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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 373 final
Subject:	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

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Delegations will find attached document COM(2018) 373 final.

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Strasbourg, 29.5.2018  
COM(2018) 373 final

2018/0198 (COD)

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**

{SEC(2018) 268 final} - {SWD(2018) 282 final} - {SWD(2018) 283 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

One of the main objectives of the Union is the promotion of its overall harmonious development. The Union shall therefore develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions (Article 174 of the Treaty on the Functioning of the European Union ('TFEU'), among which "particular attention shall be paid to (...) cross-border (...) regions". The Union and its immediate neighbours in the European Free Trade Association ('EFTA') currently have forty internal land borders.

Since 1990, Interreg<sup>1</sup> funding has supported cross-border cooperation programmes in EU border regions including those with EFTA countries. It has financed thousands of projects and initiatives that have helped improve European integration. The main achievements of Interreg programmes include: increased trust, greater connectivity, improved environment, better health and economic growth. The 2014-2020 legal framework allowed the European Regional Development Fund ('ERDF') under Interreg programmes to support projects "enhancing institutional capacity of public authorities and stakeholders and efficient public administration by promoting legal and administrative cooperation and cooperation between citizens and institutions"<sup>2</sup>. Since it was set up Interreg has also supported the completion of the internal market<sup>3</sup>. In recent decades, the European integration process has helped internal border regions to transform themselves from mainly peripheral areas into areas of growth and opportunities. The completion of the Single Market in 1992 has boosted EU productivity and reduced costs through the abolition of customs formalities, harmonisation or mutual recognition of technical rules and lower prices as a result of competition; intra EU trade has increased by 15% over 10 years; additional growth has been generated and around 2.5 million more jobs have been created.

However, in a "Cross-border review"<sup>4</sup>, lasting more than two years, the Commission gathered evidence that border regions generally perform less well economically than other regions within a Member State. Access to public services such as hospitals and universities<sup>5</sup> is generally lower in border regions. Navigating between different administrative and legal

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<sup>1</sup> Interreg, also known as European Territorial Cooperation ('ETC'), is one of the two goals of cohesion policy and provides a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States. The overarching objective of ETC is to promote a harmonious economic, social and territorial development of the Union as a whole. Interreg is built around three strands of cooperation: cross-border (Interreg A), transnational (Interreg B) and interregional (Interreg C). Five programming periods of Interreg have succeeded each other: Interreg I (1990-1993), Interreg II (1994-1999), Interreg III (2000-2006), Interreg IV (2007-2013) and Interreg V (2014-2020).

<sup>2</sup> Point (a)(iv) of Article 7(1) of Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259).

<sup>3</sup> Points 3 and 13 of the Notice C(90) 1562/3 to the Member States, laying down guidelines for operational programmes which Member States are invited to establish in the framework of a Community initiative concerning border areas (Interreg) (OJ C 215, 30.8.1990, p. 4).

<sup>4</sup> See: [http://ec.europa.eu/regional\\_policy/en/policy/cooperation/european-territorial/cross-border/review/](http://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/review/).

<sup>5</sup> 'Territories with specific geographical features', European Commission, DG REGIO (2009), Working Paper No: 02/2009: [http://ec.europa.eu/regional\\_policy/en/information/publications/working-papers/2009/territories-with-specific-geographical-features](http://ec.europa.eu/regional_policy/en/information/publications/working-papers/2009/territories-with-specific-geographical-features).

systems is often still complex and costly. Individuals, businesses, public authorities and non-governmental organisations have shared with the Commission their at times negative experiences of interaction across internal borders. As a consequence the Commission adopted its Communication 'Boosting growth and cohesion in EU border regions'<sup>6</sup> ('the Border Regions Communication'). It highlights ways in which the EU and its Member States can reduce the complexity, length and costs of cross-border interaction and promote the pooling of services along internal borders. It looks at what needs to be improved to ensure that citizens and businesses in border regions can take full advantage of the opportunities offered on both sides of the border. The Communication proposes a 10 points action plan; one point specifically addresses legal and administrative border obstacles<sup>7</sup>.

It is therefore reasonable to consider that legal barriers (especially those related to health services, labour regulation, taxes, business development), and barriers linked to differences in administrative cultures and national legal frameworks, are difficult for the programmes alone to address (as they required decisions beyond programme and project management structures). A number of effective mechanisms for cross-border cooperation already exist at inter-governmental, regional and local level<sup>8</sup>.

One specific action referred to in point nine of the Border Regions Communication refers to an initiative started under the Luxembourg Presidency in 2015: A number of Member States are considering the merit of a new instrument to simplify cross-border projects by making it possible, on a voluntary basis and agreed by the competent authorities in charge, for the rules of one Member State to apply in the neighbouring Member State. This would apply to a specific project or action limited in time, located within a border region and initiated by local and/or regional public authorities<sup>9</sup>. The Commission has closely followed this work, agrees with the concept and is therefore proposing a voluntary mechanism to resolve legal obstacles in border regions.

For the details of this proposal see Section 5 below.

- **Consistency with existing policy provisions**

Interreg as the main funding instrument of Cohesion Policy, supports cross-border cooperation programmes in EU border regions, including those with bordering EFTA countries. However, as set out in the Border Regions Communication, border regions generally perform less well economically than other regions within a Member State. Measures that go beyond European funding but which complement further EU funding in border regions are therefore needed as these ongoing difficulties cannot be addressed through financing and investments such as Interreg alone.

A mechanism to resolve legal obstacles in border regions is therefore a necessary complement both to the financial support under Interreg, but also to institutional support such as European

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<sup>6</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>7</sup> A border obstacle within the context of this Communication is not only a restriction on free movement as established by the European Court of Justice, but a law, rule or administrative practice that obstructs the inherent potential of a border region when interacting across the border.

<sup>8</sup> For details see SWD(2017) 307 final, point 3.1, p. 24, 25, 32, 36 and 48.

<sup>9</sup> Input paper for the Informal Ministerial Meeting on Territorial Cohesion under the Luxembourg Presidency, see: [http://www.aménagement-territoire.public.lu/fr/eu-presidency/Informal-Ministerial-Meetings-on-Territorial-Cohesion-and-Urban-Policy-26-27-November-2015-Luxembourg-City\\_.html#](http://www.aménagement-territoire.public.lu/fr/eu-presidency/Informal-Ministerial-Meetings-on-Territorial-Cohesion-and-Urban-Policy-26-27-November-2015-Luxembourg-City_.html#); see also SWD(2017) 307 final, point 3.9, p. 49-50.

groupings of territorial cooperation<sup>10</sup>, as those groupings are not given legislative powers to overcome legal obstacles<sup>11</sup>.

- **Consistency with other Union policies**

As set out above, Cohesion Policy and the Single Market support each other. The mechanism to be established under this Regulation would contribute to the objectives of the Border Regions Communication and boosting the potential of border regions, which is partially untapped because of differing legal systems. A recent study contracted by the Commission<sup>12</sup> on the economic impact of border obstacles on GDP and employment levels in internal land border regions estimates that, even if only 20% of the existing obstacles were removed, border regions would increase their GDP by 2%. A mechanism to resolve legal obstacles in border regions is therefore also a necessary complement to the functioning of the internal market, a core objective of the Union (Article 3 TEU and Article 3(1)(b) TFEU)<sup>13</sup>.

The provisions in this proposal on legal protection of persons resident in a cross-border region who consider themselves wronged by acts or omissions arising from the authorities' application of the mechanism predominantly concern administrative/public law and do not affect existing EU law on the resolution of conflict of law<sup>14</sup>, because that EU law concerns civil law only. This Regulation is without prejudice to such law (such EU law may apply to disputes about contractual or non-contractual matters).

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The third subparagraph of Article 175 TFEU provides for specific actions to be decided upon outside the Funds listed in the first subparagraph of that Article, in order to achieve the objective of social and economic cohesion envisaged by the TFEU. The harmonious development of the entire Community territory and greater economic, social and territorial cohesion entail more intensive territorial cooperation. To this end it is appropriate to take the measures to improve implementing conditions for territorial cooperation actions.

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<sup>10</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).

<sup>11</sup> See the first subparagraph of Article 7(4) of Regulation (EC) No 1082/2006.

<sup>12</sup> Politecnico di Milano (2017) 'Quantification of the effects of legal and administrative border obstacles in land border regions'; see COM(2017) 534 final, p. 6; for more details see its accompanying SWD(2017) 307 final, point 2.2, p. 20-22.

<sup>13</sup> See also the 9th consideration of the preamble TEU (**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,...".

<sup>14</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1) ('**Brussels I Recast**'),

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1) ('**Brussels II**'), Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (**Rome I**), (OJ L 177, 4.7.2008, p. 6), and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (**Rome II**) (OJ L 199, 31.7.2007, p. 40).

- **Subsidiarity**

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 ('TEU'). Member States have undertaken individual, bilateral and even multilateral initiatives to resolve legal border obstacles. However, those mechanisms do not exist in all Member States, or not for all borders of a given Member State. The financing (mainly Interreg) and legal instruments (mainly EGTCs) provided at EU level so far have not been sufficient to resolve legal border obstacles throughout the EU. 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, by reason of the scale or effects of the proposed action, be better achieved at Union level. Further action by the Union legislator is therefore needed.

**Proportionality**

In accordance 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. Recourse to the specific mechanism set up under this Regulation is voluntary. A Member State may decide, on a specific border with one or more neighbouring Member States, to continue to resolve legal obstacles in a specific cross-border region under the effective mechanisms it has set up at national level or which it has set up formally or informally, together with one or more neighbouring Member States. In that case, it may opt not to use the mechanism set up under this Regulation. Likewise, a Member State may decide, on a specific border with one or more neighbouring Member States, to join an existing effective mechanism set up formally or informally by one or more neighbouring Member States. If that mechanism allows it to join, again, it may opt not to use the mechanism set up under this Regulation. 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 mechanisms in place for resolving legal obstacles.

- **Choice of the instrument**

As set out in Section 1 above, Member States have undertaken individual, bilateral and even multilateral initiatives to resolve legal border obstacles.

A Regulation establishes obligations on Member States to set up, per border with a neighbouring Member State, a mechanism to resolve legal obstacles in a joint cross-border region, while allowing them to implement other effective mechanisms.

A recommendation would not be the most effective instrument, because recommendations do not have binding force (see the fifth paragraph of Article 288 TFEU).

A Directive would also not be the most effective instrument, as it is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves the choice of form and methods to the national authorities (see the third paragraph of Article 288 TFEU). As set out in Section 3.2 of the Border Regions Communication, the transposition of an EU Directive in two neighbouring Member States may create two different systems which then meet along internal borders. This may create complexity - and sometimes even legal uncertainty - and inflate costs<sup>15</sup>. This proposal is precisely for a mechanism to establish a

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<sup>15</sup> E.g. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement contains 19 instances where minimum standards apply, for example on setting

method at EU level because only few Member States have set up a different method. A Directive could therefore create new divergences in border regions.

### **3. RESULTS OF RETROSPECTIVE EVALUATIONS, STAKEHOLDERS CONSULTATIONS AND IMPACT ASSESSMENTS, FUNDAMENTAL RIGHTS**

- **Retrospective evaluations/fitness checks of existing legislation**

N/A: new legislation

- **Stakeholder consultations**

The concept for a cross-border policy stems initially from work undertaken by the Luxembourg Presidency of the Council in 2015, which led to the establishment of an informal working group of Member States that has met regularly since. The informal working group has explored options to facilitate the resolution of persisting border obstacles, especially when implementing cross-border projects. The notion of applying the rules (laws, regulations, standards) of one Member State across the border in the neighbouring Member State has been formulated by that group. The group normally gathers between 10 and 15 Member States at its meetings. Groupings of Member States have also been active, in particular the Benelux Union and the Nordic Council of Ministers.

Other stakeholders, in particular border regions and institutions, have been asking for such an instrument for quite some time. This has been particularly visible during the Cross-Border Review undertaken by DG REGIO between 2015 and 2017. During that Review, a public consultation in all the official languages of the EU took place and received over 620 replies. To the question linked to potential solution to border issues, several respondents explicitly asked for the Commission to seek to promote more flexibility in the implementation of national/regional legislation in border regions. The idea of "freeing" a border region from national legislation or adapting it to border conditions was suggested several times.

Finally, the draft opinions of the Committee of the Regions and of the European Parliament in response to the Communication "Boosting Growth and Cohesion in EU Border Regions" specifically welcome the proposal to develop such an instrument. Both opinions will be adopted in the summer 2018.

- **Impact assessment**

The impact and European added value of Interreg programmes are well recognised. However, in many cases cross-border barriers (especially in relation to health services, labour regulation, local public transport and business development) stem from differences in administrative practices and national legal frameworks. These are difficult for programmes to address alone, requiring decisions beyond programme structures.

To tackle this, in 2015 the Luxembourg Presidency and several Member States explored the use of one Member State's rules in a neighbouring Member State. The Commission proposes to facilitate such solutions with an "off-the-shelf" legal instrument.

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specific time limits. This creates 19 potential occasions where cross-border public procurement can be particularly difficult, as certain Member States will apply longer deadlines than others.

There are two options: a European Cross-Border Commitment ("Commitment") (which itself enables derogation from normal rules) or a European Cross-Border Statement ("Statement") (signatories undertake formally to legislate to amend normal rules). The mechanism will:

- remain voluntary: Member States may opt for the mechanism or use other effective mechanisms to resolve legal border barriers;
- focus on intra-EU land borders, while allowing Member States to also apply the mechanism to maritime and external borders;
- cover joint projects for any item of infrastructure with impact in a cross-border region or any service of general economic interest provided in a cross-border region.

If 20% of existing legal and administrative obstacles found along internal borders were addressed, border regions would increase their GDP by 2%. The Commitment contributes to this by providing a cost-free legal framework to reduce the costs and run-in time of certain cross-border projects.

The framework would help resolve certain expensive complexities when implementing cross-border projects. It is not, however, "one-size-fits-all" but rather gives Member States the option of devising solutions that best suit the regional context.

- **Simplification**

N/A: new legislation

- **Fundamental rights**

Under Article 6 of the Treaty on the European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties. Moreover, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, constitute general principles of the EU law.

This proposal concerns a legal mechanism to resolve legal border obstacles and is, therefore, mainly addressed to authorities in the Member States. People should benefit from the solutions agreed. Resolving legal border obstacles under this proposal should help people living in border regions to enjoy their fundamental rights. In particular, this refers to the right to protection of personal data (Article 8), to the right to education including access to vocational and continuing training (Article 14), the freedom to choose an occupation and the right to engage in work (Article 15), especially freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State; freedom to conduct a business (Article 16); access to social security and social assistance (Article 34); access to health care (Article 35); and access to services of general economic interest (Article 36).

The proposal therefore also covers the issue of effective legal protection of people in border regions.

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

The present proposal is not expected to have immediate budgetary implications, in so far as it is to set up a mechanism and not a financial instrument.

The involvement of the Border Focal Point ('BFP') set up within the Commission also has no immediate budgetary implications, in so far as it has already been set up and assigned its own staff.

## 5. OTHER ELEMENTS

### • **Implementing 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) TFEU requires Member States to adopt all measures of national law necessary to implement legally binding Union 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 rules for implementing EU Regulations. As a result, when two different systems meet along internal borders, this may create complexity - and sometimes even legal uncertainty - and inflate costs. Consequently, uniform conditions for implementing legally binding Union acts are needed. As allowed under Article 291(2) TFEU, the proposed Regulation may confer implementing powers on the Commission. Like the method for controlling the implementation of other legal instruments at EU level<sup>16</sup>, this proposal limits itself to requiring Member States to communicate their national implementing rules to the Commission, thus enabling the Commission to assess whether those national rules implement this Regulation effectively.

To assess whether the mechanism established under the proposed Regulation has proven an additional effective tool to resolve legal obstacles in border regions, the Commission should, in line with the Better Regulation Agenda<sup>17</sup>, evaluate existing legislation. It is therefore proposed, as for the EGTC, that the Commission forward a report to the European Parliament, the Council and the Committee of the Regions on the application of the proposed Regulation, using 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**

#### **Chapter 1 - General provisions (Articles 1 to 7)**

Title 1 sets out the subject matter and scope of the Regulation, definitions and clarifications, the Member States' choice of whether to use the mechanism established under this proposal, the national and regional Cross-border Coordination Points in the Member States and a coordination point at EU level.

The subject matter (**Article 1**) is a mechanism to apply, for a common cross-border region, in a given Member State, the legal provisions from the neighbouring Member State if applying its own laws would present a legal obstacle to implementing a joint project (which might be an item of infrastructure or any service of general economic interest).

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<sup>16</sup> See the third subparagraph of Article 16 of Regulation (EU) No 1082/2006: "The Member State shall submit to the Commission any provisions adopted under this Article, as well as any amendments thereof."

<sup>17</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.

The Mechanism consists in concluding a European Cross-border Commitment ('Commitment'), which is self-executing, or a European Cross-border Statement ('Statement') which requires a further legislative procedure in the Member State.

The scope of the proposed Regulation (**Article 2**) covers common-border regions on land borders. Based on the evidence gathered under the Cross-border Review and as set out in the Border Regions Communication, legal obstacles are predominantly presented to people interacting on land borders, because people cross borders on a daily or weekly basis for working, learning, shopping or using facilities and services of general economic interest, or a combination of these.

**Article 3** lists definitions needed to implement the proposed Regulation together with some clarifications, in particular with regard to Member States which cover several territorial entities with legislative powers, in order to guarantee that all relevant levels of a given Member State can, where relevant, amend legal obstacles under its competence.

To respect the principle of subsidiarity, Member States may opt for the Mechanism established under the proposed Regulation or continue to use other effective mechanisms to resolve legal obstacles, or, for certain borders, join other effective mechanisms (**Article 4**). Most Member States will probably need to adopt legislation first to enable competent authorities to conclude a Commitment, which by force of its conclusion would allow the Member State to "pull over the border" legal provisions from the neighbouring Member State thus derogating from its "normally" applicable national rules. Some Member States may just allow its competent authorities to sign up to a Statement, committing it to legislate to derogate from the "normally" applicable national rules by means of a formal legislative act. In case of the self-executing Commitment the "normally" applicable national rules remain, but the Commitment creates a derogation. In case of the Statement, the "normally" applicable national rules will be formally amended to allow for an explicit derogation.

Member States opting for the Mechanism set up under the proposed Regulation are obliged to establish a national or, in the case of federal states, regional Cross-border Coordination Points (**Article 5**). Finally, **Article 6** lists the tasks of the coordination point at EU level, as announced in the Border Regions Communication and already set up in the Commission's Directorate-General for Regional and Urban Policy. In order to ensure uniform conditions for the implementation of this Regulation, **Article 7** confers implementing powers on the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>18</sup> for setting up a database and rules for maintaining it, for the protection of data and for the model to be used when information on the implementation and use of the Mechanism is submitted by Cross-border Coordination Points. The database must comply with the provisions on the protection of data under Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>19</sup>.

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<sup>18</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>19</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

## **Chapter 2 - Procedure for concluding a Commitment or Statement (Articles 8 to 17)**

The procedure for concluding a Commitment or Statement consists in the preparation and submission of the initiative document (**Articles 8 and 9**), to be drafted by the "initiator", a preliminary analysis by the Member State which is requested to "pull over the border" the legal provisions of the neighbouring Member State (**Articles 10 and 11**), the drafting of the Commitment or Statement to be concluded (**Articles 12 to 15**) and finally the conclusion of the Commitment or Statement and its signing by the competent authorities of both Member States (**Articles 16 and 17**).

More specifically **Article 8** establishes who can be an "initiator": (a) the public or private body responsible for initiating or both initiating and implementing a joint project (e.g. the company organising public transport in Strasbourg planning to extend a tramline over the border to the German town of Kehl); or (b) one or more local or regional authority located in a given cross-border region or exercising public power in that cross-border region (e.g. the city of Strasbourg or the intercommunal structure of Strasbourg Eurométropole or the city of Kehl); or (c) a body with or without legal personality set up for cross-border cooperation located in or covering at least partially a given cross-border region, including European groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council, Euroregions, Euregios and similar bodies (e.g. the EGTC Eurodistrict Strasbourg-Ortenau); or (d) an organisation set up on behalf of cross-border regions with the aim of promoting the interests of cross-border territories and of facilitating the networking of players and the sharing of experiences, such as the Association of European Border Regions, the *Mission Opérationnelle Transfrontalière* or the Central European Service for Cross-border Initiatives; or (e) several of the entities referred to in points (a) to (d) jointly.

The initiator shall prepare an initiative document covering the elements listed in **Article 9**. The derogation from the "normally" applicable national law is limited to the strict minimum with regard to both the territory it covers and its duration.

The key actors in the Member States requested to conclude a Commitment or Statement are the respective national or regional Cross-border Coordination Points which will liaise with all the competent authorities in the Member State and with their counterpart(s) in the neighbouring Member State (**Articles 10 and 11**). By a certain deadline, the Cross-border Coordination Point must react and decide whether to launch a procedure leading to the conclusion of a Commitment or Statement, whether the legal obstacle is "real" and whether for one or more legal obstacles a resolution has been found which could be applied. The initiator may be asked to revise or add to its document (**Article 12**).

Once the initiative document is considered complete, the Cross-border Coordination Point must prepare a draft Commitment or Statement and, again by a certain deadline, reach an agreement on the text with the other Member State (**Articles 13 to 15**) and finally conclude it (**Articles 16 and 17**). The signed Commitment or Statement must set out the elements listed in Article 14(1). The signed Commitment or Statement must be transmitted not only to the initiator, but also to the Cross-border Coordination Point of the neighbouring Member State, the competent authority of its own Member State, the EU coordination point and the authority or body designated by the committing Member State for official publication (**Article 17(2)(e)**).

### **Chapter 3 - Implementation and monitoring of Commitments or Statements (Articles 18 to 20)**

The Commitment is implemented by, where relevant, amending existing administrative acts based on the "normally" applicable law or adopting new administrative acts based on the law "pulled over the border" (**Article 18**). Where several authorities are each competent for different aspects of a complex legal obstacle, the Commitment must be accompanied by a timetable for each of them. Respecting the principle of subsidiarity, the adoption and transmission of those amended or new administrative acts must be governed by the national law on administrative procedures (Article 18(5)).

The Statement must be implemented by one or more submissions of proposals to the competent legislative body in order to amend the national law to cover the necessary derogations (**Article 19**).

In both cases, once all steps planned are implemented, the Cross-border Coordination Point must inform its counterpart in the other Member State and the EU coordination point (Article 18(4) and (5) and Article 19(6) and (7)).

Member States may decide that the Cross-border Coordination Point may remind the competent authority to comply with the deadlines and the timetables referred to in Articles 14(3) and 18(1) and may inform the authority supervising the competent committing authority or the competent member of government of missed deadlines or timetables fixed in a given Commitment or Statement (Article 6(2)(e)).

Member States should decide which authorities will monitor compliance with a given Commitment and with the amended provisions adopted pursuant to a Statement (**Article 20**). Based on the administrative acts the respect for the obligations and rights of the addressees thereof should be monitored. Member States should be allowed to decide whether that monitoring is entrusted to the authorities of the Member State which transferred its legal provisions because those authorities are more familiar with those rules or is entrusted to the authorities of the Member State where those provisions are applied because those authorities are more familiar with the remaining legal system of the committing Member States and the law governing the addressees.

### **Chapter 4 - Legal protection under Commitment and Statement (Articles 21 and 22)**

Based on experience in negotiating the EGTC Regulation, and in response to specific concerns of some Member States, it is appropriate to address the issue of legal protection of persons resident in a cross-border region who consider themselves wronged by acts or omissions arising from the authorities' application, under a Commitment or Statement, of another Member State' legal provision (**Article 21(1)**).

Both for Commitments and Statements, the law of the neighbouring Member State is applied in the committing Member State as incorporated into its own legislation and the legal protection should therefore fall to the courts of the committing Member States even where persons have their legal residence in the transferring Member State. The same should apply to legal redress against the Member State whose administrative act is challenged (**Article 21(2)**). For example, an administrative act allowing a tram to operate on German territory under French law should only be challenged in German courts.

A different approach should apply to legal redress against the monitoring of the application of the Commitment and Statement. Where an authority from the neighbouring Member State (e.g. France) has agreed to monitor the application of the amended law in Germany (by way of integrating French provisions and derogating from "normally" applicable German provisions) and can act in respect of persons resident in the cross-border area in its own name, the competent courts are those of the Member State where those persons have their legal residence (**Article 22(1)**). So if a French authority can adopt in its own name an administrative act addressed to the tram operator whose legal residence is in France (stating that the tram operator has not complied with French law on technical requirements for electric signals on German territory), then French courts are competent. However, where the competent transferring authority cannot act in its own name, but only in the name of the competent committing authority, the competent courts are those of the committing Member State, regardless of the legal residence of the person (**Article 22(2)**). So if the French authority monitors compliance with French law, but the administrative act is in the name of a German authority, then German courts are competent.

### **Chapter 5 – Implementing and final provisions (Articles 23 to 26)**

In order to ensure uniform conditions for the implementation of this Regulation, in particular for the exchange of information between the Cross-border Coordination Points and the Commission through a database set up and maintained by the Commission, implementing powers should be conferred in accordance with the legislation on committee procedure. For practical and coordination purposes, that will be the ‘Coordination Committee for the European Structural and Investment Funds’ (**Article 23**).

The final provisions<sup>20</sup> establish the Member States' obligation to make the national provisions needed to ensure effective application of the proposed Regulation (**Article 24(1)**) and to inform the Commission within a year of the entry into force of the proposed Regulation both of those national implementing rules and of the setting up of national or regional Cross-border Coordination Points (**Article 24(2)**).

As those provisions will specify which border regions of a given Member State are covered by the Mechanism, the Commission will be in a position to assess whether the Member State has opted for a different mechanism for borders not specified. Member States should nevertheless also inform explicitly about such choice under Article 4, but without deadline (**Article 24(3)**).

**Article 25** establishes an obligation of the Commission to forward a report on the application of the proposed Regulation within five years after its adoption.

The application of the Regulation should be deferred by one year after its entry into force in order to grant Member States a year to adopt its national implementation provisions (**Article 26**).

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<sup>20</sup> Based on the experience with the corresponding provisions of Regulation (EU) No 1082/2006 (Articles 16 to 18).

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 175 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>21</sup>,

Having regard to the opinion of the Committee of the Regions<sup>22</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The third paragraph of Article 175 of the Treaty provides for specific actions to be decided upon outside the Funds which are the subject of the first subparagraph of that Article, in order to achieve the objective of social and economic cohesion envisaged by the Treaty. The harmonious development of the entire Union territory and greater economic, social and territorial cohesion imply the strengthening of territorial cooperation. To this end it is appropriate to adopt the measures necessary to improve the implementation conditions for actions of territorial cooperation.
- (2) Article 174 of the Treaty recognises the challenges faced by border regions and provides that the Union should pay particular attention to these regions, when developing and pursuing actions leading to the strengthening of the Union's economic, social and territorial cohesion. Due to the increase in the number of land and maritime borders, the Union and its immediate neighbours in the European Free Trade Association ('EFTA') have forty internal land borders.
- (3) In its Communication 'Boosting growth and cohesion in EU border regions'<sup>23</sup> ('the Border Regions Communication') the Commission sets out that over the past decades, the European integration process has helped internal border regions to transform from mainly peripheral areas into areas of growth and opportunities. The completion of the Single Market in 1992 has boosted Union productivity and reduced costs through the abolition of customs formalities, harmonisation or mutual recognition of technical rules and lower prices as a result of competition; intra-EU trade has increased by 15% over 10 years; additional growth has been generated and around 2.5 million more jobs have been created.

<sup>21</sup> Not yet published in the Official Journal.

<sup>22</sup> Not yet published in the Official Journal.

<sup>23</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.

- (4) The Border Regions Communication has also given evidence of the fact that there still exist a number of legal barriers in border regions, especially those related to health services, labour regulation, taxes, business development, and barriers linked to differences in administrative cultures and national legal frameworks. Neither European Territorial Cooperation funding nor the institutional support to cooperation by the European groupings of territorial cooperation (EGTCs) is sufficient alone to address the resolution of those barriers which constitute real obstacles to effective cooperation.
- (5) Since 1990, programmes under the European Territorial Cooperation goal, better known as 'Interreg'<sup>24</sup> have supported cross-border cooperation programmes along Union border regions, including those with EFTA countries. It has financed thousands of projects and initiatives that have helped improve European integration. The main achievements of Interreg programmes include: increased trust, higher connectivity, improved environment, better health and economic growth. From people-to-people projects via infrastructure investments and support to institutional cooperation initiatives, Interreg has made a genuine difference to border regions and has contributed to their transformation. Interreg has also supported cooperation on certain maritime borders. However, legal obstacles are much less an issue for maritime border regions because of the physical impossibility to cross the border daily or several times per week for work, education and training, shopping, the use of facilities and services of general economic interest or a combination or for rapid emergency interventions.
- (6) Financial support by Interreg to cross-border cooperation has been complemented by the EGTCs, set up since 2006 under Regulation (EU) No 1082/2006 of the European Parliament and of the Council<sup>25</sup>. However, pursuant to the first subparagraph of Article 7(4) of Regulation (EC) No 1082/2006, EGTCs cannot exercise regulatory powers to resolve legal and administrative obstacles in cross-border context.
- (7) In its Border Regions Communication, the Commission referred among other measures to an initiative started under the Luxembourg Presidency in 2015: A number of Member States are considering the merits of a new instrument to simplify cross-border projects by making it possible, on a voluntary basis and agreed by the competent authorities in charge, for the rules of one Member State to apply in the neighbouring Member State. This would apply to an individual project or action limited in time, located within a border region and initiated by local or regional authorities.
- (8) Even though a number of effective mechanisms for cross-border cooperation already exist at inter-governmental, regional and local level in certain regions of the Union, they do not cover all border regions in the Union. In order to complement the existing systems, it is therefore necessary to set up a voluntary mechanism to resolve legal and administrative obstacles in all border regions ('the Mechanism').
- (9) In full respect of the constitutional and institutional set-up of the Member States, the use of the Mechanism should be voluntary with regard to those border regions of a given Member State where another effective mechanism exists or could be set up with the neighbouring Member State. It should consist of two measures: the signature and

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<sup>24</sup> Five programming periods of Interreg have succeeded each other: INTERREG I (1990-1993), INTERREG II (1994-1999), INTERREG III (2000-2006), INTERREG IV (2007-2013) and INTERREG V (2014-2020).

<sup>25</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).

the conclusion of a European Cross-Border Commitment (the 'Commitment') or the signature of a European Cross-Border Statement (the 'Statement').

- (10) The Commitment should be self-executing, meaning that pursuant to the conclusion of the Commitment certain legal provisions of one Member State are to be applied on the territory of the neighbouring Member State. It should also be acceptable that the Member States are to adopt a legislative act to allow for the conclusion of a Commitment, in order to prevent national legislation formally adopted by a legislative body from being derogated from by an authority other than that legislative body and in breach of legal clarity and transparency or both.
- (11) The Statement would still require a legislative procedure in the Member State. The authority concluding the Statement should make a formal statement that it will trigger by a certain deadline the legislative procedure necessary to amend the normally applicable national law and to apply, by way of an explicit derogation, the law of a neighbouring Member State.
- (12) Legal obstacles are predominantly felt by persons interacting on land borders, because people cross borders on a daily or weekly basis. 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 cross-border regions within the meaning of the territory covered by neighbouring land border regions in two or more Member States at NUTS level 3 regions<sup>26</sup>. This should not prevent Member States from applying the Mechanism also to maritime and external borders others than those with EFTA countries.
- (13) In order to coordinate the tasks of different authorities which in some Member States will include national and regional legislative bodies, within a given Member States and between those of one or more neighbouring Member States, each Member State which opts for the Mechanism should be obliged to set up a national and, where applicable, regional Cross-border Coordination Points and define their tasks and competencies during the different steps of the Mechanism covering initiation, conclusion, implementation and monitoring of Commitments and Statements.
- (14) The Commission should set up a coordination point at Union level, as announced in the Border Regions Communication. That coordination point should liaise with the different national and, where relevant, regional Cross-border Coordination Points. The Commission should set up and maintain a database on Commitments and Statements in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>27</sup>.
- (15) This Regulation should set out the procedure to conclude a Commitment or Statement and describe in detail the different steps; preparation and submission of an initiative document, a preliminary analysis by the Member State which is to apply the legal provisions of the neighbouring Member State, preparation of the Commitment or Statement to be concluded and finally the conclusion procedure both for the Commitment and the Statement. The elements to be covered in the initiative

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<sup>26</sup> 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).

<sup>27</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

document, the draft and final Commitments and Statements should also be set out in detail as well as the applicable deadlines.

- (16) More specifically, this Regulation should define who can be an initiator of a joint project. As the Mechanism should improve the implementation of joint cross-border projects, the first group should be bodies initiating or both initiating and implementing such joint project. The term project should be understood in a broad sense, covering both a specific item of infrastructure or a number of activities with regard to a certain territory or both. Secondly, a local or regional authority located in a given cross-border region or exercising public power in that cross-border region should be empowered to take the initiative to apply national law which constitutes an obstacle, but the amendment of or derogation from that law is outside their institutional competence. Thirdly, bodies set up for cross-border cooperation located in or covering at least partially a given cross-border region, including EGTCs, or similar bodies to organise cross-border development in a structured way should be initiator. Finally, bodies specialised in cross-border cooperation which may also be aware of effective resolutions found elsewhere in the Union for a comparable issue should also be enabled to start an initiative. In order to create synergy of bodies directly affected by the obstacle and those expert in cross-border cooperation in general, all groups may initiate the Mechanism jointly.
- (17) The key actor in the Member States requested to conclude a Commitment or Statement should be the respective national or regional Cross-border Coordination Points which is to liaise with all competent authorities in its Member State and with its counterpart in the neighbouring Member State. It should also be clearly established that the Cross-border Coordination Point may decide whether a procedure leading to the conclusion of a Commitment or a Statement is to be launched or whether for one or more legal obstacles a resolution has already found which could be applied. On the other hand, it should also be established that the Member State the legal provisions of which are to be applied in the other Member State may refuse such application outside its territory. Any decision should be justified and communicated.
- (18) This Regulation should establish detailed rules on the implementation, application and monitoring of Commitments and Statements to be concluded and signed.
- (19) The implementation of a self-executing Commitment should consist in the application of national provisions of another Member State. This should mean either the amendment of legally binding administrative acts already adopted in accordance with the normally applicable national law or, where this has not yet been done, the adoption of new administrative acts based on the legislation of another Member State. Where several authorities are each competent for different aspects of a complex legal obstacle, the Commitment should be accompanied by a timetable for each of these aspects. Respecting the subsidiarity principle, the adoption and transmission of those amended or new administrative acts should follow the national law on administrative procedures.
- (20) The implementation of Statements should mainly consist in the preparation and submission of a legislative proposal to amend existing national law or to derogate from it. After adoption, those amendments or derogations should be made public and then also implemented like the Commitments by the amendment and adoption of legally binding administrative acts.
- (21) Based on the legally binding acts, the respect for the obligations and rights of the addressees thereof should be monitored. Member States should be allowed to decide

whether that monitoring is entrusted to the authorities of the Member State which transferred its legal provisions because those authorities are more familiar with those rules or whether that monitoring is entrusted to the authorities of the Member State where those provisions are applied because those authorities are more familiar with the remaining legal system of the committing Member States and the law governing the addressees.

- (22) The protection of persons resident in cross-border regions directly or indirectly affected by the application and monitoring of a Commitment and the amended legislation pursuant to a Statement, who consider themselves wronged by acts or omissions by the application should be clarified. Both for Commitment and Statement, the law of the neighbouring Member State would be applied in the committing Member State as incorporated into its own legislation and the legal protection should therefore be in the remit of the courts of the committing Member States even where persons have their legal residence in the transferring Member State. The same principle should apply for the legal redress against the Member State whose administrative act is challenged. However, a different approach should apply to legal redress against the monitoring of the application of the Commitment or Statement. Where an authority from the transferring Member State has accepted to monitor the application of the amended legal provisions of the committing Member State and can act with regard to persons resident in the cross-border area on behalf of the authorities of the committing Member State, but in its own name, the competent courts should be those of the Member State where those persons have their legal residence. On the other hand, where the competent transferring authority cannot act in its own name, but in the name of the competent committing authority, the competent courts should be those of the committing Member State, regardless of the legal residence of the person.
- (23) This Regulation should set out rules on its implementation, the monitoring of its application and on the obligations of the Member States with regard to their national implementing rules.
- (24) In order to establish a database according to Article 8, implementing powers should be conferred on the Commission to lay down rules on its running, on the protection of data and the model to be used when information on the implementation and on the use of the Mechanism is submitted by Cross-border Coordination Points. Those powers should be exercised in accordance with the advisory procedure under Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>28</sup>. For practical and coordination purposes, the ‘Coordination Committee for the European Structural and Investment Funds’ should be the committee competent for the procedure of adoption of implementing acts.
- (25) The national implementing rules are to specify which border regions of a given Member State are covered by the Commitment or the Statement. Consequently, the Commission will be in a position to assess whether for the border which is not mentioned the Member State has opted for a different mechanism.
- (26) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data (Article 8), the right to education (Article 14), the freedom to choose an occupation and the right to engage in work (Article 15), in

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<sup>28</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

particular the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State, the freedom to conduct business (Article 16), access to social security and social assistance (Article 34), access to health care (Article 35) and access to services of general economic interest (Article 36).

- (27) 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. Member States have undertaken individual, bilateral or even multilateral initiatives to resolve legal border obstacles. However, those mechanisms do not exist in all Member States or not for all borders of a given Member State. The financing instruments (mainly Interreg) and the legal instruments (mainly EGTCs) provided at Union level so far have not been sufficient to resolve legal border obstacles throughout the Union. 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, by reason of the scale or effects of the proposed action, be better achieved at Union level. Further action by the Union legislator is therefore needed.
- (28) In accordance with the principle of proportionality, as set out in Article 5(4) TEU, the content and form of Union action should not exceed what is necessary to achieve the objectives of the Treaties. The recourse to the specific Mechanism set up under this Regulation is voluntary. Where a Member State decides, on a specific border with one or more neighbouring Member States, to continue to resolve legal obstacles in a specific cross-border region under the effective mechanisms it has set up at national level or which it has set up formally or informally, together with one or more neighbouring Member States, the Mechanism set up under this Regulation does not need to be selected. Likewise, where a Member State decides, on a specific border with one or more neighbouring Member States, to join an existing effective mechanism set up formally or informally by one or more neighbouring Member States, provided that mechanism allows for accession, again, the Mechanism set up under this Regulation does not need to be selected. 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 mechanisms to resolve legal obstacles in place,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **General provisions**

#### *Article 1* *Subject matter*

1. This Regulation sets up a mechanism to allow for the application in one Member State, with regard to a cross-border region, of the legal provisions from another Member State, where the application of the legal provisions of the former would constitute a legal obstacle hampering the implementation of a joint Project ('the Mechanism').
2. The Mechanism shall consist of one of the following measures:
  - (a) the conclusion of a European Cross-Border Commitment, which is self-executing,

- (b) the conclusion of a European Cross-Border Statement which would require a legislative procedure in the Member State.
3. This Regulation also lays down
  - (a) the organisation and tasks of Cross-border Coordination Points in the Member States,
  - (b) the coordinating role of the Commission with respect to the Mechanism,
  - (c) the legal protection of persons resident in a cross-border region with regard to the Mechanism.

## *Article 2*

### *Scope*

1. This Regulation applies to cross-border regions as defined in point (1) of Article 3.
2. Where a Member State comprises several territorial entities with legislative powers, this Regulation shall also apply to those territorial entities including their respective authorities or legal provisions.

## *Article 3*

### *Definitions*

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;
- (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;
- (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;
- (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;
- (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;
- (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;

- (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.

#### *Article 4*

##### ***Member States' options for resolving legal obstacles***

- 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.
- 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.
- 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.
- 4. Member States shall inform the Commission about any decision taken under this Article.

#### *Article 5*

##### ***Cross-border Coordination Points***

- 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; or
  - (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.

#### *Article 6*

#### ***Tasks of Cross-border Coordination Points***

1. Each Cross-border Coordination Points shall have at least the following tasks:
  - (a) implement the procedure set out in Articles 10 and 11;
  - (b) coordinate the preparation, signature, implementation and monitoring for all Commitments and Statements concerning the territory of its Member State;
  - (c) build up and maintain a database covering all Cross-border Coordination Points concerning the territory of its Member State;
  - (d) liaise, where they exist, with the Cross-border Coordination Points in the neighbouring Member State or States and with the Cross-border Coordination Points in other territorial entities with legislative powers of its own Member State or another Member State;
  - (e) liaise with the Commission;
  - (f) support the Commission as regards its database on Statements and Commitments.
2. Each Member State or each territorial entity with legislative powers in that Member State may decide to entrust the respective Cross-border Coordination Point also with the following tasks:
  - (a) where applicable, to conclude Commitments or Statements pursuant to Articles 16(2) and 17(2);
  - (b) upon request from a given initiator, support that initiator by, among other things, identifying the competent committing authority in the same Member State or the competent transferring authority in another Member State;
  - (c) upon request from a given competent committing authority located in another Member State without its own Cross-border Coordination point, perform the preliminary analysis of an initiative document;
  - (d) monitor the implementation of all Commitments and Statements concerning the territory of its Member State;
  - (e) remind the competent committing authority to comply with the deadlines established by in a given Commitment or Statement and request a reply within a given deadline;
  - (f) inform the authority supervising the competent committing authority on any missed deadlines as established in a given Commitment or Statement.
3. Where at least one among several legal obstacles concerns an issue of legislative competence at national level, the national Cross-border Coordination Point shall assume the tasks set out in Articles 9 to 17 and coordinate with the relevant regional Cross-border Coordination Point or Points in the same Member State, unless the Member State has decided that the tasks set out in Articles 14 to 17 are entrusted to a competent committing authority at national level.

4. Where none of the legal obstacles concerns an issue of legislative competence at national level, the competent regional Cross-border Coordination Point shall assume the tasks set out in Articles 9 to 17 and coordinate, with the other regional Cross-border Coordination Point or Points in the same Member States, in the cases where more than one territorial entity is concerned by the joint project, unless the Member State has decided that the tasks set out in Articles 14 to 17 are entrusted to a national Cross-border Coordination Point. That competent regional Cross-border Coordination Point shall keep the national Cross-border Coordination Point informed about any Commitment or Statement procedure.

#### *Article 7*

#### ***Coordination tasks of the Commission***

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).

## **CHAPTER II**

### **Procedure for concluding and signing a Commitment or for signing a Statement**

#### *Article 8*

#### ***Preparation and submission of the initiative document***

1. The initiator shall identify the legal obstacle with regard to the planning, development, staffing, financing or functioning of a joint project.
2. The initiator shall be one of the following:
  - (a) the public or private body responsible for initiating or both initiating and implementing a joint project;
  - (b) one or more local or regional authorities located in a given cross-border region or exercising public power in that cross-border region;
  - (c) a body with or without legal personality set up for cross-border cooperation located in or covering at least partially a given cross-border region, including European groupings of territorial cooperation under Regulation (EC) No 1082/2006, Euroregions, Euregios and similar bodies;
  - (d) an organisation set up on behalf of cross-border regions with the aim to promote the interests of cross-border territories and to facilitate the networking of players and the sharing of experiences, such as the Association of European

Border Regions, the *Mission Opérationnelle Transfrontalière* or the Central European Service for Cross-border Initiatives; or

- (e) several of the entities referred to in points (a) to (d) jointly.
3. The initiator shall prepare an initiative document drafted in accordance with Article 9.
  4. The initiator shall submit the initiative document to the competent Cross-border Coordination Point of the committing Member State and send a copy to the competent Cross-border Coordination Point of the transferring Member State.

#### *Article 9*

#### ***Content of the initiative document***

1. The initiative document shall include at least the following elements:
  - (a) a description of the joint project and of its context, of the corresponding legal obstacle in the committing Member State as well as of the rationale for resolving the legal obstacle;
  - (b) a list of the specific legal provisions of the transferring Member State resolving the legal obstacle or, where no appropriate legal provision exists, a proposal for an *ad hoc* legal resolution;
  - (c) a justification for the area of application;
  - (d) the foreseeable duration or, where duly justified, its unlimited duration;
  - (e) a list of the competent committing authority or authorities;
  - (f) a list of the competent transferring authority or authorities.
2. The area of application shall be limited to the minimum necessary for the effective implementation of the joint project.

#### *Article 10*

#### ***Preliminary analysis of the initiative document by the committing Member State***

1. The competent Cross-border Coordination Point shall analyse the initiative document. It shall liaise with all competent committing authorities and with the national or, where relevant, other regional Cross-border Coordination Points in the committing Member State and with the national Cross-border Coordination Point in the transferring Member State.
2. Within three months after receipt of the initiative document the competent Cross-border Coordination Point shall take, one or more of the following actions, to be transmitted to the initiator in writing:
  - (a) inform the initiator that the initiative document was prepared in accordance with Article 9 and is therefore admissible;
  - (b) request, if necessary, the submission of a revised initiative document or of additional specific information while setting out why and in which aspect the initiative document is not considered sufficient;
  - (c) inform the initiator about its assessment that there is no legal obstacle while setting out the reasons and also referring to the means of legal redress against that decision under the law of the committing Member State;

- (d) inform the initiator about its assessment that the legal obstacle consists in one of the cases listed in Article 12(4) and describe the commitment of the competent committing authority, to change or adapt that legal obstacle;
  - (e) inform the initiator about its assessment that the legal obstacle consists in one of the situations under Article 12(4) while setting out its reasons to refuse to change or adapt that legal obstacle and referring to the means of legal redress against that decision under the law of the committing Member State;
  - (f) commit itself towards the initiator to find a resolution to the legal obstacle or obstacles within six months, either by signing a Commitment with the Cross-border Coordination point of the transferring Member State or with the competent transferring authority, as designated by the transferring Member State, or by proposing an *ad hoc* legal resolution within the legal framework of the committing Member State.
3. In duly justified cases, the competent committing authority may extend the deadline referred to in point (f) of paragraph 2 once, by a maximum of six months and shall inform the initiator and the transferring Member State accordingly, while setting out the reasons in writing.

#### *Article 11*

#### ***Preliminary analysis of the initiative document by the transferring Member State***

Upon receipt of an initiative document, the competent Cross-border Coordination Point of the transferring Member State shall also carry out the tasks listed in Article 10(2) and may send its preliminary reaction to the competent Cross-border Coordination Point of the committing Member State.

#### *Article 12*

#### ***Follow-up on the preliminary analysis of the initiative document***

1. Where the competent Cross-border Coordination Point of the committing Member State requests a revised initiative document or additional specific information, it shall analyse the revised initiative document or the additional specific information or both and take, within three months after receipt thereof, the actions as if the initiative document was submitted for the first time.
2. Where the competent Cross-border Coordination Point of the committing Member State considers that the revised initiative document is still not prepared in accordance with Article 10 or that the additional specific information is still not sufficient, it shall, within three months after receipt of the revised initiative document, inform the initiator in writing about its decision to end the procedure. This decision shall be duly justified.
3. Where the analysis by the competent Cross-border Coordination Point of the committing Member State or the competent committing authority concludes that the legal obstacle described in the initiative document is based on a misunderstanding or misinterpretation of the relevant legislation or on the lack of sufficient information about the relevant legislation, the procedure ends by informing the initiator about the assessment that there is no legal obstacle.
4. Where the legal obstacle consists only in an administrative provision, rule or administrative practice of the committing Member State or in a an administrative

provision, rule or administrative practice clearly distinct from a provision adopted under a legislative procedure and can therefore be changed or adapted without a legislative procedure, the competent committing authority shall inform the initiator in writing its refusal or willingness to change or adapt the relevant administrative provision, rule or administrative practice within eight months.

5. In duly justified cases, the competent committing authority may extend the deadline referred to in paragraph 4 once by a maximum of eight months and shall inform the initiator and the transferring Member State accordingly, while setting out the reasons in writing.

#### *Article 13*

#### ***Preparation of the draft Commitment or Statement***

The Cross-border Coordination Point or the competent committing authority of the committing Member State shall draw up a draft Commitment or a draft Statement in accordance with Article 14, based on the initiative document.

#### *Article 14*

#### ***Content of the draft Commitment and draft Statement***

1. The draft Commitment shall include at least the following elements:
  - (a) the description of the joint project and of its context, of the corresponding legal obstacle as well as of the rationale for resolving the legal obstacle;
  - (b) the list of the specific legal provision or provisions constituting the legal obstacle and which shall therefore not apply to the joint project;
  - (c) the area of application;
  - (d) the duration of the application and a justification for that duration;
  - (e) the competent committing authority or authorities;
  - (f) the specific legal provision of the transferring Member State which shall apply to the joint project;
  - (g) the proposal of the *ad hoc* legal resolution, where no appropriate legal provision exists in the legal framework of the transferring Member State;
  - (h) the competent transferring authority or authorities;
  - (i) the authority or authorities from the committing Member State competent for the implementation and monitoring;
  - (j) the authority or authorities from the transferring Member State which are proposed to be designated jointly for the implementation and monitoring;
  - (k) the date of its entry into force.

The date of entry into force referred to in point (k) shall be either the date when the last of the two Cross-border Coordination Points or competent authorities have signed or the date when it has been notified to the initiator.

2. In addition to the elements listed in paragraph 1, the draft Commitment shall also include a date of application which may be
  - (a) set at the same date as its entry into force;

- (b) set with retroactive effect;
  - (c) deferred to a date in the future.
3. In addition to the elements listed in paragraph 1, the draft Statement shall also include a formal statement of the date or dates by which each competent committing authority shall submit a formal proposal to the respective legislative body in order to amend the national legal provisions accordingly.

The date referred to in the first subparagraph shall not be later than twelve months after the conclusion of the Statement.

#### *Article 15*

##### ***Transmission of the draft Commitment or draft Statement***

1. Where the competent committing authority has prepared the draft Commitment or draft Statement, it shall transmit this draft to the competent Cross-border Coordination Point of the committing Member State:
- (a) within a maximum of three months after having transmitted information under Article 10(2) or Article 12(1) and (2);
  - (b) within a maximum of eight months pursuant to Article 12(4) and (5).
2. Where the competent Cross-border Coordination Point of the committing Member State has prepared the draft Commitment or draft Statement or where it has received it from the competent committing authority it shall transmit this draft to the competent Cross-border Coordination Point of the transferring Member State within the periods referred to in points (a) or (b) of paragraph 1.
3. In both cases, a copy shall also be sent for information to the initiator.

#### *Article 16*

##### ***Tasks of the transferring Member State in concluding and signing the Commitment or in signing the Statement***

1. The competent Cross-border Coordination Point of the transferring Member State shall examine the draft Commitment or draft Statement received pursuant to Article 15 and, within a maximum of three months after receipt of the draft and after consulting the competent transferring authorities, take one or more of the following actions:
- (a) agree with the draft Commitment or draft Statement, sign two original copies and send one back to the competent Cross-border Coordination Point of the committing Member State;
  - (b) agree with the draft Commitment or draft Statement, after correcting or supplementing the information referred to in points (f) and (h) of Article 14(1), sign two original copies of the revised draft Commitment or draft Statement and send one back to the competent Cross-border Coordination Point of the of the committing Member State;
  - (c) refuse to sign the draft Commitment or draft Statement and transmit a detailed justification to the competent Cross-border Coordination Point of the committing Member State;

- (d) refuse to sign the draft Commitment or draft Statement and send back an amended draft as regards the information referred to in points (c), (d) and, where relevant, (g) of Article 14(1), as well as for the draft Commitment the information referred to under Article 14(2), with a justification for the amendments to the competent Cross-border Coordination Point of the committing Member State.
- 2. In Member States where the competent transferring authority shall sign a Commitment or Statement, the competent Cross-border Coordination Point of the transferring Member State shall send, in accordance with points (a) and (b) of paragraph 1, the two original copies signed by the competent transferring authority.
- 3. Where the transferring Member State agrees in accordance with point (a) or (b) of paragraph 1 to sign a Commitment or a Statement, it shall, in addition, explicitly confirm or refuse that the competent authority or authorities which are proposed to be designated jointly for the implementation and monitoring of the Commitment or the Statement pursuant to point (j) of Article 14(1) shall assume those tasks to be carried out in the area of application.

#### *Article 17*

#### ***Tasks of the committing Member State in concluding and signing the Commitment or in signing the Statement***

- 1. The competent Cross-border Coordination Point of the committing Member State shall examine the reply transmitted by the competent Cross-border Coordination Point of the transferring Member State and take, within a maximum of one month after its receipt one or more of the following actions, to be transmitted to the competent transferring authority in writing:
  - (a) in the case of point (a) of paragraph 2, finalise the Commitment or the Statement, sign two original copies and send one back to the competent Cross-border Coordination Point of the transferring Member State for signature;
  - (b) in the case of point (b) of paragraph 2, amend the Commitment or the Statement as regards the information in the draft Commitment or the draft Statement covered by points (f) and (h) of Article 14(1) accordingly, finalise the Commitment or Statement, sign two original copies and send one back to the competent Cross-border Coordination Point of the transferring Member State for signature;
  - (c) in the case of point (c) of paragraph 2, inform the initiator and the Commission, while adding the justification as set out by the competent transferring authority;
  - (d) in the case of point (d) of paragraph 2, consider the amendments and either proceed as under point (b) of this paragraph or relaunch a second procedure under Article 9 setting out why some or all of the amendments could not be accepted by the competent committing authority.
- 2. Upon receipt of the Commitment or the Statement, as also signed by the competent Cross-border Coordination Point or competent transferring authority in the cases of points (a) or (b) of paragraph 1 or, where the competent Cross-border Coordination Point of the transferring Member State has reacted positively under the second procedure of point (d) of paragraph 1, the competent Cross-border Coordination Point of the committing Member State shall:

- (a) transmit the final Commitment or Statement to the initiator;
- (b) transmit the second original copy to the competent Cross-border Coordination Point of the transferring Member State;
- (c) send a copy to all competent committing authorities;
- (d) send a copy to the coordination point at Union level; and
- (e) request the competent service in the committing Member State responsible for official publications to publish the Commitment or the Statement.

## **CHAPTER III**

### **Implementation and monitoring of Commitments and Statements**

#### *Article 18*

##### *Implementation of the Commitment*

1. The information referred to under point (c) of Article 17(2) and sent to all competent committing authorities concerned, shall be accompanied by a timetable, by which each of those authorities shall, where relevant, amend any administrative act adopted under the applicable law with regard to the joint project and adopt any administrative act necessary to apply the Commitment to the joint project in order to apply to it the legal provision of the transferring Member State or an *ad hoc* legal resolution.
2. A copy of the timetable shall be sent to the national and, where relevant, regional Cross-border Coordination Point of the committing Member State.
3. Any administrative act referred to in paragraph 1 shall be adopted and notified to the initiator, in particular to the public or private body responsible for initiating or both initiating and implementing a joint project, in accordance with the national law applicable to such administrative acts.
4. Once all administrative acts with regard to a given joint project are adopted, the Cross-border Coordination Point of the committing Member State shall inform the Cross-border Coordination Point of the transferring Member State and the coordination point at Union level.
5. The Cross-border Coordination Point of the transferring Member State shall inform, where relevant, the competent transferring authorities.

#### *Article 19*

##### *Implementation of the Statement*

1. Each competent committing authority listed in a Statement under Article 14(3) shall submit by the respective date fixed in the signed Statement a formal proposal to the respective legislative body in order to amend the national legal provisions accordingly.
2. In case the respective date fixed in the signed Statement cannot be respected, in particular in view of upcoming elections for the competent legislative body, the competent committing authority shall inform in writing the initiator as well as the competent Cross-border Coordination Point of both the committing and the transferring Member States.

3. Once a formal proposal has been submitted to the respective legislative body, the respective competent committing authority shall up-date in writing the initiator as well as the competent Cross-border Coordination Point of both the committing and the transferring Member States about the monitoring in the respective legislative body, and this every six months after the date of formal submission.
4. Upon entry into force of the amending legislative act or its publication in the official Gazette or both, each competent committing authority shall amend any administrative act adopted under the applicable national law with regard to the joint project and adopt any administrative act necessary to apply the amended legal provisions to the joint project.
5. Any administrative act as referred to in paragraph 4 shall be adopted and notified to the initiator, in particular where this initiator is a public or private body responsible for initiating or both initiating and implementing a joint project, in accordance with the national law applicable to such administrative acts.
6. Once all administrative acts with regard to a given joint project are adopted, the Cross-border Coordination Point of the committing Member State shall inform the Cross-border Coordination Point of the transferring Member State and the coordination point at Union level.
7. The Cross-border Coordination Point of the transferring Member State shall, where relevant, inform the competent transferring authorities.

#### *Article 20*

#### ***Monitoring of Commitments and Statements***

1. Based on the administrative acts referred to in Articles 18(1) and 19(4), the committing and transferring Member States shall decide whether the monitoring of the application of a Commitment or of the amended national legislation pursuant to a Statement shall be entrusted to the authorities of the transferring Member State, in particular due to their expertise with the legal provisions transferred, or to the authorities of the committing Member State.
2. Where the monitoring of the application of the transferred legal provisions is entrusted to the authorities of the transferring Member State, the committing Member State shall decide, in agreement with transferring Member States, whether the authorities of the transferring Member State shall act with regard to the addressees of the monitoring tasks on behalf and in the name of the authorities of the committing Member State or on behalf, but in their own name.

## **CHAPTER IV**

### **Legal protection against the application and monitoring of Commitments and Statements**

#### *Article 21*

#### ***Legal protection against the application of a Commitment or Statement***

1. Any person resident in the territory covered by a Commitment or Statement or, although not resident in that territory, being user of a service of general economic interest provided in that territory ('person resident in the cross-border region'), who considers itself wronged by the acts or omissions by the application, pursuant to a

Commitment or a Statement, of a legal provision of a transferring Member State shall be entitled to seek legal redress before the courts of the committing Member State.

2. However, the competent courts for legal redress against any administrative acts adopted under Article 18(3) and 19(5) shall be exclusively the courts of the Member State whose authorities issued the administrative act.
3. Nothing in this Regulation shall deprive persons from exercising their national constitutional rights of appeal against authorities which are parties of a Commitment in respect of:
  - (a) administrative decisions in respect of activities which are being carried out pursuant to a Commitment;
  - (b) access to services in their own language; and
  - (c) access to information.

In these cases the competent courts shall be those of the Member State under whose constitution the rights of appeal arise.

#### *Article 22*

##### ***Legal protection against the monitoring of Commitments or Statements***

1. Where the competent transferring authority has accepted to monitor the application of the legal provisions of the transferring Member State in the relevant area and can act in its own name towards persons resident in the cross-border region of the committing Member State, the competent courts for legal redress against any action or omission by that authority shall be the courts of the Member State where those persons have their legal residence.
2. Where the competent transferring authority has accepted to monitor the application of the legal provisions of the committing Member State on the territory of the committing Member State, but cannot act on its own name towards persons resident in the cross-border region, the competent courts for legal redress against any action or omission by that authority shall be only the courts of the committing Member State, including for persons having their legal residence in the transferring Member State.

## **CHAPTER V**

### **Final provisions**

#### *Article 23*

##### ***Committee procedure***

1. The Commission shall be assisted by the Coordination Committee for the European Structural and Investment Funds established by Article 108(1) of Regulation (EU) No [new CPR]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 24*

***Implementing provisions in the Member States***

1. Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation
2. By the date of the start of application of this Regulation, Member States shall inform the Commission accordingly of any provisions adopted under paragraph 1.
3. The Commission shall render public the information received from the Member States.

*Article 25*

***Reporting***

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 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.

*Article 26*

***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*.

It shall apply from [*the 1<sup>st</sup> of the month following the entry into force of this Regulation + one year; to be filled in by the Publication Office*].

However, Article 24 shall apply from [*the 1<sup>st</sup> of the month following the entry into force of this Regulation; to be filled in by the Publication Office*].

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*