

Subsidiarity check of the Commission's proposal for a regulation on a mechanism to resolve legal and administrative obstacles in a cross-border context

Annex 2

Reasoned opinion of the Riksdag

The Riksdag has examined the application of the principle of subsidiarity in the Commission's proposal for a regulation of the European Parliament and the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context (COM(2018) 373).

One of the EU's tasks is to develop and implement its activities in order to strengthen the member states' economic, social and territorial cohesion. The Union should make a particular effort to reduce differences between development levels in the various regions and delays in beneficial effects reaching the least privileged areas. Like the Commission, the Riksdag considers that territorial and cross-border cooperation creates added value for the inhabitants of the EU.

In this context, the Riksdag would also like to point out that a well-functioning internal market is of crucial importance when it comes to strengthening competitiveness, growth and employment throughout the EU, which will benefit companies, employees and consumers. The Interreg programmes have led to improved integration in the EU and increased confidence, greater opportunities for participation, a better environment, better health and increased economic growth as a result. Interreg has also provided support in fully developing the internal market and helped internal border areas to be transformed from fringe areas to areas of growth and opportunity. A smoother functioning internal market is of course also dependent on the fact that obstacles are removed from internal borders. In order to deal with legal obstacles to common cross-border projects concerning infrastructure or services of general economic interest in border regions, the Commission proposes a regulation containing a mechanism for solving legal and administrative problems.

The Riksdag notes that the current proposal is complex and unclear on a number of points. This lack of clarity applies to such aspects as to what extent recourse to the mechanism set up under this regulation to resolve obstacles arising in border areas is voluntary. The Commission states that although member states have today already taken individual, bilateral and multilateral initiatives to solve legal problems at borders, such mechanisms do not exist in all member states and they do not apply to all borders in each particular member state. The Commission states that the most effective instrument to solve legal problems in border areas is legislation by means of a regulation, thus establishing an obligation 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. It is further stated in point 9 that "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". This possibility to choose to set up a mechanism that does not already exist is not included in Article 4 of the proposal, where it is established that a member state shall either choose the mechanism or choose to use existing ways to solve legal problems, or, with regard to a certain border with one or more member states, join an existing effective way set up formally or informally by one or more neighbouring Member States. Consequently, the member states that do not already have mechanisms today to deal with legal problems that can arise in common

cross-border projects have, according to the present wording, no other choice but to introduce the mechanism proposed by the Commission. Furthermore, it is unclear what the existing alternative mechanisms approved by the Commission actually are and whether, in the assessment of the Commission, they are sufficiently effective to be chosen by the member states as an alternative to the mechanism proposed in the regulation.

The Riksdag further considers that the proposal is unclear regarding the powers of cross-border coordination points in relation to national law, administrative structure and legal systems. The proposal lacks a clear definition to distinguish which problems and which legal areas the regulation should cover. Nor is it therefore clear to the Riksdag which aspects of infrastructure projects and services of general economic interest are intended to fall under the scope of the regulation or whether the proposal aims to focus on national differences in, for example, labour law and taxation matters. Here, the Riksdag wishes to recall that labour market policy and taxation policy belong to the national competence of the member states. Since it cannot clearly be ascertained whether the proposal in its present form could potentially encroach on this competence, it cannot be said that the proposal is compatible with the principle of subsidiarity. The Riksdag also notes that there is no thorough impact assessment of the effects of the regulation in terms other than economic terms, which possibly contributes to the lack of clarity in the proposal. In addition to this, the Riksdag considers that the Commission's justification as to why a regulation of problem-solving mechanisms of this kind for cross-border obstacles should be raised to EU level is not fully substantiated, which in itself also contributes to the lack of clarity.

In view of the above, the Riksdag therefore considers that the proposal in its current form is not in compliance with the principle of subsidiarity.