



Brussels, 18 October 2024
(OR. en)

14607/24

LIMITE

COH 61
CADREFIN 151
IA 184
CODEC 1953

**Interinstitutional File:
2018/0198(COD)**

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

No. Cion doc.: 16805/23 (COM(2023) 790 final)

Subject: Amended 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
- Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 12 December 2023, the Commission submitted to the Council and the European Parliament an amended 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 context¹, which aims to provide a legal framework applicable to all Member States to help finding solutions to legal and administrative obstacles that potentially undermine cross-border interaction and the development of cross-border regions.

¹ 16805/23

2. The proposal amends the initial proposal from 28 May 2018, the assessment of which was discontinued by the Working Party on Structural Measures on 10 May 2021, due to legal concerns related to subsidiarity and proportionality raised by the Member States and confirmed by the Council Legal Service in their opinion issued on 2 March 2020².
3. The amended proposal responds to the European Parliament's legislative own-initiative report³ that was approved in plenary on 13 September 2023.
4. The draft Regulation is based on Articles 174 and 175 paragraph 3 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).
5. The Committee of the Regions delivered its opinion on the amended proposal on 17 April 2024⁴.
6. The European Economic and Social Committee delivered its opinion on the amended proposal on 24 April 2024⁵.
7. In the European Parliament, the Committee on Regional Development has the lead responsibility. MEP Sandro GOZI (Renew, FR) was appointed rapporteur. The report on the original proposal was tabled on 29 November 2018 and the European Parliament adopted its negotiating mandate at the plenary session on 14 February 2019. After elections, on 9 October 2019, the newly elected Committee announced in plenary its decision to enter in interinstitutional negotiations. Relative to the amendments brought by the Commission to the original proposal, the European Parliament has not changed its formal position ahead of interinstitutional negotiations.

² 6009/20

³ https://www.europarl.europa.eu/doceo/document/A-9-2023-0252_EN.html

⁴ 9207/24

⁵ 9664/24

II. STATE OF PLAY

8. The Working Party on Structural Measures and Outermost Regions discussed the amended proposal at its meetings on 15 and 26 January 2024, 29 February 2024, 7 and 16 May 2024, 6 and 26 June 2024, 24 September 2024 and 11 October 2024.
9. Building on the work carried out under the Belgian Presidency after a second opinion of the Council Legal Service issued on 8 May 2024⁶, and on the basis of further consultations with delegations, the Hungarian Presidency has proposed a draft compromise and its final version is set out in Annex to this note. Changes compared to the Commission proposal are marked in **bold and underlined** and/or ~~strike through~~.
10. The compromise text reflects the efforts of the Presidency to strike a balance between the different positions of delegations while maintaining the main objectives of the Commission proposal, and is based on the following main elements:
 - a) Exclusion of maritime borders from the scope of the Regulation;
 - b) Absolute voluntary character of the setting up of cross-border coordination points and absolute choice for Member States on the way to solve cross-border obstacles, including the choice of not solving them;
 - c) Exclusion of the possibility for natural persons to be initiators of cross-border files;
 - d) Limitation of the obligation to provide detailed information on each cross-border file exclusively to the Member States that set up cross-border coordination points, and consequent elimination of the requirement to set up national public registers on cross-border files;
 - e) Minimalisation of obligations for Member States not willing to set up cross-border contact points to submitting information on a relevant authority that may be contacted and receive information from a cross-border coordination point of a neighbouring Member State dealing with a cross-border file, and to providing information on the absolutely voluntary follow-up, if any, solely to cross-border obstacles shared by a cross-border coordination point.

⁶ 9345/24

III. CONCLUSIONS

11. The Permanent Representatives Committee is therefore invited to agree on a mandate with regard to the proposed Regulation, as set out in Annex to this note, and to invite the Presidency to conduct negotiations with the European Parliament on the basis of this mandate.
 12. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2023, and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate thus agreed will be made public unless the Permanent Representatives Committee objects.
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Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on facilitating Cross-Border Solutions ~~a mechanism to resolve legal and administrative~~
~~obstacles in a cross-border context~~

- (1) “Article 175, third paragraph, of the Treaty on the Functioning of the European Union (‘the Treaty’) provides for specific actions to be decided upon outside the Funds¹ which are the subject of the first paragraph of that Article, in order to achieve the objective of social and economic cohesion envisaged by the Treaty. In that context, territorial cooperation also contributes to the goals set out in that Article. To that end, it is appropriate to adopt the measures necessary to improve the implementation conditions for actions of territorial cooperation.
- (2) Article 174, third paragraph, of the Treaty recognises the challenges faced by cross-border regions and provides that the Union should pay particular attention to those regions, when developing and pursuing actions leading to the strengthening of the Union’s economic, social and territorial cohesion.

¹ The European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund, the Just Transition Fund (JTF), the European Maritime, Fisheries and Aquaculture Fund (EMFAF), the Asylum, Migration and Integration Fund (AMIF), the Internal Security Fund (ISF) and the Instrument for Financial Support for Border Management and Visa Policy (BMVI); See Article 1 of Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, (OJ L 231, 30.6.2021, p. 159, ELI: <http://data.europa.eu/eli/reg/2021/1060/oj>).

- (3) Commission communication ‘Boosting growth and cohesion in EU border regions’² acknowledged the progress made so far in transforming such regions from mainly peripheral areas into areas of growth and opportunities, but at the same time highlighted the persisting legal and other obstacles in those regions, especially obstacles related to health services, labour regulation, taxes, business development, and obstacles linked to differences in administrative cultures and national legal frameworks. Neither European Territorial Cooperation funding, provided in particular in the context of the ‘Interreg’ programmes³, nor the institutional support to cooperation by the European groupings of territorial cooperation (‘EGTCs’) established by Regulation (EC) No 1082/2006 of the European Parliament and of the Council⁴ or by the initiative b-solutions launched in 2018 by the Commission⁵ are sufficient to address the resolution of some of the administrative and legal obstacles which hamper effective cooperation.
- (4) Cross-border regions risk being disproportionately affected at times of crisis. During the COVID-19 pandemic, the economic impact for cross-border regions of border-related measures taken by Member States was more than double the average impact on all EU regions. This experience reinforces the need for providing means for addressing cross-border obstacles.

² 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.

³ Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94, ELI: <http://data.europa.eu/eli/reg/2021/1059/oj>).

⁴ 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 - ELI: <http://data.europa.eu/eli/reg/2006/1082/oj>).

⁵ 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.

- (4a) Barriers and discrepancies of legal and administrative nature arising at the internal borders of the EU, and that potentially undermine cross-border interaction and the development of cross-border regions, are difficult for the Member States alone to address, therefore finding solutions to these obstacles should be facilitated by piloting a clear and comprehensive framework at Union level that allows for Member States to cooperate and co-ordinate their efforts. Recourse to applying the framework should therefore be optional for Member States not wishing to apply it.**
- (4b) For those Member States, which decide to use the framework provided for in this Regulation, common standards should apply.**
- (5) Even though several legal tools to resolve cross-border obstacles already exist at inter-governmental, national, regional, and local level in certain regions of the Union, they do not cover all border regions in the Union or do not address necessarily in a consistent manner issues related to the development and strengthening of territorial cohesion. **This Regulation complements the existing tools with an additional framework established by Union law to including namely the Cross-Border Facilitation Tool is therefore needed.**
- (6) In order to **facilitate set up the administrative structure to adequately addressing** requests concerning cross-border obstacles, ~~each~~ Member States **that have chosen to apply the framework** should establish one or more cross-border coordination points, **covering one or more border regions of the Member State,** responsible for receiving and assessing applications **files** on cross-border obstacles **and informing the initiators.** **The cross-border coordination points** should liaise with the Commission and support its role of coordination. **Member States should decide in accordance with their own legal, administrative and institutional framework whether the cross-border coordination point should be entrusted with additional tasks including the assessment of cross-border files or it will be for a different body (“the competent authority”).**

(6a) Where a Member State does not set up any cross-border coordination point, it should submit information to the Commission on the relevant authority that may be contacted and receive information from a cross-border coordination point of a neighbouring Member State dealing with a cross-border file.

Being contacted by a cross-border coordination point of a neighbouring Member State dealing with a cross-border file or receiving information from it should not entail any obligation for the relevant authority under this Regulation. In particular, that authority should not be required to examine the file or give an answer to the initiator.

(6b) With the view to support the setting-up of cross-border coordination points, Member States may decide to allocate European Regional Development Fund resources under Interreg programmes pursuant to Article 14, paragraph 4, point b) of Regulation (EU) 2021/1059, and European Regional Development Fund or Cohesion Fund resources, as appropriate, under the Investment for jobs and growth goal pursuant to Article 3, paragraph 4, point c) of Regulation (EU) 2021/1058.

(6c) The application of this Regulation for Member States should be without prejudice to equivalent procedures set out under national law or international law between Member States.

(7) ~~Despite~~ **Due to** the fact that maritime border regions are different in nature due to more limited possibilities for cross-border interactions and the use of cross-border public services, this Regulation should ~~also~~ **not** apply to maritime borders. **Member States, which have exclusively maritime borders with other Member States, should not be required to appoint a cross-border coordination point nor submit information to the Commission on the relevant authority or any information required by the Annex.**

- (8) At Union level there are several non-judicial tools to monitor and enforce the respect of Union law, in particular those linked to the single market, such as SOLVIT⁶. This Regulation should not affect such existing tools. The **framework provided for** ~~additional tool created~~ will only apply to cross-border obstacles generated under national law, including the correct, but diverging application of Union law potentially resulting in the unintentional hindering of the planning or implementation of cross-border public services and items of infrastructure. It should not apply to files involving a potential breach of Union law ~~governing the internal market~~ by a public authority in another Member State. This Regulation is also without prejudice to the coordination mechanisms established for social security and taxation.
- (9) In order to identify possible cross-border obstacles that could be covered by this Regulation, it is necessary to define the situations which qualify as cross-border interactions. To that end, this Regulation should apply to infrastructure for cross-border activities and to cross-border public services. Being provided on a long-term basis, those ‘cross-border public services’ should aim to generate benefits for the general public or a specific target group in the border region in which the service is provided, thereby improving living conditions and territorial cohesion in those regions. Second, items of infrastructure needed for cross-border activities may be impacted by border obstacles, such as different technical standards for buildings or vehicles, including for related equipment. A cross-border file should be submitted by an initiator, that is a public law or private law entity ~~or a natural person only and insofar as he or she has a legitimate interest in a cross-border public service or certain items of infrastructure.~~
- (10) In order to ~~establish the adequate administrative capacity at national level to~~ **facilitate dealing** with the cross-border obstacle applications and to provide for a network of national bodies able to liaise with each other for the implementation of this Regulation, Member States should **be allowed to** set up one or more cross-border coordination points at national or regional level. Two or more neighbouring Member States should also be allowed to identify existing joint bodies as the cross-border coordination point on a given border or empower an existing joint authority or body with the additional tasks of the cross-border coordination point for **some or** all their borders.

⁶ Commission Recommendation 2013/461/EU of 17 September 2013 (OJ L 249, 19.9.2013, p. 10, ELI: <http://data.europa.eu/eli/reco/2013/461/oj>).

(10a) Member States may choose to set up cross-border coordination points as a separate authority, public law body or permanent entity, as part of an existing authority, public law body or permanent entity, in particular by entrusting them with additional tasks of a cross-border point, including in cases where such public law bodies or permanent entities do not have legal personality. Such authorities, bodies and entities may be in particular cross-border cooperation committees or commissions, established in the framework of bilateral cooperation or friendship treaties; intergovernmental commissions for cross-border cooperation or their secretariats; councils, secretariats or general-secretariats, established in the framework of multinational agreements for cooperation; national coordination offices, national centres or contact points, or similar structures established in the framework of other sectoral European policies; Interreg programme authorities and European Groupings of Territorial Cooperation.

- (11) In order to establish a framework for the treatment of cross-border obstacle applications common to all cross-border coordination points, it is necessary to define the tasks which each cross-border coordination point should carry out. Cross-border coordination points should act as ‘one-stop shops’ for the initiators and should be their privileged contact point. Member States should ensure that contact information for cross-border coordination points is publicly available and ensure its visibility and accessibility. ~~Where there is more than one cross-border coordination point in a Member State, they shall clearly identify a single contact point for each initiator.~~ In order to allow for a follow-up of the outcome of cross-border applications and to increase transparency on the solution of cross-border obstacles, cross-border coordination points should also be responsible for **submitting information to the Commission** ~~setting up and maintaining a public register covering all cross-border files submitted by initiators located in that Member State.~~ Moreover, it is necessary that this Regulation sets out obligations with regard to coordination, cooperation and exchange of information between the different cross-border coordination points in one Member State and between the cross-border coordination points of neighbouring Member States.

- (12) **An initiator may submit a cross-border file only if the obstacle pertains to a border for which at least one cross-border coordination point has been established.** A given initiator should submit its cross-border file only once. However, in case a different initiator in another Member State also submits a mirroring cross-border file in that other Member State, the cross-border coordination points of those Member States should avoid parallel files by organising their coordination accordingly.
- (13) The different layers of the applicable national law may make it difficult to identify the specific provision which constitutes a cross-border obstacle. Also based on the experience with b-solutions, the initiator should therefore only describe the situation and the problem to be resolved.
- (14) In order to provide for a procedural framework granting ~~at the same time~~ legal certainty to the initiator of a cross-border file, the cross-border coordination point should assess cross-border files ~~and a preliminary~~ and a ~~final~~ reply should be given to the initiator within reasonable deadlines, which should in principle be those established in national law. **It is appropriate to provide for such time limits where the national legislation does not provide for a standard deadline for replies to an equivalent request submitted to the administration. Such time limits should start from the date of reception of a cross-border file or a revised cross-border file, including in cases where a file is received following a transfer from another cross-border contact point or competent authority.** ~~Where the initiator has not identified the cross-border obstacles, the competent authorities or public-law bodies should do so.~~
- (14a)** The analysis of a cross-border file could conclude that there is actually no cross-border obstacle, ~~because the description of the alleged obstacle is based on insufficient information, on misinterpretation of the applicable legal or administrative provisions, or because legal or administrative provisions already cover the necessary requirements to address the obstacle.~~ In that **event** case, ~~the cross-border obstacle should be considered as resolved and the cross-border file should be closed.~~

(14b) Once the existence of a cross-border obstacle is confirmed, Member States should remain free to decide what would be the appropriate tool to address the situation among those available in the cross-border region concerned. **Member States may rely for that purpose on any existing international agreement or other procedures existing in that Member State. Where that Member State considers that the available instruments do not enable resolving that obstacle, it may rely on an ad hoc solution created to that end. It may do so either individually or, if necessary and agreed, jointly with the neighbouring Member State** relying in the first instance on already existing mechanisms, where appropriate, to resolve the obstacle. Where Member States decide not to resolve cross-border obstacles, they should duly provide the reasons and indicate possible options of legal redress, **including in particular**, where the Member State concludes that the obstacle identified does not fall within the scope of this Regulation.

(15) Where the competent authority has not found an existing appropriate tool **or has not created an ad hoc mechanism**, it may ~~select~~ use the Cross-Border Facilitation Tool ~~or set out the reasons why it decides not to resolve the cross-border obstacle~~. As the outcome of the procedure might slightly differ depending on the nature of the possible cross-border legal obstacle, –administrative or legislative, it is necessary to provide for such particularities under the Cross-Border Facilitation Tool.

(16) In order to provide an effective procedural structure to deal with cross-border obstacles files, this Regulation should set out the essential procedural steps, both for files where the obstacle is of an administrative and where it is of a legislative nature. It should also be clarified that the different legal systems in neighbouring Member States may result in the cross-border obstacles qualifying as administrative provision in one Member State, but as legal provision in the other and vice-versa. Each Member State should therefore apply the appropriate procedure. Neighbouring Member States should coordinate their respective procedures as close as possible. Where a final position is taken on a file, the reasons thereof should be communicated to the initiator together with the decision.

(16a) This Regulation does not imply for the Member States any obligation to solve a cross-border obstacle.

- (17) In order to ensure the monitoring of the application of this Regulation at Union level and to provide support to Member States, also in terms of capacity building, the Commission should be entrusted with the relevant tasks to achieve those goals. The ~~coordination point~~ **Commission** at EU level should, in particular, support the cross-border coordination points by promoting the exchange of experiences between those coordination points. That support may also consist in technical assistance-based tools like b-solutions.
- (18) In order to allow for evidence-based policymaking, there should be **a review** reporting on the implementation of this Regulation. ~~That report should address the main evaluation questions including effectiveness, efficiency, relevance, European added value, scope for simplification and sustainability and necessity for further action at Union level. The~~ **submitted by the** Commission ~~should submit that report~~ to the European Parliament, the Council and, pursuant to Article 307, first paragraph of the Treaty, to the Committee of the Regions and the European Economic and Social Committee. In order to ensure a broad evidence base for the use of this Regulation and of the Cross-Border Facilitation Tool, the report should be submitted five years after the entry into force of this Regulation.
- (19) This Regulation respects the fundamental rights, observes the principles recognised by the Charter of Fundamental Rights of the European Union and has no negative impact on any Fundamental Right. Due to its aim of removing legal obstacles in a cross-border context, the Regulation may foster the right to access to services of general economic interest (Article 36) and the freedom to conduct business (Article 16). The wide range of that kind of services may also foster the access to health care (Article 35). In a more general way, as it seems very likely that cross-border public transport services will benefit from the Cross-Border Facilitation Tool, the freedom of movement and of residence (Article 45) may be positively impacted by this Regulation.

- (20) 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. Experience shows that Member States have undertaken individual, bilateral or even multilateral initiatives to resolve legal cross-border obstacles. However, those tools do not exist in all Member States or not for all borders of a given Member State. 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, due to the necessary involvement of at least two neighbouring Member States, be better achieved at Union level. Further action by the Union legislator is therefore needed.
- (21) In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on the European Union, the content and form of Union action should not exceed what is necessary to achieve the objectives of the Treaties. The use of the Cross-Border Facilitation Tool under this Regulation is optional for each Member State. A Member State should decide, on a specific border with one or more neighbouring Member States, to resolve cross-border obstacles through existing tools it has set up at national level or with one or more neighbouring Member States. This Regulation does therefore not go beyond what is necessary in order to **facilitate cooperation in** achieve its cross-border regions, for which Member States have no efficient tool to resolve cross-border obstacles in place.”

CHAPTER I

General provisions

Article 1

Subject matter

1. This Regulation establishes a **framework procedure** to facilitate the **identification and** resolution of cross-border obstacles that hamper the establishment and functioning of any item of infrastructure necessary for public or private cross-border activities or of any cross-border public service provided in a given cross-border region and provided it fosters economic, social and territorial cohesion in the cross-border region (the ‘Cross-Border Facilitation Tool’).

1a. That framework shall provide for the possibility to initiate a procedure with regard to a cross-border obstacle in a Member State which decided to set up a cross-border coordination point in accordance with this Regulation.

2. This Regulation also lays down rules on:

- (a) the organisation and tasks of cross-border coordination points in the Member States;
- (b) the coordinating tasks of the Commission.

Article 2

Scope

1. This Regulation applies to cross-border obstacles in land ~~or maritime~~ border regions of neighbouring Member States.

1a. This Regulation shall not apply to cross-border obstacles in border regions between Member States and third countries.

2. This Regulation shall not affect any other Union legal acts, in particular those applicable to the non-judicial resolution of legal issues arising from cross-border obstacles and to the correct interpretation or implementation of Union law. It shall be without prejudice to the coordination mechanisms established for social security and taxation.

3. Member States may, without prejudice to the respective competencies of the Union and its Member States, provide in their national law for procedures for solving cross-border obstacles, conclude new international agreements and modify existing agreements laying down such procedures.

Member States may also create ad hoc mechanisms.

Article 3

Definitions

1. For the purpose of this Regulation, the following definitions shall apply:
- (1) ‘cross-border interaction’ means:
 - (a) any item of infrastructure necessary for public or private cross-border activities;
 - (b) the establishment, the functioning or the provision of any cross-border public service in a cross-border region;
 - (2) ‘cross-border obstacle’ means any legislative or administrative provision or practice by a public authority in a Member State that potentially negatively affects a cross-border interaction and thus the development of a cross-border region and which does not involve a potential breach of Union law governing the internal market;
 - (3) ‘competent authority’ means a body at national, regional or local level that has the power to adopt legally binding and enforceable acts **in a Member State that establishes one or more cross-border coordination points**;
 - (4) ‘cross-border file’ means the document prepared by one or more initiators to be submitted to a cross-border coordination point;
 - (5) ‘cross-border public service’ means an activity carried out in the public interest to provide a service, or address joint problems or development potentials of border regions located on different sides of one or more neighbouring Member States’ borders, provided it fosters economic, social and territorial cohesion in the cross-border territory;
 - (6) ‘initiator’ means any private or public entity involved in the provision, operation, establishment or functioning of any cross-border public service or infrastructure **on a border for which at least one cross-border coordination point is established** ~~or any natural person having a legitimate interest in the resolution of a cross-border obstacle.~~

(7) ‘relevant authority’ means any authority, public law body or permanent entity within a Member State without any cross-border coordination point, which a cross-border coordination point from a neighbouring Member State may contact with regards to a cross-border file.

2. For the purpose of this Regulation, the reference to ‘the competent authority’ shall also cover situations where more than one competent authority within the same Member State is competent or has to be consulted.
3. For the purpose of this Regulation, the term ‘cross-border obstacle’ shall cover one or more cross-border obstacles linked to a cross-border file.

CHAPTER II

Cross-border coordination points and relevant authorities

Article 4

Setting-up of cross-border coordination points

1. ~~Each~~ Member States ~~shall~~ **may** establish one or more cross-border coordination points in accordance with ~~their~~^{its} institutional and legal framework, at national or regional level or both, in accordance with paragraphs **2 and 3**.

Where a Member State decides to establish one or more cross-border coordination points, it shall not be required to establish a cross-border coordination point for all cross-border regions within its territory.

2. Two or more neighbouring Member States may decide to establish a joint cross-border coordination point competent for one or more of the respective cross-border regions.
3. Each cross-border coordination point **may** ~~shall~~ be set up in one of the following ways:
 - (a) as a separate authority or public law body;

- (b) as part of an existing authority, **an existing public law body or permanent entity** of an existing public law body, including by entrusting an existing authority, **an existing public law body** or **permanent entity** public law body with the additional tasks of the cross-border coordination point.
4. Member States shall ensure that, within two months after the decision establishing the cross-border coordination point, its contact details and information relating to its tasks are available on the website **of the authority, public body or permanent entity that has been set up as cross-border coordination point and on the websites of the relevant** Interreg **A** programmes referred to in Article 36(2) of Regulation (EU) 2021/1059, **and that at the same time this information is electronically transmitted to the Commission in accordance with the Annex to this Regulation and kept up to date.** Member States shall ensure visibility and accessibility of the cross-border coordination point.

Article 5

Main tasks of the cross-border coordination points

1. Member States shall define, either individually in the case referred to in Article 4(1) or jointly in the case referred to in Article 4(2), the tasks that each cross-border coordination point shall carry out and the tasks which shall be conferred to the competent authority.
2. Member States shall decide whether cross-border coordination points can act upon a cross-border file on their own behalf or whether they are only responsible for communicating with initiators on behalf of the competent authority.
3. ~~The cross-border coordination point shall constitute the only contact point of the initiator, depending on the organisation of the contact points put in place by the Member States, in the following way:~~
 - ~~(a) each national cross-border coordination point for all cross-border files submitted by an initiator located in the territory of the respective Member State;~~
 - ~~(b) each regional cross-border coordination point for cross-border files submitted by an initiator located in the border region or regions of the respective Member State;~~

- (c) ~~each joint cross-border coordination point for cross-border files submitted by an initiator located in one of the border regions concerned.~~

The cross-border coordination point that was referred to by the initiator, be it national, regional or joint, shall constitute the only contact point of the initiator for the assessment of the cross-border file under Chapter III.

4. In addition to their tasks referred to in Articles 8, 10 and 11, cross-border coordination points shall ~~carry out the following tasks:~~

- (a) ~~setting up and maintaining a public register covering all cross-border files submitted by initiators located in that Member State;~~
- (b) ~~liaising~~ with the Commission and supporting the Commission's coordination tasks referred to in Article 12, by providing **at least once a year** the necessary information **about each cross-border file they have processed**, including the NUTS classification for each file. **The information provided to the Commission shall include all the elements set out in the Annex.**

~~Where several cross-border coordination points exist in a Member State, one cross-border coordination ('the main cross-border coordination point') shall carry out the tasks set out in points (a) and (b).~~

5. ~~Member States shall ensure that the register under paragraph 4 remains available to the public in open machine-readable formats as set out in Article 5(1) of Directive (EU) 2019/1024 of the European Parliament and of the Council⁷, which allows data to be sorted, searched, extracted, compared and used, and is updated at least three times a year. The cross-border coordination point may integrate open access information or link the register with the single website portal referred to in Article 46, point (b), of Regulation (EU) 2021/1060, the website referred to in Article 49(1) of that Regulation, or the website referred to in Article 36(2) of Regulation (EU) 2021/1059.~~

⁷ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56, ELI : <http://data.europa.eu/eli/dir/2019/1024/oj>).

- ~~6. In a Member State with more than one cross-border coordination point, the cross-border coordination points shall transmit the necessary information to the main cross-border coordination point in order to enable it to implement its tasks under paragraphs 4 and 5.~~
- ~~7. Where two or more neighbouring Member States have decided to set up a joint cross-border coordination point, that point shall transmit the necessary information to the main cross-border coordination points, if any, of the respective Member States.~~

Article 5a

Information on the relevant authority

- 1. Where a Member State has not established one or more cross-border coordination points, it shall submit information on the relevant authority to the Commission in accordance with Article 12(2) and the Annex.**
- 2. This provision applies only to Member States which have land border regions in accordance with Article 2(1).**

CHAPTER III

Cross-border files

Article 6

Preparation and submission of cross-border files

- The initiator shall prepare a cross-border file in accordance with Article 7.
- The initiator shall submit the cross-border file to the cross-border coordination point **in one of the Member States in the territory of which the geographical area concerned by the alleged obstacle is located.** ~~of the Member State where the initiator is located or has its registered office.~~

~~(a) where the initiator is located or has its registered office in one of the Member States concerned by that obstacle, and, it shall submit the file to the cross-border coordination point of that Member State;~~

(b) where the initiator is not located or does not have its registered office in one of the Member States concerned by that obstacle, it shall submit the file to the cross-border coordination point in one of the Member States in the territory of which the geographical area concerned by the alleged obstacle is located;

3. Where cross-border files on the same cross-border obstacle are initiated in two or more neighbouring Member States, their respective ~~coordination~~ cross-border **coordination** points shall liaise with each other to ~~clear~~ **determine** which of ~~one~~ **them shall** deal ~~primarily~~ with the file. **The other cross-border coordination points shall transfer the file accordingly.**

Article 7

Content of cross-border files

1. The cross-border file shall include at least the following elements:
 - (a) a description of the cross-border interaction, its context and the problem arising from a cross-border obstacle which should be ~~resolved~~;
 - (b) a justification for the need to ~~resolve~~ the cross-border obstacle;
 - (c) where available, a description of the negative impact of the cross-border obstacle on the development of the border region;
 - (d) the geographical area concerned;
 - (e) where available and relevant, the expected necessary duration of the application of a derogation from or exception to the cross-border obstacle or, where duly justified, its removal.
2. The initiator may also identify the cross-border obstacle and, if possible, suggest the text for a derogation from or exception to the cross-border obstacle or for an ad hoc legal ~~resolution~~.
3. The geographical area referred to in paragraph 1, point (d), shall be limited to the minimum necessary for the effective ~~resolution~~ of a cross-border file.

Preliminary assessment steps

1. The cross-border coordination point or the competent authority shall assess each cross-border file submitted in accordance with Articles 6 and 7 and identify the cross-border obstacle or cross-border obstacles.
2. Within a deadline of two months from the submission of the file, the cross-border coordination point or the competent authority may request the initiator to clarify the cross-border file or to submit additional specific information. ~~Such a request shall set out why and in which aspect the cross-border file is not considered sufficient to be examined.~~
 - 2a.** If **following the procedure referred to in paragraphs 1 and 2** the ~~revised~~ cross-border file does not **contain all the necessary elements referred to in Article 7(1)** ~~address the aspects considered insufficient~~, the cross-border coordination point or the competent authority may end the procedure and **the cross-border coordination point** shall inform the initiator accordingly setting out the reasons.
3. Where after assessing a cross-border file, the cross-border coordination point or the competent authority concludes that an alleged cross-border obstacle does not exist, the cross-border coordination point **or the competent authority** may end the procedure and **the cross-border coordination point** shall inform the initiator accordingly setting out the reasons.
 - 3a.** **Where, after assessing a cross-border file, the cross-border coordination point or the competent authority concludes that the alleged cross-border obstacle falls within the competence of another Member State, it shall contact the responsible cross-border coordination point in that other Member State or, in the absence of that, its relevant authority.**

Where that cross-border coordination point or relevant authority agrees, the cross-border coordination point shall transfer all relevant information to it, and immediately inform the initiator accordingly.

4. Where after assessing a cross-border file, the cross-border coordination point or the competent authority concludes that the alleged cross-border obstacle exists, it may **contact either a cross-border coordination point or, in the absence of that, the relevant authority.**

4a. In such case, the cross-border coordination point in the Member State concerned by the obstacle may proceed in one of the following ways:

(a) at any step of the procedure choose not to resolve it and shall inform the initiator accordingly setting out the reasons.

~~5. Before concluding the assessment, the cross-border coordination point or the competent authority shall further assess whether for each alleged cross-border obstacle, it is **where** possible, to **rely** on an existing international cooperation agreement in force, be it bilateral or multilateral, multi sectoral or sector specific providing an own mechanism for the resolution of cross-border obstacles between the Member States concerned by that obstacle or those obstacles. In the event such an international agreement exists **The** resolution of **the one or more** cross-border obstacles, including the actors involved and the procedure to be followed, in particular, for liaising and cooperating with the neighbouring Member State, shall be governed exclusively by the provisions of that agreement.~~

(b) where possible, rely on other existing procedures in the Member States.

(c) create ad hoc mechanisms.

(d) 6. Where the Member State chooses to resolve the obstacle and in the absence of any international agreement of the kind mentioned in paragraph 5, or where the available international agreements do not seem to satisfactorily contribute to the resolution of the obstacle set out in the cross-border file, the cross-border coordination point or the competent authority may apply the Cross-Border Facilitation Tool, **according to Article 10, either individually or, if necessary and agreed, jointly with the neighbouring Member State.**

(e) choose not to solve the obstacle and end the procedure.

Article 9

Information to the initiator

1. ~~After the receipt of a cross-border file or a revised cross-border file, the~~ The cross-border coordination point ~~or the competent authority~~ shall inform the initiator in writing of ~~the~~ **any** preliminary assessment steps taken in accordance with Article 8, within the standard deadline provided for in the national legislation for replies to an equivalent request submitted to the administration.
2. Where no such deadline is provided for in the national legislation, the following deadlines shall apply:
 - (a) ~~three~~ **four** months **from the date of reception of the cross-border file by the cross-border point** for the preliminary assessment steps referred to in Article 8(2) ~~(2a)~~, second subparagraph;
 - (b) ~~six~~ **seven** months **from the date of reception of the cross-border file by the cross-border point** for the preliminary assessment steps referred to in Article 8(3), **(3a)** and (4).
3. The information provided under paragraph 1 shall also indicate:
 - (a) the preliminary assessment steps that have been taken, their justification and conclusions, if already available;
 - (b) the ways and procedures of legal redress provided for in the national legislation against those preliminary assessment steps, if any.

The legal redress shall be limited to verifying the respect of procedural rights referred to in this regulation.

4. The first contact with the initiator under Article 8(2), first subparagraph, may also state that more time is needed for legal analysis or for consultations inside the Member State or for coordination with the neighbouring Member State.

CHAPTER IV

The Cross-Border Facilitation Tool

Article 10

Procedure

1. Where the cross-border coordination point or the competent authority has decided pursuant to Article 8(6) to apply the Cross-Border Facilitation Tool, it shall apply the procedure provided for in this Article.
2. After the cross-border coordination point or the competent authority has identified the cross-border obstacle in its national legal system, it shall inform the initiator about:
 - (a) the cross-border obstacle identified;
 - (b) the nature of the provision at the origin of the cross-border obstacle which would need to be amended to solve the obstacle;
 - (c) the next steps leading to the removal or not of the cross-border obstacle and which of the procedures under paragraphs 4 or 5 of this Article should apply.
3. After the assessment of the cross-border file and the identification of the cross-border obstacle, the ~~competent~~ cross-border coordination point shall **share the** ~~exchange~~ relevant information concerning the cross-border obstacle with the ~~competent~~ cross-border coordination point **or, in the absence of that, the relevant authority** in the neighbouring Member State. The cross-border coordination points shall endeavour to avoid parallel procedures concerning the same cross-border obstacle.
- 4.5. Where the cross-border obstacle consists in an administrative provision or practice, not requiring the change of a legal provision, the cross-border coordination point shall contact the competent authority responsible for the administrative provision to check whether an amendment of that administrative provision or practice is sufficient to ~~resolve~~ resolve the cross-border obstacle and whether the authority is willing to change it accordingly. The initiator shall be informed in writing within eight months as of the submission of the cross-border file.

- 5.6. Where the cross-border obstacle consists in a legal provision, the cross-border coordination point shall contact the competent authority to check whether an amendment, including an exception to or a derogation from the applicable legal provision would resolve the cross-border obstacle and whether the competent authority will take the necessary steps to trigger a legislative procedure in accordance with the institutional and legal framework. The initiator shall be informed in writing within eight months as of the submission of the cross-border file.
6. Where a cross-border file has been submitted to the cross-border coordination point of two or more neighbouring Member States, each shall decide on the type of procedure to follow in its Member State **and liaise with each other**.
7. Where a legal analysis, consultations inside the Member State, coordination with the neighbouring Member State, or **where** the competent **or relevant** authority of the neighbouring Member State is triggering a change of an administrative provision, or launching a legislative procedure prevents the cross-border coordination point to reply to the initiator within eight months pursuant to paragraphs 4 and 5, the initiator shall be informed in writing of the reason for the delay and timeline of the reply.

Article 11

Final steps to solve address the cross-border obstacle

1. The cross-border coordination point or the competent authority shall, on the basis of its assessment carried out pursuant to Article 8 and in accordance with the information received under Article 10(3), inform the initiator in writing about the outcome of the file, namely:
- (a) the outcome of a procedure under Article 10(4), including where relevant, the amendment of any administrative provision;
 - (b) the outcome of a procedure under Article 10(5) including where relevant, the launch of a legislative procedure or the amendment of any legal provision;
 - (c) that the cross-border obstacle will not be addressed;
 - (d) the reasons underpinning the position adopted under points (a), (b) or (c);

- (e) the deadline for legal redress under national law if any. In the absence of any deadline under national law, the initiator shall be granted six months to request a review of the decision.

The legal redress shall be limited to verifying the respect of procedural rights referred to in this regulation.

2. Where the cross-border coordination point or the competent authority has decided to solve the cross-border obstacle by way of the procedure provided for in Article 10(5), it shall:
 - (a) inform the cross-border coordination point of the neighbouring Member State;
 - (b) inform the initiator of the most important steps of the amendment of the legal provision, including where relevant, of the legislative procedure launched to proceed to a legislative amendment solving the cross-border obstacle or the final decision dismissing the procedure.

The cross-border coordination point ~~The initiator~~ should equally be informed **the initiator** where the competent authorities of the neighbouring Member State have also launched the amendment of a legal provision.

3. Where the Member State concerned and the neighbouring Member State conclude that each of them is willing to launch an own legislative procedure or a change in their administrative provisions or practices, they shall do so in close coordination, in accordance with their respective institutional and legal framework. That coordination may cover the timing of the procedures and may lead to the establishment of a joint committee with representatives of the **competent authorities and the** cross-border coordination points, **where relevant**.

CHAPTER V

Final provisions

Article 12

Coordination tasks of the Commission

- 1.** The Commission shall fulfil the following coordination tasks:
 - (a) liaise with the cross-border coordination points;
 - (b) support the enhancement of the institutional capacity in Member States necessary to implement this Regulation efficiently;
 - (c) promote the exchange of experience between Member States and in particular between the cross-border coordination points;
 - (d) publish and keep an updated list of all national and regional cross-border coordination points;
 - (e) set up and maintain a **single EU** public register of cross-border files.

- 2.** **Member States shall support the Commission's coordination tasks referred to in point c) either in accordance with article 5(4) or through submitting annually information in accordance with the Annex.**

This provision applies only to Member States who have land border regions as referred to in Article 2(1).

Article 13

Information to the Commission and eReview ~~Monitoring and reporting~~

- 1- By dd mm yyyy [i.e. the 1st of the month following the entry into force of this Regulation + ~~six months; to be filled in by the Publication Office~~], each Member State shall inform the Commission of the establishment of its cross-border coordination point or points and about ~~the contact data thereof~~.
- 2- By dd mm yyyy [i.e. the **date of applicability**1st of the month following the entry into ~~force~~ of this Regulation + five years; to be filled in by the Publication Office], the Commission shall **review the implementation** ~~carry out an evaluation~~ of the present Regulation **and shall submit a** ~~and~~ report to the European Parliament, the Council, the Committee of the Regions and the European Economic and Social Committee.

Article 14

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*.²²

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

Done at Strasbourg,

For the European Parliament

For the Council

The President

The President

Annex – Electronic data exchange between the Member States and the Commission

The information requested in this Annex is provided in one of the official languages of the institutions of the Union.

SECTION 1 – Information provided by Member States with cross-border coordination points

List of cross-border coordination points

The information provided by the Member States on each cross-border coordination point in the table below is included in the list of cross-border coordination points published online by the Commission.

Name of the cross-border coordination point	Cross-border coordination point code	Postal address	Web address ¹	Phone number	Geographical coverage ²	Date of nomination/creation	Legal reference of nomination/creation	Main tasks ³

Reference: Article 4(4) and Article 12(1) point (d) of Regulation (EU) XXXX/XXXX

The information provided by the Member States for each cross-border coordination point in the table below enables the Commission to carry out its tasks of coordination, capacity building and knowledge-sharing. This information is not made public.

Contact person	Position	Email address	Phone number

Reference: Article 4(4) of Regulation (EU) XXXX/XXXX

¹ Pursuant to Article 5(4) of this Regulation

² In case of a joint cross-border coordination point pursuant to Article 4(2), this should be specified.

³ Pursuant to Article 5(1) and (2).

Information to feed the EU public register of cross-border files

The information provided by the cross-border coordination points concerning each cross-border file in the table below is included in the single public register of cross-border files published online by the Commission. This information enables the Commission to carry out its coordination, capacity building and knowledge-sharing tasks.

File code	
Title of the file	[200] ⁴
Date of reception by the cross-border coordination point	
Communication dates to the Commission	a) first submission; b) further submissions
Description of the obstacle	[5000]
Name of the initiator	
Geographical area of the obstacle ⁵	
Situation of the file	<i>1 – Not yet assessed; 2 – Pending further information from the initiator⁶ or closed due to a lack of sufficient information from the initiator⁷; 3 – No obstacle or out of the scope of this Regulation; 4 – File closed for being duplicated⁸; 5 – Assessed, further action to be decided; 6 – File transferred to another cross-border coordination point or a relevant authority⁹; 7 – Process for eventual solution triggered with the Cross-Border Facilitation Tool; 8 – Process for eventual solution triggered with another instrument¹⁰; 9 – Obstacle solved (partially or completely)¹¹; 10 – Decision not to solve the obstacle.</i>

⁴ Numbers in square brackets refer to the maximum number of characters without spaces.

⁵ NUTS 3 codes of the territorial unit(s) concerned by the obstacle. Should the obstacle concern only part of one or more territorial unit(s), NUTS 3 codes can be replaced by the LAU codes of those parts.

⁶ Pursuant to Article 8(2).

⁷ Pursuant to Article 8(2a).

⁸ If applicable, indicate the file code of the file that remains open in case of similar files.

File last modified on (date)	
Description of the follow-up	[5.000] <i>if applicable</i>
Legal reference of solution implemented ¹²	<i>if applicable</i>
Webpage for the file	<i>If applicable</i>
Publications on the file	<i>If applicable</i>

Reference: Article 12(1) point (e) and Article 5(4) of Regulation (EU) XXXX/XXXX

The information provided by the Member States for each cross-border coordination file in the table below is optional. It enables the Commission to carry out its tasks of capacity building and knowledge-sharing. This information is only processed with the free and explicit permission of the person and should not be made public.

Contact person of the initiator	Position	Email address

Reference: Article 12(1) point (e) and Article 5(4) of Regulation (EU) XXXX/XXXX

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- ⁹ If applicable, indicate the file code of the file that remains open in case of similar files.
- ¹⁰ If applicable, indicate the nature of instrument envisaged or used pursuant to points a), b) and c) of Article 8(4) of this Regulation.
- ¹¹ If applicable, indicate whether the obstacle has been partially or completely solved.
- ¹² If applicable, the reference of the legal or administrative act by which a solution (even partial) has been implemented.

SECTION 2 – Information provided by Member States without cross-border coordination points

List of relevant authorities

The information provided by the Member States on each relevant authority in the table below is included in the list of relevant authorities published online by the Commission.

Name of the relevant authority	Postal address	Phone number

Reference: Article 5a(1) of Regulation (EU) XXXX/XXXX

Information from Member States without any cross-border coordination point, submitted by 31 December yearly

Summary of the main steps taken over the past year in relation to the information received from one or more cross-border coordination points on cross-border obstacles identified, with an indication on the eventual actions taken to solve them and any other relevant issues.	[8 000] ¹³
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Reference: Article 12(1) point (e) of Regulation (EU) XXXX/XXXX

¹³ Numbers in square brackets refer to the maximum number of characters without spaces.