup>11</sup> European Commission, Directorate-General for Regional and Urban Policy, Caragliu, A., Capello, R., Camagni, R. et al., *Quantification of the effects of legal and administrative border obstacles in land border regions – Final report*, Publications Office, 2017, <https://data.europa.eu/doi/10.2776/25579>; see COM(2017) 534 final, p. 6; for more details see its accompanying SWD(2017) 307 final, point 2.2, p. 20-22.

<sup>12</sup> See also the 9th consideration of the preamble to the Treaty on European Union (**bold added**): "DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the **accomplishment of the internal market** and of **reinforced cohesion** and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields".

and measures decided upon in the framework of other EU policies nor affect the institutional balance as laid down in the Treaties.

This Regulation will not affect any other Union legal acts, in particular those are applicable to the non-judicial resolution of legal issues arising from cross-border obstacles or that are relevant to the correct interpretation or implementation of Union law. This Regulation is without prejudice to the coordination mechanisms established for social security and taxation.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

Article 175 of the Treaty, third subparagraph, provides for specific actions to be decided upon outside the Funds listed in the first subparagraph, in order to achieve the objective of social and economic cohesion envisaged by the Treaty. To achieve a harmonious development of the European Union as a whole and greater economic, social and territorial cohesion, more intensive territorial cooperation is needed. To this end, it is appropriate to take measures to improve the implementing conditions for cooperation across cross-border regions, which merit particular attention, in line with Article 174 of the Treaty, paragraph 3.

### **• Subsidiarity**

The conditions for territorial cooperation should be created in line with the subsidiarity principle enshrined in Article 5(3) TEU. Member States have taken individual, bilateral and even multilateral initiatives to resolve legal cross-border obstacles. However, not all Member States have such cooperation structures, and not for all borders of a given Member State.

Similarly, cross-border coordination points are not operational in all Member States covering all internal EU borders, though they are needed to create an efficient network to share knowledge and strengthen capacities, in liaison with the Commission. In addition, EU funding (mainly under the Interreg programmes) and legal instruments (mainly EGTCs) have so far not been sufficient to resolve the legal cross-border obstacles identified across the Union.

As a result, the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at national, regional or local level. Given the scale and effects of the proposed action, they are better achieved by taking action at EU level. Further action by the EU legislator is therefore needed.

### **• Proportionality**

In line with the principle of proportionality, as set out in Article 5(4) TEU, the content and form of EU action should not exceed what is necessary to achieve the objectives of the Treaties. Use of the Cross-Border Facilitation Tool set up under this Regulation is voluntary. Member States may decide with one or more neighbouring Member States to continue to resolve legal obstacles in a specific cross-border region under existing cooperation structures.

Member States can decide how best to organise their resources when nominating a cross-border coordination point, including by nominating an existing body or joint cross-border coordination points with neighbouring Member States.

If a Member State lacks such a tool or if the cooperation structures in place are not sufficient to resolve a given cross-border obstacle, it may opt to use the Cross-Border Facilitation Tool set up under this Regulation.

Therefore, this Regulation does not go beyond what is necessary to achieve its objectives. The amended proposal is without prejudice to the legal remedies laid down by the Treaties for tackling breaches of Union law by Member States.

- **Choice of the instrument**

As described in Section 1 above, Member States have taken individual, bilateral and even multilateral initiatives to resolve legal cross-border obstacles; however, this is not necessarily the case for all Member States and certainly insufficient to cover all obstacles.

A regulation establishes obligations on Member States to nominate cross-border cooperation points and to ensure that initiators receive a reply from them after an assessment of a cross-border file, within a reasonable deadline (which may be set under national law). A regulation is compatible with proposing a voluntary, off-the-shelf tool (the Cross-Border Facilitation Tool) and with Member States' prerogative to choose the appropriate instrument. The choice of this amended Regulation is consistent with the Commission's 2018 ECBM proposal and with the interinstitutional context of this file (see Section 1).

### **3. RESULTS OF *EX-POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- ***Ex-post* evaluations/fitness checks of existing legislation**

N/A: new legislation

- **Stakeholder consultations**

The concept of a cross-border policy stems initially from the work undertaken by the Luxembourg Presidency of the Council in 2015. This led to the establishment of an informal working group of Member States and groupings of Member States that met until December 2018. The working group explored options to facilitate the resolution of persisting cross-border obstacles, especially when implementing cross-border projects.

Other stakeholders, in particular cross-border regions and institutions, have asked for an instrument addressing cross-border obstacles for quite some time. This has been particularly visible during the Cross-Border Review carried out by the Commission between 2015 and 2017. The public consultations carried during the Review in all the official languages of the Union received over 620 replies. On the question linked to potential solutions to border issues, respondents explicitly asked the Commission to promote greater flexibility in implementing national/regional legislation in border regions.

The opinion issued by the Committee of the Regions and the resolution of the European Parliament in response to the Communication "Boosting Growth and Cohesion in EU Border Regions" welcomed the 2018 proposal to develop this instrument. Both documents were adopted in summer 2018. Reacting to the 2018 proposal, on 5 December 2018, the Committee of the Regions adopted another report (Rapporteur: Bouke Arends, NL/PES) in support of the proposal. The Committee of the Regions adopted a new opinion on "European Cross-Border Mechanism 2.0" on 10 October 2023 (Rapporteur: Magali Altounian, FR/ RENEW).

The *b-solutions* initiative referred to in Section 1 further evidenced the need for a legal tool established under Union law to help resolve cross-border obstacles. In the 2020 survey conducted by the Commission (see also Section 1), 44% of the citizens in EU border regions identified legal and administrative differences as the most important obstacles to cross-border cooperation.

- **Impact assessment**

The impact and European added value of Interreg programmes are well recognised<sup>13</sup>. However, in many cases, cross-border barriers (especially regarding health services, local public transport and business development) stem from differences in administrative practices and national legal frameworks. These are difficult for programmes to address alone and they require decisions that are outside the scope of programme structures.

The 2018 ECBM proposal was part of the 2021-2027 Cohesion Policy legislative package, which was accompanied by an impact assessment<sup>14</sup>, which continues to apply. This impact assessment draws on the aforementioned study from 2017 contracted by the Commission. The findings being still relevant and valid today, there is no need for an updated impact assessment for the amended proposal. This proposal brings in substantial simplifications to the 2018 ECBM proposal, while maintaining its original focus on resolving the legal and administrative obstacles that hamper the economic and social development of EU cross-border regions.

A more recent study carried out by the European Parliamentary Research Service entitled ‘Mechanism to resolve legal and administrative obstacles in a cross-border context - European added value assessment’<sup>15</sup> concluded that adopting a new legislative instrument at EU level tackling cross-border legal and administrative obstacles could bring economic benefits of EUR 123 billion per year within the EU and have a positive social impact on border regions.

The Commission launched a call for evidence on the need for a legal act at EU level to resolve cross-border obstacles. All interested parties were invited to provide feedback and empirical evidence on the obstacles they face, their impacts and whether there were alternative tools to find solutions. The consultation period closed on 16 November 2023. Over 50 stakeholders submitted responses and evidence. Contributions demonstrate the persistence of many administrative and legal obstacles to cooperation between EU border regions. They underline the need to create a new off-the-shelf tool under Union law to overcome these obstacles, thus improving cross-border cooperation and contributing to the development of border regions.

This amended proposal aims to unlock the potential positive impacts of greater cross-border interaction across the Union. It provides a comprehensive framework applicable to all Member States to find solutions to the legal and administrative obstacles that limit such cross-border interaction and curb the potential of EU border regions.

- **Regulatory fitness and simplification**

N/A: new legislation.

- **Fundamental rights**

This amended proposal creates a legal mechanism to resolve legal and administrative obstacles in cross-border regions and therefore it is mainly addressed to the authorities in the Member States. People should benefit from the solutions found using the proposed mechanism. Resolving legal obstacles in cross-border regions under this proposal should positively impact on the daily life of people living in these regions by improving their access to services and economic opportunities. The proposal observes the principles recognised by the Charter of Fundamental Rights of the European Union and has no negative impact on any Fundamental Right. In particular, and due to its aim of removing legal obstacles in a cross-border context,

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<sup>13</sup> Commission, ‘European Territorial Cooperation, Work Package 11, Ex-post evaluation of Cohesion Policy programmes 2007-2013, focusing on the European Regional Development Fund (ERDF) and the Cohesion Fund (CF)’, July 2016.

<sup>14</sup> SWD(2018) 282 final - 2018/0197 (COD).

<sup>15</sup> EPRS, Mechanism to resolve legal and administrative obstacles in a cross-border context: European added value assessment, PE 740.233, 2023.



the Regulation fosters the right to access to public services (Article 36) and the freedom to conduct business (Article 16). However, as cross-border public services encompass a wider range of activities, the proposal will also foster the access to health care (Article 35). In a more general way, cross-border public transport services may benefit from the Cross-Border Facilitation Tool, as well as the freedom of movement and of residence (Article 45).

The amended proposal also covers the issue of effective legal protection of people living in cross-border regions.

#### **4. BUDGETARY IMPLICATIONS**

The amended proposal does not have a budgetary impact as it does not involve providing financial resources in any form.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Like any EU regulation, the proposed Regulation will be binding in its entirety and directly applicable in all Member States. Article 291(1) of the Treaty requires Member States to adopt all measures of national law needed to implement legally binding EU acts. As set out in Section 3.2 of the Border Regions Communication, even where there is European legislation, Member States have a degree of flexibility and discretion in the way they apply the legislation in their national systems and in the detailed implementing rules. As a result, when two different systems meet along internal borders, this may create complexity – and sometimes even legal uncertainty – and inflate costs.

To assess whether the mechanism established under the proposed Regulation proves to be an additional effective tool to resolve legal obstacles in cross-border regions, the Commission should evaluate the legislation, following the Better Regulation Agenda<sup>16</sup>. The Commission therefore proposes to carry out an evaluation and report to the European Parliament, the Council, the Committee of the Regions, and the European Economic and Social Committee on the application of the proposed Regulation. In its report, it will use indicators to evaluate its effectiveness, efficiency, relevance, European added value and scope for simplification within 5 years of application of the proposed Regulation.

- **Detailed explanation of the specific provisions of the proposal**

Since the co-legislative negotiations on the 2018 ECBM proposal showed strong concerns from the Council, the detailed provisions have undergone thorough scrutiny, revision, simplification, and restructuring to address the key concerns. This process involved reducing the number of provisions from 26 to 14 articles. The amended proposal combines elements of the initial Commission proposal with new elements brought in following the own initiative legislative resolution of the Parliament.

#### Chapter I - General provisions (Articles 1 to 3)

Chapter I sets out the subject matter and scope of the proposed Regulation and defines key terms.

The subject matter (Article 1) is a procedure to facilitate the resolution of cross-border obstacles. To select the appropriate tool, Member States will set up and organise cross-border coordination points (CBCP). The proposal specifies the tasks of these CBCPs as well as the

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<sup>16</sup> Communication from the Commission to the European Parliament, the European Council and the Council “Better Regulation: Delivering better results for a stronger Union” - COM(2016) 615 final, 14.9.2016.

coordinating tasks of the Commission.

The scope of the proposal (Article 2) covers both geographical and substance aspects. Due to the legal basis, the Regulation will apply to cross-border obstacles under national law in all internal land and maritime border regions between neighbouring Member States. The Regulation does not affect other Union legal acts, in particular those applicable to the non-judicial resolution of legal issues arising from cross-border obstacles and to the correct interpretation or implementation of Union law.

Article 3 lists the definitions needed to implement the proposal. As regards the definition of initiators, the proposal is broad by including any private or public entity involved in the provision, operation, establishment or functioning of any cross-border public service or infrastructure, or any natural person having an interest in the solution of the cross-border obstacle. Several legal or natural persons may submit a cross-border file jointly.

## Chapter II – Cross-border coordination points (Articles 4 and 5)

The proposal sets out several options to set up CBCPs (Article 4) and lists their tasks (Article 5). The options allow Member States to implement this obligation as flexibly as possible and in full accordance with their internal institutional and legal frameworks (one or several CBCPs, at national and/or regional level, a separate or an existing authority or public law body). Neighbouring Member States may also apply these options to a joint CBCP covering both sides of a common border.

Cross-border coordination points should act as ‘one-stop shops’ for the initiators and be their privileged contact point in the respective Member State. If a given Member State sets up several CBCPs, one should take the role of the main CBCP and the others should support its tasks and transmit the necessary information.

## Chapter III – Cross-border files (Articles 6 to 9)

At the core of the proposal is the management of a cross-border file identifying a cross-border obstacle. The proposal sets out the elements of a cross-border file (Article 7), the preliminary assessment steps in Member States (Article 8) and some procedural aspects (Article 9).

Based on experience with *b-solutions*, initiators should not be obliged to identify the administrative and legal provision at the origin of the obstacle, but they may be supported by organisations with expertise on cross-border obstacles in doing so (e.g., the Association of European Border Regions, the *Mission Opérationnelle Transfrontalière*, or the Central European Service for Cross-border Initiatives). Initiators can submit cross-border files only once, i.e., in the Member State where the initiator is located or has its registered office (Article 6(2)).

In addition to giving a description of the elements necessary for the CBCPs to assess the file, the cross-border file should also describe the scope of any derogation from or exception to the normally applicable provisions or practice to limit them to the strict minimum.

The purpose of the preliminary assessment is to ascertain whether there is a cross-border obstacle or whether the file can be closed. Even if the preliminary assessment concludes that there is a cross-border obstacle, the resolution mechanism for cross-border obstacles is voluntary, so the procedure can be closed at any stage provided a due explanation is given to the initiator.

Article 8(5) refers to the list of tools available to Member States. The competent body assesses whether one or more tools are available to apply to the specific cross-border obstacle and to resolve it in coordination with other parties using these tools. When applying these tools, Member States follow the procedures and aspects of these tools. However, where the competent

body assesses that none of the tools available applies to the specific cross-border obstacle or that none of them is sufficient to resolve it, the Member State may apply the Cross-Border Border Facilitation Tool, proposed in Chapter IV as an additional tool established under Union law.

To provide the initiator with legal certainty, Article 9 sets out a procedural framework for the preliminary assessment: deadlines, the need to set out the reasons of a decision whether to resolve a given cross-border obstacle, and the means of legal redress against those decisions.

#### Chapter IV – The Cross-Border Facilitation Tool (Articles 10 to 13)

Article 10 sets out the applying procedure if the CBCP or the competent authority uses the Cross-Border Facilitation Tool (Article 8(6)) after assessing the cross-border obstacle under Article 8(1) and the other existing tools available to resolve the identified obstacle (Article 8(5)). The CBCP or the competent authority transmits to the initiator the information about the cross-border obstacle identified, the nature of the provision at the origin of the obstacle and the next steps, leading to its removal or not (Article 10(2)). A coordination is also ensured with the neighbouring Member State if there is no joint CBCP once the obstacle is identified in the national legal system (Article 10(3)). Whether the obstacle is of administrative or legal nature, the CBCP is responsible for contacting the competent authority to first verify the interest and feasibility of resolving the obstacle through the identified national administrative or legal provision(s) or practice (Article 10(4) and (5)). The initiator may be informed that more time is needed for legal analysis, consultations inside the Member State, or coordination with the neighbouring Member State (Article 10(7)).

If a decision is taken to resolve the identified obstacle, the procedure may vary depending on the nature of the provision at the origin of the cross-border obstacle. In the context of an administrative provision, the authority contacted by the CBCP may decide to change the provision or practice, including its interpretation (Article 10(4)). In this case, the CBCP notifies the initiator in writing (Article 11(1), point (a)). In the context of a legislative provision, the authority contacted by the CBCP may only suggest adapting the legislative framework to resolve the obstacle (Article 10(5)), in line with the constitutional rules of the Member State. In this case, the CBCP shall inform the initiator in writing of the steps of the legislative procedure that might be envisaged. If two or more neighbouring Member States conclude that they each want to launch a legislative procedure or change an administrative provision on practice to resolve the same obstacle, they will need to do so in close coordination, possibly including parallel timing and the setting up of a joint committee, in accordance with their respective legislative frameworks (Article 11(3)).

The decision as to whether to resolve an administrative or legal obstacle remains voluntary.

#### Chapter V – Final provisions (Articles 12 to 14)

Chapter V sets out the coordination tasks of the Commission (Article 12), monitoring and reporting tasks (Article 13) and the date of entry into force and application (Article 14).

Article 13(1) requires that each Member State informs the Commission of the establishment of its CBCPs (six months after the entry into force of the proposed Regulation).

Article 13(2) establishes an obligation of the Commission to report on the application of the proposed Regulation within five years after its entry into force.

Amended proposal for a

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on a mechanism to resolve legal and administrative obstacles in a cross-border context**

Commission proposal COM(2018) 373 final is amended as follows:

- (1) the title is replaced by the following:

**“REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on facilitating Cross-Border Solutions”;**
- (2) recitals 1 to 28 are replaced by the following:
  - (1) “Article 175, third paragraph, of the Treaty on the Functioning of the European Union (‘the Treaty’) provides for specific actions to be decided upon outside the Funds<sup>17</sup> which are the subject of the first paragraph of that Article, in order to achieve the objective of social and economic cohesion envisaged by the Treaty. In that context, territorial cooperation also contributes to the goals set out in that Article. To that end, it is appropriate to adopt the measures necessary to improve the implementation conditions for actions of territorial cooperation.
  - (2) Article 174, third paragraph, of the Treaty recognises the challenges faced by cross-border regions and provides that the Union should pay particular attention to those regions, when developing and pursuing actions leading to the strengthening of the Union’s economic, social and territorial cohesion.
  - (3) Commission communication ‘Boosting growth and cohesion in EU border regions’<sup>18</sup> acknowledged the progress made so far in transforming such regions from mainly peripheral areas into areas of growth and opportunities, but at the same time highlighted the persisting legal and other obstacles in those regions, especially obstacles related to health services, labour regulation, taxes, business development, and obstacles linked to differences in administrative cultures and national legal frameworks. Neither European Territorial Cooperation funding, provided in particular in the context of the ‘Interreg’ programmes<sup>19</sup>, nor the

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<sup>17</sup> The European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund, the Just Transition Fund (JTF), the European Maritime, Fisheries and Aquaculture Fund (EMFAF), the Asylum, Migration and Integration Fund (AMIF), the Internal Security Fund (ISF) and the Instrument for Financial Support for Border Management and Visa Policy (BMVI); See Article 1 of Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, (OJ L 231, 30.6.2021, p. 159, ELI: <http://data.europa.eu/eli/reg/2021/1060/oj>).

<sup>18</sup> Communication from the Commission to the Council and the European Parliament ‘Boosting growth and cohesion in EU border regions’ - COM(2017) 534 final, 20.9.2017.

<sup>19</sup> Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94, ELI: <http://data.europa.eu/eli/reg/2021/1059/oj>).

institutional support to cooperation by the European groupings of territorial cooperation ('EGTCs') established by Regulation (EC) No 1082/2006 of the European Parliament and of the Council<sup>20</sup> or by the initiative *b-solutions* launched in 2018 by the Commission<sup>21</sup> are sufficient to address the resolution of some of the administrative and legal obstacles which hamper effective cooperation.

- (4) Cross-border regions risk being disproportionately affected at times of crisis. During the COVID-19 pandemic, the economic impact for cross-border regions of border-related measures taken by Member States was more than double the average impact on all EU regions. This experience reinforces the need for providing means for addressing cross-border obstacles.
- (5) Even though several legal tools to resolve cross-border obstacles already exist at inter-governmental, national, regional, and local level in certain regions of the Union, they do not cover all border regions in the Union or do not address necessarily in a consistent manner issues related to the development and strengthening of territorial cohesion. To complement the existing tools, an additional tool established by Union law, namely the Cross-Border Facilitation Tool is therefore needed.
- (6) In order to set up the administrative structure to adequately address requests concerning cross-border obstacles, each Member State should establish one or more cross-border coordination points responsible for receiving and assessing applications on cross-border obstacles. They should liaise with the Commission and support its role of coordination.
- (7) Despite the fact that maritime border regions are different in nature due to more limited possibilities for cross-border interactions and the use of cross-border public services, this Regulation should also apply to maritime borders.
- (8) At Union level there are several non-judicial tools to monitor and enforce the respect of Union law, in particular those linked to the single market, such as SOLVIT<sup>22</sup>. This Regulation should not affect such existing tools. The additional tool created will only apply to cross-border obstacles generated under national law, including the correct, but diverging application of Union law potentially resulting in the unintentional hindering of the planning or implementation of cross-border public services and items of infrastructure. It should not apply to files involving a potential breach of Union law governing the internal market by a public authority in another Member State. This Regulation is also without prejudice to the coordination mechanisms established for social security and taxation.
- (9) In order to identify possible cross-border obstacles that could be covered by this Regulation, it is necessary to define the situations which qualify as cross-border interactions. To that end, this Regulation should apply to infrastructure for cross-border activities and to cross-border public services. Being provided on a long-

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<sup>20</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19 - ELI: <http://data.europa.eu/eli/reg/2006/1082/oj>).

<sup>21</sup> Communication from the Commission to the Council and the European Parliament 'Boosting growth and cohesion in EU border regions' - COM(2017) 534 final, 20.9.2017.

<sup>22</sup> Commission Recommendation 2013/461/EU of 17 September 2013 (OJ L 249, 19.9.2013, p. 10, ELI: <http://data.europa.eu/eli/reco/2013/461/oj>).

term basis, those ‘cross-border public services’ should aim to generate benefits for the general public or a specific target group in the border region in which the service is provided, thereby improving living conditions and territorial cohesion in those regions. Second, items of infrastructure needed for cross-border activities may be impacted by border obstacles, such as different technical standards for buildings or vehicles, including for related equipment. A cross-border file should be submitted by an initiator, that is a public law or private law entity or a natural person only and insofar as he or she has a legitimate interest in a cross-border public service or certain items of infrastructure.

- (10) In order to establish the adequate administrative capacity at national level to deal with the cross-border obstacle applications and to provide for a network of national bodies able to liaise with each other for the implementation of this Regulation, Member States should set up one or more cross-border coordination points at national or regional level. Two or more neighbouring Member States should also be allowed to identify existing joint bodies as the cross-border coordination point on a given border or empower an existing joint authority or body with the additional tasks of the cross-border coordination point for all their borders.
- (11) In order to establish a framework for the treatment of cross-border obstacle applications common to all cross-border coordination points, it is necessary to define the tasks which each cross-border coordination point should carry out. Cross-border coordination points should act as ‘one-stop shops’ for the initiators and should be their privileged contact point. Member States should ensure that contact information for cross-border coordination points is publicly available and ensure its visibility and accessibility. Where there is more than one cross-border coordination point in a Member State, they shall clearly identify a single contact point for each initiator. In order to allow for a follow-up of the outcome of cross-border applications and to increase transparency on the solution of cross-border obstacles, cross-border coordination points should also be responsible for setting up and maintaining a public register covering all cross-border files submitted by initiators located in that Member State. Moreover, it is necessary that this Regulation sets out obligations with regard to coordination, cooperation and exchange of information between the different cross-border coordination points in one Member State and between the cross-border coordination points of neighbouring Member States.
- (12) A given initiator should submit its cross-border file only once. However, in case a different initiator in another Member State also submits a mirroring cross-border file in that other Member State, the cross-border coordination points of those Member States should avoid parallel files by organising their coordination accordingly.
- (13) The different layers of the applicable national law may make it difficult to identify the specific provision which constitutes a cross-border obstacle. Also based on the experience with *b-solutions*, the initiator should therefore only describe the situation and the problem to be resolved.
- (14) In order to provide for a procedural framework granting at the same time legal certainty to the initiator of a cross-border file, the cross-border coordination point should assess cross-border files and a preliminary and a final reply should be given to the initiator within reasonable deadlines, which should in principle

be those established in national law. Where the initiator has not identified the cross-border obstacles, the competent authorities or public-law bodies should do so. The analysis of a cross-border file could conclude that there is actually no cross-border obstacle, because the description of the alleged obstacle is based on insufficient information, on misinterpretation of the applicable legal or administrative provisions, or because legal or administrative provisions already cover the necessary requirements to address the obstacle. In that case, the cross-border obstacle should be considered as resolved and the cross-border file should be closed. Once the existence of a cross-border obstacle is confirmed, Member States should remain free to decide what would be the appropriate tool to address the situation among those available in the cross-border region concerned, relying in the first instance on already existing mechanisms, where appropriate, to resolve the obstacle. Where Member States decide not to resolve cross-border obstacles, they should duly provide the reasons and indicate possible options of legal redress, in particular, where the Member State concludes that the obstacle identified does not fall within the scope of this Regulation.

- (15) Where the competent authority has not found an existing appropriate tool it may select the Cross-Border Facilitation Tool or set out the reasons why it decides not to resolve the cross-border obstacle. As the outcome of the procedure might slightly differ depending on the nature of the possible cross-border legal obstacle, administrative or legislative, it is necessary to provide for such particularities under the Cross-Border Facilitation Tool.
- (16) In order to provide an effective procedural structure to deal with cross-border obstacles files, this Regulation should set out the essential procedural steps, both for files where the obstacle is of an administrative and where it is of a legislative nature. It should also be clarified that the different legal systems in neighbouring Member States may result in the cross-border obstacles qualifying as administrative provision in one Member State, but as legal provision in the other and *vice-versa*. Each Member State should therefore apply the appropriate procedure. Neighbouring Member States should coordinate their respective procedures as close as possible. Where a final position is taken on a file, the reasons thereof should be communicated to the initiator together with the decision.
- (17) In order to ensure the monitoring of the application of this Regulation at Union level and to provide support to Member States, also in terms of capacity building, the Commission should be entrusted with the relevant tasks to achieve those goals. The coordination point at EU level should, in particular, support the cross-border coordination points by promoting the exchange of experiences between those coordination points. That support may also consist in technical assistance-based tools like *b-solutions*.
- (18) In order to allow for evidence-based policymaking, there should be reporting on the implementation of this Regulation. That report should address the main evaluation questions including effectiveness, efficiency, relevance, European added value, scope for simplification and sustainability and necessity for further action at Union level. The Commission should submit that report to the European Parliament, the Council and, pursuant to Article 307, first paragraph of the Treaty, to the Committee of the Regions and the European Economic and Social Committee. In order to ensure a broad evidence base for the use of this

Regulation and of the Cross-Border Facilitation Tool, the report should be submitted five years after the entry into force of this Regulation.

- (19) This Regulation respects the fundamental rights, observes the principles recognised by the Charter of Fundamental Rights of the European Union and has no negative impact on any Fundamental Right. Due to its aim of removing legal obstacles in a cross-border context, the Regulation may foster the right to access to services of general economic interest (Article 36) and the freedom to conduct business (Article 16). The wide range of that kind of services may also foster the access to health care (Article 35). In a more general way, as it seems very likely that cross-border public transport services will benefit from the Cross-Border Facilitation Tool, the freedom of movement and of residence (Article 45) may be positively impacted by this Regulation.
- (20) The conditions for territorial cooperation should be created in accordance with the subsidiarity principle enshrined in Article 5(3) of the Treaty on the European Union. Experience shows that Member States have undertaken individual, bilateral or even multilateral initiatives to resolve legal cross-border obstacles. However, those tools do not exist in all Member States or not for all borders of a given Member State. The objectives of the proposed action can consequently not be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, due to the necessary involvement of at least two neighbouring Member States, be better achieved at Union level. Further action by the Union legislator is therefore needed.
- (21) In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on the European Union, the content and form of Union action should not exceed what is necessary to achieve the objectives of the Treaties. The use of the Cross-Border Facilitation Tool under this Regulation is optional for each Member State. A Member State should decide, on a specific border with one or more neighbouring Member States, to resolve cross-border obstacles through existing tools it has set up at national level or with one or more neighbouring Member States. This Regulation does therefore not go beyond what is necessary in order to achieve its objectives for those cross-border regions, for which Member States have no efficient tool to resolve cross-border obstacles in place.”
- (3) Articles 1 to 26 are replaced by the following:

## **“CHAPTER I General provisions**

### *Article 1 Subject matter*

1. This Regulation establishes a procedure to facilitate the resolution of cross-border obstacles that hamper the establishment and functioning of any item of infrastructure necessary for public or private cross-border activities or of any cross-border public service provided in a given cross-border region and provided it fosters economic, social and territorial cohesion in the cross-border region (the ‘Cross-Border Facilitation Tool’).
2. This Regulation also lays down rules on:



- (a) the organisation and tasks of cross-border coordination points in the Member States;
- (b) the coordinating tasks of the Commission.

## *Article 2*

### ***Scope***

1. This Regulation applies to cross-border obstacles in land or maritime border regions of neighbouring Member States.  
It shall not apply to cross-border obstacles in border regions between Member States and third countries.
2. This Regulation shall not affect any other Union legal acts, in particular those applicable to the non-judicial resolution of legal issues arising from cross-border obstacles and to the correct interpretation or implementation of Union law. It shall be without prejudice to the coordination mechanisms established for social security and taxation.

## *Article 3*

### ***Definitions***

1. For the purpose of this Regulation, the following definitions shall apply:
  - (1) ‘cross-border interaction’ means:
    - (a) any item of infrastructure necessary for public or private cross-border activities;
    - (b) the establishment, the functioning or the provision of any cross-border public service in a cross-border region;
  - (2) ‘cross-border obstacle’ means any legislative or administrative provision or practice by a public authority in a Member State that potentially negatively affects a cross-border interaction and thus the development of a cross-border region and which does not involve a potential breach of Union law governing the internal market;
  - (3) ‘competent authority’ means a body at national, regional or local level that has the power to adopt legally binding and enforceable acts;
  - (4) ‘cross-border file’ means the document prepared by one or more initiators to be submitted to a cross-border coordination point;
  - (5) ‘cross-border public service’ means an activity carried out in the public interest to provide a service, or address joint problems or development potentials of border regions located on different sides of one or more neighbouring Member States’ borders, provided it fosters economic, social and territorial cohesion in the cross-border territory;
  - (6) ‘initiator’ means any private or public entity involved in the provision, operation, establishment or functioning of any cross-border public service or infrastructure or any natural person having a legitimate interest in the resolution of a cross-border obstacle.

2. For the purpose of this Regulation, the reference to ‘the competent authority’ shall also cover situations where more than one competent authority within the same Member State is competent or has to be consulted.
3. For the purpose of this Regulation, the term ‘cross-border obstacle’ shall cover one or more cross-border obstacles linked to a cross-border file.

## **CHAPTER II**

### **Cross-border coordination points**

#### *Article 4*

##### ***Setting-up of cross-border coordination points***

1. Each Member State shall establish one or more cross-border coordination points in accordance with its institutional and legal framework, at national or regional level or both, in accordance with paragraph 3.
2. Two or more neighbouring Member States may decide to establish a joint cross-border coordination point competent for one or more of the respective cross-border regions.
3. Each cross-border coordination point shall be set up in one of the following ways:
  - (a) as a separate authority or public law body;
  - (b) as part of an existing authority or of an existing public law body, including by entrusting an existing authority or public law body with the additional tasks of the cross-border coordination point.
4. Member States shall ensure that, within two months after the decision establishing the cross-border coordination point, its contact details and information relating to its tasks are available on the website of Interreg programmes referred to in Article 36(2) of Regulation (EU) 2021/1059. Member States shall ensure visibility and accessibility of the cross-border coordination point.

#### *Article 5*

##### ***Main tasks of the cross-border coordination points***

1. Member States shall define, either individually in the case referred to in Article 4(1) or jointly in the case referred to in Article 4(2), the tasks that each cross-border coordination point shall carry out and the tasks which shall be conferred to the competent authority.
2. Member States shall decide whether cross-border coordination points can act upon a cross-border file on their own behalf or whether they are only responsible for communicating with initiators on behalf of the competent authority.
3. The cross-border coordination point shall constitute the only contact point of the initiator, depending on the organisation of the contact points put in place by the Member States, in the following way:
  - (a) each national cross-border coordination point for all cross-border files submitted by an initiator located in the territory of the respective Member State;

- (b) each regional cross-border coordination point for cross-border files submitted by an initiator located in the border region or regions of the respective Member State;
  - (c) each joint cross-border coordination point for cross-border files submitted by an initiator located in one of the border regions concerned.
- 4. In addition to their tasks referred to in Articles 8, 10 and 11, cross-border coordination points shall carry out the following tasks:
  - (a) setting up and maintaining a public register covering all cross-border files submitted by initiators located in that Member State;
  - (b) liaising with the Commission and supporting the Commission's coordination tasks referred to in Article 12, by providing the necessary information, including the NUTS classification for each file.

Where several cross-border coordination points exist in a Member State, one cross-border coordination ('the main cross-border coordination point') shall carry out the tasks set out in points (a) and (b).

- 5. Member States shall ensure that the register under paragraph 4 remains available to the public in open machine-readable formats as set out in Article 5(1) of Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>23</sup>, which allows data to be sorted, searched, extracted, compared and used; and is updated at least three times a year. The cross-border coordination point may integrate open access information or link the register with the single website portal referred to in Article 46, point (b), of Regulation (EU) 2021/1060, the website referred to in Article 49(1) of that Regulation, or the website referred to in Article 36(2) of Regulation (EU) 2021/1059.
- 6. In a Member State with more than one cross-border coordination point, the cross-border coordination points shall transmit the necessary information to the main cross-border coordination point in order to enable it to implement its tasks under paragraphs 4 and 5.
- 7. Where two or more neighbouring Member States have decided to set up a joint cross-border coordination point, that point shall transmit the necessary information to the main cross-border coordination points, if any, of the respective Member States.

## **CHAPTER III**

### **Cross-border files**

#### *Article 6*

#### ***Preparation and submission of cross-border files***

- 1. The initiator shall prepare a cross-border file in accordance with Article 7.
- 2. The initiator shall submit the cross-border file to the cross-border coordination point of the Member State where the initiator is located or has its registered office.

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<sup>23</sup> Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56, ELI : <http://data.europa.eu/eli/dir/2019/1024/oj>).

3. Where cross-border files on the same cross-border obstacle are initiated in two or more neighbouring Member States, their respective coordination cross-border points shall liaise with each other to clear which of one will deal primarily with the file.

#### *Article 7*

##### ***Content of cross-border files***

1. The cross-border file shall include at least the following elements:
  - (a) a description of the cross-border interaction, its context and the problem arising from a cross-border obstacle which should be resolved;
  - (b) a justification for the need to resolve the cross-border obstacle;
  - (c) where available, a description of the negative impact of the cross-border obstacle on the development of the border region;
  - (d) the geographical area concerned;
  - (e) where available and relevant, the expected necessary duration of the application of a derogation from or exception to the cross-border obstacle or, where duly justified, its removal.
2. The initiator may also identify the cross-border obstacle and, if possible, suggest the text for a derogation from or exception to the cross-border obstacle or for an ad hoc legal resolution.
3. The geographical area referred to in paragraph 1, point (d), shall be limited to the minimum necessary for the effective resolution of a cross-border file.

#### *Article 8*

##### ***Preliminary assessment steps***

1. The cross-border coordination point or the competent authority shall assess each cross-border file submitted in accordance with Articles 6 and 7 and identify the cross-border obstacle or cross-border obstacles.
2. Within a deadline of two months from the submission of the file, the cross-border coordination point or the competent authority may request the initiator to clarify the cross-border file or to submit additional specific information. Such a request shall set out why and in which aspect the cross-border file is not considered sufficient to be examined.

If the revised cross-border file does not address the aspects considered insufficient, the cross-border coordination point or the competent authority may end the procedure and shall inform the initiator accordingly setting out the reasons.
3. Where after assessing a cross-border file, the cross-border coordination point or the competent authority concludes that an alleged cross-border obstacle does not exist, the cross-border coordination point may end the procedure and shall inform the initiator accordingly setting out the reasons.
4. Where after assessing a cross-border file, the cross-border coordination point or the competent authority concludes that the alleged cross-border obstacle exists, it may at any step of the procedure choose not to resolve it and shall inform the initiator accordingly setting out the reasons.

5. Before concluding the assessment, the cross-border coordination point or the competent authority shall further assess whether for each alleged cross-border obstacle, it is possible to rely on an existing international cooperation agreement in force, be it bilateral or multilateral, multi sectoral or sector specific providing an own mechanism for the resolution of cross-border obstacles between the Member States concerned by that obstacle or those obstacles. In the event such an international agreement exists, the resolution of one or more cross-border obstacles, including the actors involved and the procedure to be followed, in particular, for liaising and cooperating with the neighbouring Member State, shall be governed exclusively by the provisions of that agreement.
6. Where the Member State chooses to resolve the obstacle and in the absence of any international agreement of the kind mentioned in paragraph 5, or where the available international agreements do not seem to satisfactorily contribute to the resolution of the obstacle set out in the cross-border file, the cross-border coordination point or the competent authority may apply the Cross-Border Facilitation Tool, either individually or, if necessary and agreed, jointly with the neighbouring Member State.

#### *Article 9* ***Information to the initiator***

1. After the receipt of a cross-border file or a revised cross-border file, the cross-border cooperation point or the competent authority shall inform the initiator in writing of any preliminary assessment step taken in accordance with Article 8, within the standard deadline provided for in the national legislation for replies to an equivalent request submitted to the administration.
2. Where no such deadline is provided for in the national legislation, the following deadlines shall apply:
  - (a) three months for the preliminary assessment steps referred to in Article 8(2), second subparagraph;
  - (b) six months for the preliminary assessment steps referred to in Article 8(3) and (4).
3. The information provided under paragraph 1 shall also indicate:
  - (a) the preliminary assessment steps that have been taken, their justification and conclusions, if already available;
  - (b) the ways and procedures of legal redress provided for in the national legislation against those preliminary assessment steps, if any.
4. The first contact with the initiator under Article 8(2), first subparagraph, may also state that more time is needed for legal analysis or for consultations inside the Member State or for coordination with the neighbouring Member State.

## **CHAPTER IV**

### **The Cross-Border Facilitation Tool**

#### *Article 10*

#### ***Procedure***

1. Where the cross-border coordination point or the competent authority has decided pursuant to Article 8(6) to apply the Cross-Border Facilitation Tool, it shall apply the procedure provided for in this Article.
2. After the cross-border coordination point or the competent authority has identified the cross-border obstacle in its national legal system, it shall inform the initiator about:
  - (a) the cross-border obstacle identified;
  - (b) the nature of the provision at the origin of the cross-border obstacle which would need to be amended to solve the obstacle;
  - (c) the next steps leading to the removal or not of the cross-border obstacle and which of the procedures under paragraphs 4 or 5 of this Article should apply.
3. After the assessment of the cross-border file and the identification of the cross-border obstacle, the competent cross-border coordination point shall exchange relevant information concerning the cross-border obstacle with the competent cross-border coordination point in the neighbouring Member State. The cross-border coordination points shall endeavour to avoid parallel procedures concerning the same cross-border obstacle.
- 4.5. Where the cross-border obstacle consists in an administrative provision or practice, not requiring the change of a legal provision, the cross-border coordination point shall contact the competent authority responsible for the administrative provision to check whether an amendment of that administrative provision or practice is sufficient to resolve the cross-border obstacle and whether the authority is willing to change it accordingly. The initiator shall be informed in writing within eight months as of the submission of the cross-border file.
- 5.6. Where the cross-border obstacle consists in a legal provision, the cross-border coordination point shall contact the competent authority to check whether an amendment, including an exception to or a derogation from the applicable legal provision would resolve the cross-border obstacle and whether the competent authority will take the necessary steps to trigger a legislative procedure in accordance with the institutional and legal framework. The initiator shall be informed in writing within eight months as of the submission of the cross-border file.
6. Where a cross-border file has been submitted to the cross-border coordination point of two or more neighbouring Member States, each shall decide on the type of procedure to follow in its Member State.
7. Where a legal analysis, consultations inside the Member State, coordination with the neighbouring Member State, or the competent authority of the neighbouring Member State is triggering a change of an administrative provision or launching a legislative procedure prevents the cross-border coordination point to reply to the initiator within eight months pursuant to paragraphs 4 and 5, the initiator shall be informed in writing of the reason for the delay and timeline of the reply.

*Article 11*  
***Final steps to solve the cross-border obstacle***

1. The cross-border coordination point or the competent authority shall, on the basis of its assessment carried out pursuant to Article 8 and in accordance with the information received under Article 10(3), inform the initiator in writing about the outcome of the file, namely:
  - (a) the outcome of a procedure under Article 10(4), including where relevant, the amendment of any administrative provision;
  - (b) the outcome of a procedure under Article 10(5) including where relevant, the launch of a legislative procedure or the amendment of any legal provision;
  - (c) that the cross-border obstacle will not be addressed;
  - (d) the reasons underpinning the position adopted under points (a), (b) or (c);
  - (e) the deadline for legal redress under national law if any. In the absence of any deadline under national law, the initiator shall be granted six months to request a review of the decision.
2. Where the cross-border coordination point or the competent authority has decided to solve the cross-border obstacle by way of the procedure provided for in Article 10(5), it shall:
  - (a) inform the cross-border coordination point of the neighbouring Member State;
  - (b) inform the initiator of the most important steps of the amendment of the legal provision, including where relevant, of the legislative procedure launched to proceed to a legislative amendment solving the cross-border obstacle or the final decision dismissing the procedure.

The initiator should equally be informed where the competent authorities of the neighbouring Member State have also launched the amendment of a legal provision.
3. Where the Member State concerned and the neighbouring Member State conclude that each of them is willing to launch an own legislative procedure or a change in their administrative provisions or practices, they shall do so in close coordination, in accordance with their respective institutional and legal framework. That coordination may cover the timing of the procedures and may lead to the establishment of a joint committee with representatives of the cross-border coordination points.

**CHAPTER V**  
**Final provisions**

*Article 12*  
***Coordination tasks of the Commission***

The Commission shall fulfil the following coordination tasks:

- (a) liaise with the cross-border coordination points;
- (b) support the enhancement of the institutional capacity in Member States necessary to implement this Regulation efficiently;

- (c) promote the exchange of experience between Member States and in particular between the cross-border coordination points;
- (d) publish and keep an updated list of all national and regional cross-border coordination points;
- (e) set up and maintain a public register of cross-border files.

#### *Article 13*

#### ***Monitoring and reporting***

1. By dd mm yyyy [i.e. the 1<sup>st</sup> of the month following the entry into force of this Regulation + six months; to be filled in by the Publication Office], each Member State shall inform the Commission of the establishment of its cross-border coordination point or points and about the contact data thereof.
2. By dd mm yyyy [i.e. the 1<sup>st</sup> of the month following the entry into force of this Regulation + five years; to be filled in by the Publication Office], the Commission shall carry out an evaluation of the present Regulation and report to the European Parliament, the Council, the Committee of the Regions and the European Economic and Social Committee.

#### *Article 14*

#### ***Entry into force and application***

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.”

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



## Com 790 (2023)

### Information Note

#### 1. Proposal (amended)

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a mechanism to resolve legal and administrative obstacles in a cross-border context

#### Date of Commission document

12 December 2023

#### 2. Number of Commission document

COM (2023) 790

#### 3. Number of Council document:

2018/0198

#### 4. Dealt with in Brussels by

General Affairs Council (GAC)

#### 5. Department with primary responsibility

Department of Public Expenditure NDP Delivery & Reform

#### 6. Other Departments involved

None

#### 7. Background to, Short summary and aim of the proposal

In 2018, the European Commission proposed a regulation of the European Parliament and the Council which set out a mechanism to resolve legal and administrative obstacles in a cross-border context (the ECBM proposal) including amending the title for a Regulation on Facilitating Cross-Border Solutions. While the Commission adopted the ECBM proposal in May 2018, no agreement was reached between Parliament and Council on the file, due to the two co-legislators taking different stances. The Parliament adopted its first reading position in February 2019, overall the Parliament's position was supportive of the Council proposal. The Council however, did not adopt a formal position, as Member States raised several concerns with the proposal at working group level.

In September 2023 the Parliament adopted an own-initiative legislative resolution with recommendations to the Commission on amending the ECBM proposal. This Commission proposal takes into account the comments and recommendations from the two co-legislators and provides for an amended regulation setting out a mechanism to resolve legal and administrative obstacles in a cross-border context

The initial 2018 proposal proposed a voluntary mechanism focusing on neighbouring EU land borders at NUTS 3 level and covering joint projects for any item of infrastructure or service of economic interest. The mechanism would enable the application of a neighbouring Member State if the laws of the former are a legal obstacle to the delivery of a joint project. It had two main measures:

- A European cross-border commitment, which allows the committing Member State to transfer a law from a neighbouring Member State
- A European cross-border statement, involving a legislative procedure in the Member State to amend its national law in order to apply the law of a neighbouring Member State.

The amended proposal provides a legal framework applicable to all Member States to help find solutions to legal and administrative obstacles. The Commission proposes that all Member States set up cross-border coordination points, which will assess any request submitted by border stakeholders on potential obstacles, and act as a liaison between them and the national authorities. If an obstacle does exist and there is no bilateral or international cooperation agreement in place that could be used to implement a solution, Member States could apply the cross-border facilitation tool, a voluntary standard procedure designed to resolve administrative and legal obstacles in cross-border regions.

## **8. Legal basis of the proposal**

The legal basis for this proposal is Article 175 of the Treaty on the Functioning of the European Union (TFEU).

## **9. Voting Method**

Qualified Majority Voting (at Council)

## **10. Role of the EP**

Co-decision – Ordinary Legislative Procedure

## **11. Category of proposal**

This proposal would amend a proposal for a Regulation of the European Parliament and Council.

## **12. Implications for Ireland & Ireland's Initial View**

Ireland would have concerns about the instrument's voluntary nature and the extra administrative burden. This Regulation applies to cross-border obstacles in land or maritime border regions of neighbouring Member States however, subject to any amendments this is limited to areas separated by a maximum of 150 km – i.e. Ireland will not have any relevant borders.

It should be noted that this proposal shall not apply to cross-border obstacles in border regions between Member States and third countries.

However, notwithstanding the above Article 4 makes the Setting-up of cross-border coordination points and the associated reporting and publicity requirements mandatory for all Member States.

In the absence of having any relevant border(s) Ireland would seek to have an exemption from the requirement to establish a specific body and from the regular reporting requirements. Otherwise, given that Member States will always have the final decision in matters within their borders, Ireland has no issues with this proposal.

### **13. Impact on the public**

No significant impact.

### **14. Have any consultations with Stakeholders taken place or are there any plans to do so?**

The European Commission's consultation activities included a working group set up during the Luxembourg Presidency of the Council in 2015. A cross border review including public consultations which took place between 2015 – 2017. An opinion issued by the Committee of the Regions and the resolution of the European Parliament in response to the communication "Boosting Growth and Cohesion in EU Border Regions" adopted in 2018. The Commission also launched the b-solutions initiative in 2018.

### **15. Are there any subsidiarity issues for Ireland?**

No

### **16. Anticipated negotiating period**

The European Parliament and the Council have started working on the file. The Belgian Presidency would like to have it completed during their tenure which ends on 30 June 2024

### **17. Proposed implementation date**

It is proposed that this Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union and will be binding in its entirety in all Member States.

### **18. Consequences for national legislation**

There are no consequences for national legislation.

### **19. Method of Transposition into Irish law**

Transposition not required.

### **20. Anticipated Transposition date**

Transposition not required.

### **21. Consequences for the EU budget in Euros annually**

The amended proposal does not have a budgetary impact as it does not involve providing financial resources in any form.

### **22. Contact name, telephone number and e-mail address of official in Department with primary responsibility**

Andrew Condon

Principal

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Date: 20/04/2023

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