

Opinion of the European Committee of the Regions on ‘Cross-border mechanism’

(2019/C 86/10)

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Reference document: 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

COM(2018) 373 final

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 12

Text proposed by the European Commission	CoR amendment
<i>Legal obstacles are predominantly felt by persons interacting on land borders, because people cross borders on a daily or weekly basis.</i> In order to concentrate the effect of this Regulation to the regions closest to the border and with the highest degree of integration and interaction between neighbouring Member States, this Regulation should apply to <i>cross-border regions within the meaning of the territory covered by</i> neighbouring land border regions in two or more Member States at NUTS level 3 regions[1]. This should not prevent Member States from applying the Mechanism also to maritime and external borders others than those with EFTA countries. [1] Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).	In order to concentrate the effect of this Regulation to the regions closest to the border and with the highest degree of integration and interaction between neighbouring Member States, this Regulation should apply to neighbouring land <i>and maritime</i> border regions in two or more Member States at NUTS level <i>2 and NUTS</i> level 3 regions[1]. This should not prevent Member States from applying the Mechanism also to maritime and external borders others than those with EFTA countries. [1] Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

Reason

It must be specified that the regulation also applies to maritime borders. NUTS level 2 regions must be added in order to assess the NUTS level region most appropriate for identifying the mechanism to remove legal or administrative barriers in cross-border dealings.

Amendment 2

Article 3 Definitions

Text proposed by the European Commission	CoR amendment
For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:
1. 'cross-border region' means the territory covered by neighbouring land border regions in two or more Member States at NUTS level 3 regions;	1. 'cross-border region' means the territory covered by neighbouring land border regions or cross-border regions on maritime borders in two or more Member States or between one or several Member States or one or more third countries , at NUTS level 3 and NUTS level 2 regions;
2. 'joint project' means any item of infrastructure with an impact in a given cross-border region or any service of general economic interest provided in a given cross-border region;	2. 'joint project' means any item of infrastructure with an impact in a given cross-border region or any service of general economic interest provided in a given cross-border region, regardless of whether this impact is felt on one or both sides of the border ;
3. 'legal provision' means any legal or administrative provision, rule or administrative practice applicable to a joint project, regardless whether adopted or implemented by a legislative or executive body;	3. 'legal provision' means any legal or administrative provision, rule or administrative practice applicable to a joint project, regardless whether adopted or implemented by a legislative or executive body;
4. 'legal obstacle' means any legal provision with regard to the planning, development, staffing, financing or functioning of a joint project that obstructs the inherent potential of a border region when interacting across the border;	4. 'legal obstacle' means any legal provision with regard to the planning, development, staffing, financing or functioning of a joint project that obstructs the inherent potential of a border region when interacting across the border;
5. 'initiator' means the actor who identifies the legal obstacle and triggers the Mechanism by submitting an initiative document;	5. 'initiator' means the actor who identifies the legal obstacle and triggers the Mechanism by submitting an initiative document;
6. 'initiative document' means the document prepared by one or more initiators to trigger the Mechanism;	6. 'initiative document' means the document prepared by one or more initiators to trigger the Mechanism;
7. 'committing Member State' means the Member State on the territory of which one or more legal provisions from a transferring Member State will apply under a given European Cross-border Commitment (the 'Commitment') or European Cross-border Statement (the 'Statement') or where, in the absence of an appropriate legal provision, an ad hoc legal resolution will be established;	7. 'committing Member State' means the Member State on the territory of which one or more legal provisions from a transferring Member State will apply under a given European Cross-border Commitment (the 'Commitment') or European Cross-border Statement (the 'Statement') or where, in the absence of an appropriate legal provision, an ad hoc legal resolution will be established;
8. 'transferring Member State' means the Member State whose legal provisions will apply in the committing Member State under a given Commitment or Statement;	8. 'transferring Member State' means the Member State whose legal provisions will apply in the committing Member State under a given Commitment or Statement;
9. 'competent committing authority' means the authority in the committing Member State competent to accept the application of the legal provisions of the transferring Member State on its territory under a given Commitment or, in the case of a Statement, to commit itself to starting the legislative procedure needed for a derogation from its domestic legal provisions;	9. 'competent committing authority' means the authority in the committing Member State competent to accept the application of the legal provisions of the transferring Member State on its territory under a given Commitment or, in the case of a Statement, to commit itself to starting the legislative procedure needed for a derogation from its domestic legal provisions;

Text proposed by the European Commission	CoR amendment
10. 'competent transferring authority' means the authority in the transferring Member State competent for the adoption of the legal provisions which will apply in the committing Member State and for its application on its own territory or for both;	10. 'competent transferring authority' means the authority in the transferring Member State competent for the adoption of the legal provisions which will apply in the committing Member State and for its application on its own territory or for both;
11. 'area of application' means the area in the committing Member State where the legal provision of the transferring Member State or an ad hoc legal resolution shall apply.	11. 'area of application' means the area in the committing Member State where the legal provision of the transferring Member State or an ad hoc legal resolution shall apply.

Reason

Addition of maritime borders in accordance with Article 4 of the regulation in order to clarify the geographical scope.

'Joint project' suggests a project that actually takes place on the territory of the NUTS 3 regions concerned, but a joint project could also be developed on the territory of one region or municipality only.

Amendment 3

Article 4 — Member States' options for resolving legal obstacles

Text proposed by the European Commission	CoR amendment
1. Member State shall either opt for the Mechanism or opt for existing ways to resolve legal obstacles hampering the implementation of a joint project in cross-border regions on a specific border with one or more neighbouring Member States.	1. The competent authority of a Member State shall either opt for the Mechanism or opt for existing ways to resolve legal obstacles hampering the implementation of a joint project in cross-border regions with one or more neighbouring Member States.
2. A Member State may also decide, with regard to a specific border with one or more neighbouring Member States, to join an existing effective way set up formally or informally by one or more neighbouring Member States.	2. The competent authority of a Member State may also decide, with regard to a joint project in border regions with one or more neighbouring Member States, to join an existing effective way set up formally or informally by one or more neighbouring Member States.
3. Member States may also use the Mechanism in cross-border regions on maritime borders or in cross-border regions between one or more Member States and one or more third countries or one or more overseas countries and territories.	3. The competent authorities of the Member States may also use the Mechanism in cross-border regions on internal or external maritime borders. Member States may also use the Mechanism in cross-border regions between one or more Member States for a joint project with one or more third countries or overseas territories.
4. Member States shall inform the Commission about any decision taken under this Article.	4. Member States shall inform the Commission about any decision taken under this Article.

Reason

Article 4 seems to be ambiguously worded in several language versions. The legal text could be interpreted, in some language versions, as meaning that a Member State needs another Member State in order to implement the border Mechanism with a third country. Although the English version is the basis, it would be better to have a text that makes it clear in all languages that an EU Member State can implement the border Mechanism one-to-one with a neighbouring third country for the purposes of a joint project, without the involvement of a second EU Member State.

Provision should be made for regions with legislative powers to be able to establish and apply the Mechanism, without depending on the willingness of the Member State where issues of legislative power at regional level are affected by legal obstacles.

External and internal maritime borders should be explicitly mentioned in relation to the use of the Mechanism.

Amendment 4

Article 5 — Cross-border Coordination Points

Text proposed by the European Commission	CoR amendment
1. Where a Member State opts for the Mechanism, it shall establish one or more Cross-border Coordination Points in one of the following ways: (a) designate, at national or regional level or at both levels, a Cross-border Coordination Point as a separate body; (b) set up a Cross-border Coordination Point within an existing authority or body, at national or regional level; (c) entrust an appropriate authority or body with the additional tasks as national or regional Cross-border Coordination Point. 2. Committing Member States and transferring Member States shall also determine: (a) whether it is the Cross-border Coordination Point or a competent committing/transferring authority which may conclude and sign a Commitment and decide the applicable national law will be derogated from the date of the entry into force of that Commitment; (b) whether it is the Cross-border Coordination Point or a competent committing/transferring authority which may sign a Statement and state formally therein that the competent committing authority will do the necessary as to legislative or other acts be taken by the competent legislative bodies in that Member State by a given deadline. 3. The Member States shall inform the Commission of the designated Cross-border Coordination points by the date of the start of application of this Regulation.	1. Where <i>the competent authority of</i> a Member State opts for the Mechanism, it shall establish one or more Cross-border Coordination Points in one of the following ways: (a) designate, at national or regional level or at both levels, a Cross-border Coordination Point as a separate body; (b) set up a Cross-border Coordination Point within an existing authority or body, at national or regional level; (c) entrust an appropriate authority or body with the additional tasks as national or regional Cross-border Coordination Point. 2. <i>The competent authorities of</i> committing Member States and transferring Member States shall also determine: (a) whether it is the Cross-border Coordination Point or a competent committing/transferring authority which may conclude and sign a Commitment and decide the applicable national law will be derogated from the date of the entry into force of that Commitment; (b) whether it is the Cross-border Coordination Point or a competent committing/transferring authority which may sign a Statement and state formally therein that the competent committing authority will do the necessary as to legislative or other acts be taken by the competent legislative bodies in that Member State by a given deadline. 3. The Member States shall inform the Commission of the designated Cross-border Coordination points by the date of the start of application of this Regulation.

Reason

Provision must be made for regions with legislative powers to be able to establish and apply the Mechanism: consequently, the regions themselves should set up their regional Cross-border Coordination Points.

Amendment 5

Article 7 — Coordination tasks of the Commission

Text proposed by the European Commission	CoR amendment
1. The Commission shall fulfil the following coordination tasks: a) liaise with the Cross-border Coordination Points; b) publish and keep an up-dated list of all national and regional Cross-border Coordination Points; c) set up and maintain a database on all Commitments and Statements. 2. The Commission shall adopt an implementing act with regard to the functioning of the database referred to in point (c) of paragraph 1 and the forms to be used when information on the implementation and on the use of the Mechanism is submitted by Cross-border Coordination Points. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 23(2).	1. The Commission shall fulfil the following coordination tasks: a) liaise with the Cross-border Coordination Points; b) publish and keep an up-dated list of all national and regional Cross-border Coordination Points; c) set up and maintain a database on all Commitments and Statements. d) establish a communications strategy: i) to support the exchange of best practices, ii) to provide practical details on the thematic scope of the regulation, and iii) to elucidate the procedure for making a Commitment or Statement. 2. The Commission shall adopt an implementing act with regard to the functioning of the database referred to in point (c) of paragraph 1 and the forms to be used when information on the implementation and on the use of the Mechanism is submitted by Cross-border Coordination Points. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 23(2).

Reason

The implementation of the regulation should be accompanied by a clear and practical information campaign to facilitate application for stakeholders.

Amendment 6

Article 25 — Reporting

Text proposed by the European Commission	CoR amendment
<i>Article 25</i> Reporting By dd mm yyyy [i.e. the 1st of the month following the entry into force of this Regulation + five years; to be filled in by the Publication Office], the Commission shall present a report to the European Parliament, the Council and the Committee of the Regions assessing the application of this Regulation based on indicators on its effectiveness, efficiency, relevance, European added value and scope for simplification.	<i>Article 25</i> Evaluation 1. By dd mm yyyy [i.e. the 1st of the month following the entry into force of this Regulation + five years; to be filled in by the Publication Office], the Commission shall present a report to the European Parliament, the Council and the Committee of the Regions assessing the application of this Regulation based on indicators on its effectiveness, efficiency, relevance, European added value and scope for simplification. The report shall specifically address the geographical and thematic scope of the Regulation. 2. The report shall be drawn up following a public consultation of the various stakeholders, including local and regional authorities.

Reason

The Commission has chosen NUTS 3 as the geographical area for the application of the regulation. The effectiveness of the regulation might be increased by broadening its geographical scope. The report should create more clarity here.

With regard to thematic application, the Commission has opted in its proposal for infrastructure and services of general economic interest. The report should assess whether or not more policy areas should be covered by the regulation.

II. POLICY RECOMMENDATIONS**THE EUROPEAN COMMITTEE OF THE REGIONS****General comments**

1. appreciates current efforts by the European Commission to progress towards making better use of the potential of border regions, and to help enable growth and sustainable development;
2. notes that at present there is no uniform European legal provision for resolving legal and administrative bottlenecks along borders, but only a few regional mechanisms such as Benelux and the Nordic Council; therefore endorses the proposal for a regulation, as it establishes a clear, complementary legal instrument for all internal and external borders, so that bottlenecks can be tackled throughout the EU using the same procedure;
3. thanks the Commission for taking account of the recommendations set out in previous CoR opinions on border obstacles, particularly the opinion on the Communication on Boosting growth and cohesion in EU border regions;
4. points out that the EU has 40 internal land border regions, accounting for 40 % of the Union's territory and 30 % of its population, and stresses that the legal and administrative barriers have to be removed and both road and rail links improved, so that cooperation in EU border regions and European integration can be strengthened and regional growth promoted;
5. stresses that changes that are currently occurring in important national policy areas are impeding the full exploitation of the freedoms of the single market; if only 20 % of the existing obstacles were to be removed, this would lead to a 2 % increase in GDP and the creation of more than a million jobs;
6. considers that it is crucial to add maritime borders to the regulation to make it clear that the geographical scope is not limited to land borders;
7. points out that this regulation should also be applied to NUTS level 2 regions in order to assess, in various circumstances, the NUTS level region most appropriate for identifying the mechanism to remove legal and administrative barriers in cross-border dealings;
8. points out that there are also many regions with external land or maritime borders where the cross-border mechanism can help meet the challenges these regions face;
9. considers the instrument to be of great importance for fostering neighbourly cooperation in border regions, the social and cultural development of these regions, European citizenship and public support for the EU. It is these regions that best illustrate the European vision and Europe's common values. The cross-border Mechanism can strengthen this;

Bottom-up initiative and voluntary nature

10. welcomes the fact that the Mechanism offers a means for border regions to take the initiative, to launch a dialogue and procedure to address legal and administrative bottlenecks identified in relation to issues such as the construction of cross-border infrastructure, the application of legal frameworks for the provision of services and the operation of emergency services;

11. is pleased that the proposal, as a bottom-up legal instrument, can effectively support cross-border cooperation projects by enabling decentralised authorities to apply the laws of a Member State on the territory of another neighbouring Member State, in a predefined area and for a specific project;

12. agrees with the Commission that various effective mechanisms, such as the Nordic Council and Benelux, already exist, and sees the cross-border Mechanism as a suitable complement to the existing mechanisms and to solutions adopted by and between Member States. The Committee calls for further details on ways in which the cross-border Mechanism can be practically applied alongside existing mechanisms;

13. acknowledges the added value of the voluntary application of the instrument to a specific project, making it possible to choose the most suitable instrument: either the EU Mechanism or another, existing bilateral instrument for removing legal obstacles impeding the implementation of a joint project in cross-border situations;

14. calls on the Commission to enable regions with legislative powers to choose to establish and apply the Mechanism in order to receive transfers of legal provisions from the competent authorities of another Member State when there are legal obstacles affecting issues of legislative power at regional level. Also calls for the regions themselves to set up their regional Cross-border Coordination Points in all cases.

15. at the same time encourages the use of harmonised rules, which could be utilised when setting up new EU financing mechanisms to support cooperation between cross-border regions;

Scope

16. recognises the need for restrictions on the areas to which the Commission's regulation will apply, but is concerned at the limitation of application of the regulation to NUTS level 3 regions, and therefore calls for an evaluation five years after the regulation's entry into force of its geographical and thematic scope;

17. asks the Commission for clarification of the joint projects that will be eligible and for a definition of infrastructure projects and services of general economic interest; draws the Commission's attention in this context to the lack of clarity that sometimes exists at local and regional level regarding the content of services of general economic interest; offers to explore, with the Commission and the Member States, the thematic application of the regulation, on the basis of individual cases and examples;

18. having studied the text, notes that it is not always consistently translated, giving rise to a lack of clarity regarding the application of certain articles, in particular Article 4(3), concerning application to third countries. The Committee sees the restriction on cooperation with third countries implied by the apparent reference to two EU Member States as an impediment. Also considers that the articles in the proposal for a regulation concerning the preparation and presentation of the initiative document and associated matters governed by Articles 8 to 12 should be worded more clearly;

Implementation and operation

19. sees the proposed procedure as comprehensive. The innovative nature of the Mechanism means that there will be a need for clarity regarding the steps to be taken in preparing for a Commitment or Statement, and there is a risk of imposing an administrative burden on the regions and Member States. The CoR wholeheartedly supports the report provided for in Article 25, which will also include simplification of the application of the regulation. In addition, it calls for more attention to be drawn to the issue, so that national authorities start work on simplifying their national rules;

20. stresses the need for rapid and clear implementation of the regulation and calls on the Commission in this context to take account of the lessons learnt and experience acquired during the implementation phase of the EGTC regulation, and to encourage the Member States to implement the Mechanism as quickly as possible for cross-border projects; considers in this context that the role of Cross-border Coordination Points needs further elucidation. Also hopes that the CoR will play a role in registering European Cross-border Commitments and Statements, as is already the case for EGTCs, in order to strengthen feedback and the exchange of good practices;

21. considers it should also be borne in mind that other territorial cooperation structures, such as Working Communities, can be useful and complementary to the Mechanism;
22. calls on its members to share examples, inter alia, regarding cross-border transport links and the joint deployment of emergency services, the development of business parks etc.
23. calls on the EU institutions and the Member States to accompany the implementation of the regulation with a clear communication strategy, with a particular focus on the exchange of examples of best practice and on the thematic scope of the regulation;
24. stresses the complementarity of the cross-border Mechanism and the EGTC instrument and the fact that the EGTC, as a supra-national and sub-national entity, would be a practical tool for initiating and implementing projects under the new Mechanism. Further work will be needed to establish how the Mechanism and the EGTC complement each other;
25. sees the Mechanism as a useful complement to the Interreg programmes, as in certain situations the Mechanism can offer interesting approaches that could facilitate the implementation of cross-border projects.

Brussels, 5 December 2018.

*The President
of the European Committee of the Regions*
Karl-Heinz LAMBERTZ
