

**Opinion**

COM(2018)373

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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**ASSEMBLY OF THE REPUBLIC**  
**EUROPEAN AFFAIRS COMMITTEE**

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**PART I - INTRODUCTION**

Pursuant to Article 7 of Law 43/2006 of 25 August 2006 on the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic in the context of the process of EU integration, as amended by Law 21/2012 of 17 May 2012 and Law No 18/2018 of 2 May 2018, and in accordance with the Guidelines for the Scrutiny of EU Initiatives approved on 1 March 2016, the European Affairs Committee received the Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context [COM(2018)373].

The above initiative was forwarded to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, which stated that there were no grounds for it to issue an opinion. Nevertheless, this rapporteur believed that it was justified to analyse the content of the initiative and express a position, albeit succinctly, regarding compliance with the principles of subsidiarity and proportionality.

**PART II – BACKGROUND**

1. – This initiative is a 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.

2. – The Proposal starts by stating that, since 1990, Interreg<sup>1</sup> funding has supported cross-border cooperation programmes in EU border regions. 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.

3. – However, in a ‘Cross-border review’<sup>2</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>3</sup> is generally lower in border regions. Navigating between different administrative and legal 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.*

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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> 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>3</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-withspecific-geographical-features](http://ec.europa.eu/regional_policy/en/information/publications/working-papers/2009/territories-withspecific-geographical-features).

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4. – As a consequence, the Commission adopted its Communication ‘Boosting growth and cohesion in EU border regions’<sup>4</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-point action plan; one point specifically addresses legal and administrative border obstacles<sup>5</sup>.

5. – 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 require decisions beyond programme and project management structures).

6. – 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 groupings of territorial cooperation<sup>6</sup>, as those groupings are not given legislative powers to overcome legal obstacles<sup>7</sup>.*

7. – In this connection it should be noted that 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>8</sup>.

8. – Finally, it should be noted that this initiative 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.

In the light of the provisions contained in this proposal, the following must be considered:

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

<sup>5</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>6</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>7</sup> See the first subparagraph of Article 7(4) of Regulation (EC) No 1082/2006.

<sup>8</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).

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***a) The legal basis***

The legal basis is Article 175 of the Treaty on the functioning of the European Union (TFEU). 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.

***b) The principle of 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 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 provided at Union level so far have not been sufficient to resolve legal border obstacles throughout the Union.

Therefore, the objectives of this Proposal cannot 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.

Therefore the principle of subsidiarity is respected.

***The principle of proportionality***

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.

This initiative does not therefore 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.

**PART III – OPINION**

In the light of the information set out above, the European Affairs Committee is of the opinion that:

1 – This initiative does not breach the principles of subsidiarity and proportionality, insofar as the objective pursued will be achieved more effectively by means of action at European Union level and the proposal does not go beyond what is necessary to that end.

2. – This concludes the scrutiny of this initiative.

Palácio de São Bento, 17 July 2018

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**Rapporteur**

**Chair of the Committee**

**(Duarte Marques)**

**(Regina Bastos)**