



EUROPEAN COMMISSION

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C(2018) 5651 final*

*Mr Urban Ahlin
Speaker of the Riksdag
SE – 100 12 STOCKHOLM*

Dear Speaker,

The Commission would like to thank the Riksdag for its Reasoned Opinion on 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 final}.

The proposal forms part of a broader package of ambitious measures designed to govern Cohesion Policy for the post-2020 period, in particular to promote socio-economic and territorial cohesion across the European Union, via Cohesion Policy. It is a necessary complement both to the financial support under the European Territorial Cooperation (Interreg), but also to the institutional support such as European Groupings of Territorial Cooperation, as those groupings are not given legislative powers to overcome legal obstacles.

The proposal aims more specifically at making Cohesion Policy funding more effective for investments and projects carried out in cross-border regions. In addition, the proposal is a direct follow-up to the Commission Communication 'Boosting Growth and Cohesion in EU Border Regions' {COM(2017) 534 final}.

Work undertaken by the Commission since 2015 has shown how obstacles of a legal and/or administrative nature still impede on the lives of citizens and businesses in cross-border regions despite the existence of the Single Market and the associated

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freedom of movement. The above-mentioned Communication and its accompanying Staff Working Document {SWD(2017) 307 final} provide ample evidence of this. In parallel, an informal working group of Member States, under the leadership of Luxembourg has reflected on the appropriateness of devising innovative solutions to border obstacles.

Setting up a mechanism on each land border to resolve legal obstacles would therefore enable actors in border regions to develop and implement joint projects under a single set of rules and make those projects quicker and cheaper. A recent study contracted by the Commission¹ on the economic impact of border obstacles on gross domestic product 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 gross domestic product by 2%.

The Commission is pleased that the Riksdag shares the view that action at European Union level as envisaged in the proposal is required to help internal border areas to be transformed from fringe areas into areas of growth and opportunity. The Commission also agrees that a smoother functioning of the internal market is dependent on obstacles at internal borders being removed and that border obstacles need to be addressed, also beyond the opportunities offered by the Interreg programmes. Against that background, the Commission believes that the proposed mechanism is necessary to resolve legal border obstacles throughout the Union.

The Commission has taken good note of the concerns expressed by the Riksdag as regards the proposal's compliance with the subsidiarity principle. The Commission would like to confirm the voluntary character of the mechanism. The proposed mechanism does not have to be chosen by a Member State where another effective mechanism exists on a given border with another Member State. Hence, if adopted, the Regulation would not establish new obligations for Member States which already have a mechanism of comparable effectiveness.

More specifically, with regard to the scope of infrastructure projects, the proposal defines a 'joint project' in a broad sense as any item of infrastructure with an impact in a given cross-border region (e.g. cross-border tramway line, joint research centre, business park built on the border) or as any service of general economic interest provided in a given cross-border region (health care services and related infrastructures, joint public transport services across the border, education provision, etc.). In many such projects, sets of national standards apply and these can be different on either side of the border, therefore making the implementation of single joint projects complex and costly (e.g. need to comply with two sets of standards instead of one).

With regard to the Riksdag's concerns about labour market policy and taxation policy which are indeed of national competence at least as regards direct taxation, the Commission would like to stress that the proposal does not intend to interfere with national legislative competence. Instead, the proposal aims to address the fact that

¹ 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.

national legislation in a neighbouring Member State may differ, which can lead to legal obstacles in the border regions, as citizens and enterprises would have to comply with two sets of sometimes partially contradictory or incompatible legislation.

The proposed mechanism would address these legal obstacles. If Sweden had opted for the European Union Mechanism in the form of the European Cross-border Statement in order to address legal obstacles in legislation adopted in Sweden, it would be for Sweden to decide whether to amend such national legislation.

The Commission believes that setting up a mechanism to resolve legal obstacles holds considerable added value. On that basis, the Commission finds that the proposal complies with the subsidiarity principle.

In response to the more specific comments in the Riksdag's Reasoned Opinion the Commission would like to refer to the attached Annex.

The Riksdag's Reasoned Opinion has been forwarded to the relevant Commission services and will form part of the briefing files used when they go to the European Parliament and Council to negotiate the proposal.

The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Riksdag and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Pierre MOSCOVICI
Member of the Commission*

Annex

The Commission has carefully considered each of the issues mentioned by the Riksdag in its Reasoned Opinion and is pleased to offer the following clarifications and observations.

As far as the voluntary character of the mechanism is concerned, Recital 9 of the proposal clarifies that the use of the EU Mechanism is 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. Article 4(1) clearly sets out Member States' main options: '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'. Article 4(2) adds that '[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'. The wording of the recital seems to be broader ('be set up') than the enacting provisions ('opt for existing ways' or 'join an existing effective way'). In accordance with Articles 4(4) and 24(2) Member States have one year to take their decision. That is why the Commission considers it more feasible to opt for the EU Mechanism or joining an existing mechanism already set up by neighbouring Member States within a year, but not setting up an entirely new one. However, where a new mechanism was to be set up within a year from the entry into force of the Regulation the Commission may accept that as opting for an 'existing' mechanism. The negotiations may result in a clarification in this respect.

As far as the issue of the assessment of alternative mechanisms is concerned, the Commission considers that such alternative systems have to be as effective as the proposed EU Mechanism. In that respect the deadlines under an alternative system compared to the EU Mechanism shall be a decisive criterion in order to solve legal obstacles within a reasonable timeframe in the interest of the development and implementation of joint projects.

With regard to the powers of the cross-border coordination points, the Commission would like to refer to Article 5(2) and Article 6(1) and (2) of the proposal distinguishing clearly between obligatory tasks and tasks that Member States may entrust to them:

- (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.*

In accordance with the decision taken by a Member State in this respect, Articles 10(1), 11, 13, 15, 16, 17 and 18 of the proposal set out whether the Cross-border Coordination Point or the competent authority acts in the different steps of the procedure.

As regards the intended scope of the proposal, the term ‘joint project’ covers both the notion of infrastructure with an impact in a given cross-border region and of any service of general economic interest provided in a given cross-border region. For services of general economic interest, the Commission considers that they are a sub-group of services of general interest, whether market or non-market based, considered to be in the general interest by the public authorities and thus subjected to certain public-service obligations. They include non-market services (security, justice, compulsory education, healthcare and social services) and services of general economic interest (e.g. energy and communications).

The proposal clearly provides for cases where it is possible for two Member States not to find a legal and/or administrative solution to a given obstacle in the framework of the Mechanism. When this is the case, the reason for not implementing a solution needs to be clearly justified towards the initiator. With regard to direct taxation, existing bilateral agreements may already provide satisfactory solutions. With regard to social security, although this is also a field of national competence, Regulation (EC) No 883/2004² already provides for the establishment of bilateral agreements ‘in the interest of certain persons or categories of persons’.

The proposal is referred to in the general impact assessment {SWD(2018) 282 final} accompanying the cohesion package as a whole. The impact assessment includes quantified information about the loss of gross domestic product and employment linked to the existence of legal and administrative obstacles along internal EU borders. The proposal is the direct result of previous comprehensive work undertaken by the Commission with stakeholders which can be found in the Communication adopted in September 2017 {COM(2017) 534 final} and its accompanying Staff Working Document {SWD(2017) 307 final}.

² Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166 30.4.2004, p. 1); see Article 16 thereof.