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# Mechanism to resolve legal and administrative obstacles in a cross-border context

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European added  
value assessment

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STUDY

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European Added Value Unit  
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# Mechanism to resolve legal and administrative obstacles in a cross-border context

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## European added value assessment

This European added value assessment (EAVA) aims to support the European Parliament's legislative initiative 2022/2194(INL) entitled 'Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context'. EU land border regions encounter legal and administrative obstacles in their cooperation. Citizens and businesses face unequal access to public services and fewer economic opportunities. The COVID-19 pandemic has highlighted the urgent need to address remaining cross-border obstacles and define a long-term vision for unleashing the potential of border regions to become the drivers of European cooperation.

To this end, the study identifies and assesses three policy options: (1) status quo, (2) soft-law measures, and (3) adopting a new legislative instrument (ECBM 2.0). Policy option 3, assuming a realistic reduction of one fifth of the obstacles, has the highest potential impact, addressing both legal and administrative obstacles, bringing potential economic benefits of €123 billion per year, as well as positive social impacts.

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## Executive summary

### Aim of the study

This European added value assessment (EAVA) is intended to support the European Parliament's legislative initiative 2022/2194(INL)<sup>1</sup> entitled 'Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context'. The study builds on the Commission's proposal originally submitted in 2018, including amendments proposed by the European Parliament and the Council, and draws on available evidence and best practices in Member States.

### Status quo

The study analyses the status quo of existing instruments and tools and how they are implemented and applied in practice. It pinpoints the following obstacles: diverging national rules and standards, different legal competences at national or regional level, divergent transposition of EU laws by Member States contributing to barriers and obstacles in a cross-border situation.

While reducing disparities among the European Union's regions and strengthening its economic, social and territorial cohesion are among key Union objectives, EU land border regions often face challenges, including legal and administrative obstacles affecting citizens and businesses. They are often disadvantaged by barriers to working across the border, looking for the nearest healthcare or access to education. The EU pays particular attention to cross-border obstacles in the broader context of cohesion and non-discrimination.<sup>2</sup> The impact of such barriers showcases the discrimination citizens face when it comes to access to public services compared to citizens living in non-border regions and businesses might enjoy fewer opportunities. Moreover, the demographic situation, with an ageing population and low birth rates, increases rural-urban migration and 'brain drain'. More efficient cooperation between border region authorities and an effective mechanism to overcome administrative and legal obstacles, could make border regions more attractive for people to live in and companies to do business, increasing the overall level of living standards in border regions.

### Impact and cost of legal and administrative barriers

More precisely, the benefit of a complete removal of legal and administrative barriers in border regions would represent approximately €457 billion of additional gross value added (GVA) per year, corresponding to 3.8 % of total 2019 EU GVA. However, this corresponds to an ideal state scenario, which does not appear to be achievable in a short time frame, and some existing barriers would likely persist. Our analysis also emphasises that the status quo has a tangible negative impact on EU citizens and businesses, impacting the attractiveness of border regions as well as the quality of life and businesses opportunities. In that respect, it is important to recall other potential impacts of excessive legal and administrative barriers, such as social rights (equal opportunities, social protection and access to health care), as well as on fundamental rights (non-discrimination and freedom of movement).

### Solutions

The study argues that a 'one size fits all' approach would not be sufficient to resolve the current obstacles in the majority of cases, for two reasons: border regions usually face a combination of legal and administrative obstacles and administrative reality differs across the EU. The study compares three options (differing in their level of ambition), assesses their potential impact and identifies the European added value of potential regulatory action. Option 1 represents the status quo and its

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<sup>1</sup> For more detail, see the European Parliament's Legislative Observatory [website](#).

<sup>2</sup> As stated in [Article 21](#) of the Charter of Fundamental Rights: Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, shall be prohibited.

likely development; option 2 proposes a set of soft-law tools to address administrative obstacles; option 3 complements option 1 and option 2, suggesting the adoption of a streamlined proposal for a European cross-border mechanism (referred to as ECBM 2.0). Policy option 3, combining both legislative and non-legislative tools, would therefore have the highest potential to cover the wide range of different obstacles and the variety of border region contexts. The study puts forward examples of complementary tools, such as cooperation and coordination between competent authorities, creating coordination structures, capacity building, exchange of information, use of digital instruments, data collection. It argues that Member States might be more inclined to implement the European cross-border mechanism (ECBM) proposed by the European Commission, if it is simplified and addresses their concerns. With ECBM 2.0, Member States have the choice to apply it, or to opt for another suitable solution.

### EU added value

The added value of EU action has been identified in enhancing a combination of solutions, which is required to effectively overcome such obstacles, and offering tailored-made solutions. The existing legislative framework for cross-border measures or instruments does not cover all cross-border situations. Gaps therefore exist and a Union-wide problem-solving mechanism in a cross-border context seems to be the missing link to tackle obstacles in specific cross-border contexts. Inspiration can be drawn from existing best practices of cross-border projects. Looking at data between 2014 and 2019, this study finds that removing obstacles would bring significant benefits for regional areas classified as border regions ('NUTS level 3') and the entire EU economy. As already mentioned above, the benefit of a complete removal of legal and administrative barriers would represent approximately €457 billion of additional GVA per year, corresponding to 3.8 % of total 2019 EU GVA. In a 10-year time frame, a more feasible and realistic scenario (similar to that envisaged in the 2017 Commission study), would be to consider a 20 % removal of obstacles for all border regions. In such a scenario, our study found a total GVA benefit of €123 billion per year, representing around 1 % of total EU GVA in 2019. This confirms the large potential that removing remaining legal and administrative barriers would bring in economic terms.

It is important to look at border regions in the broader context of cohesion policy and therefore strive to address imbalances between countries and regions, including border regions, to support job creation, business opportunities and improve citizens' daily lives. A long-term vision is needed for border regions, in particular in the post-pandemic context, where these regions were disproportionately impacted.

Table 1 – Overview of policy options and their impacts

	Policy option 1: Status quo	Policy option 2: Soft-law measures	Policy option 3: Soft law measures + Adoption of ECBM 2.0
Quantitative assessment*	Lost potential benefits amounting to <b>€457 billion</b> per year and <b>4 million</b> potential <b>jobs</b>	Potential benefits of addressing administrative obstacles of <b>€41 billion</b> per year	Potential benefits of addressing both administrative and legal obstacles could reach <b>€123 billion</b> per year and more than <b>1 million jobs</b>
Qualitative assessment	Existing legal instruments are sector-specific only, while obstacles in other areas remain largely unaddressed  Limited potential to address existing and new obstacles  Existing government agreements, e.g. Nordic Council also show shortcomings (case study 1)	Potential reduction in administrative obstacles, but legal obstacles continue to hamper cross-border cooperation  Addressing less than half of the existing obstacles	Could help to unleash the potential of the EU single market, with greater opportunities for businesses in border regions  Streamlining of procedures in cross-border cooperation and capacity building
Impact for citizens and businesses	Negative economic and social impact, for example in the form of discrimination in access to healthcare in border regions (case study 3)	Potential to lessen negative impact via more efficient cooperation between public administration bodies and greater awareness of existing provisions or possible solutions at administrative level	Highest possible impact due to the potential to address both administrative and legal obstacles  Removal of obstacles would help facilitate citizen and business access to public services in border regions  Potential to better channel cohesion instruments to border regions  Increased attractiveness of border regions: more incentives for businesses and attracting and retaining talent

Source: EAVA, EPRS

The study confirms the significant cost for EU citizens and businesses of the legal and administrative barriers identified, as well as the need for EU action to overcome them, and therefore a clear potential in addressing these barriers that would enhance cooperation across borders. In addition to economic benefits of €123 billion per year and over 1 million new jobs that could be created, a positive impact on social rights, including on fundamental rights, is expected due to more equal opportunities, as well as access to public services. It is important to look at border regions from the broader context of cohesion policy and therefore strive to address imbalances between countries and regions, including border regions, to support job creation, business opportunities and improve citizens' daily lives. Finally, the COVID-19 pandemic has not only highlighted the urgent need to address remaining cross-border obstacles, but also provided a new momentum for a long-term vision for unleashing the potential of border regions to become the drivers of European cooperation.

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# 1. Introduction

## 1.1. Why this EAVA assessment?

Reducing disparities among the European Union's regions and strengthen their economic, social and territorial cohesion are key Union objectives. Article 174 of the Treaty on the Functioning of the EU (TFEU) aims to reduce disparities in wealth and development between EU regions, with specific reference to, among other things, cross-border regions.

An EU-wide cross-border review identified barriers to effective cross-border cooperation that impact both citizens and businesses. Coordinated by the European Commission department for regional and urban policy (DG REGIO) between 2015 and 2017, the review included an online public consultation in all EU languages and an exchange with interested parties.<sup>3</sup> The Commission's 2017 communication on boosting growth and cohesion in EU regions builds on the outcomes of the review and outlines action to make better use of the potential of border regions.<sup>4</sup> In this respect, a study for the Commission finds that a 20 % decrease in cross-border obstacles could lead to a 2 % increase in GDP.<sup>5</sup> As part of the 2018 legislative package establishing a new cohesion policy for 2021-2027, the Commission has therefore presented a proposal for a regulation on a mechanism to resolve legal and administrative obstacles in the cross-border context (hereafter 'ECBM' or 'the mechanism').

Within the European Parliament, the proposal was allocated to the Committee on Regional Development (REGI), which adopted its position with a report in November 2018. A resolution was adopted at the February 2019 Plenary sitting.

Within the Council, the Working Party on Structural Measures started discussing the proposal in June 2018. Due to the large number of questions raised by Member States related to the legal basis, scope and choice of instrument (see Section 1.2.), the Presidency of the Council of the EU, which was held by Austria at the time, requested that the Council's legal service issue an opinion, which was submitted in March 2020.<sup>6</sup> Since May 2021, when the working party decided not to continue working on this file during the Slovenian Presidency, the discussion has not progressed in the Council.

In November 2022, Parliament's REGI committee was authorised to draw up a legislative own-initiative report, entitled 'Proposal for the Commission to amend "The mechanism to resolve legal and administrative obstacles in a cross-border context"',<sup>7</sup> as an input for the Council to restart the discussion. The legislative own-initiative report aims at striking the right balance between the co-legislators' positions by addressing legal concerns and simplifying procedures. It assesses the added value of the proposed ECBM and whether existing legal instruments, such as the European Groupings of Territorial Cooperation (EGTC), are sufficient to facilitate and promote cross-border, transnational and interregional cooperation.

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<sup>3</sup> ['Cross-border review'](#), European Commission website.

<sup>4</sup> Boosting growth and cohesion in EU border regions, [COM\(2017\) 534 final](#), European Commission, September 2017.

<sup>5</sup> Impact assessment of a proposal for a regulation on European Regional Development Fund and on the Cohesion Fund, on a mechanism to resolve legal and administrative obstacles in a cross-border context, on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments [SWD\(2018\) 282 final](#), European Commission, May 2018.

<sup>6</sup> [Opinion](#) of the Council Legal Service of 2 March 2020 (6009/20).

<sup>7</sup> Request for authorisation to draw up a legislative own-initiative report, letter from the Chair of the REGI committee to the Chair of the Conference of the Committee Chairs of 15 November 2022, D (2022) 30595.

Furthermore, the final report on the Conference on the Future of Europe<sup>8</sup> included recommendations relating to improving and facilitating cross-border action, for example to:

- facilitate cross-border cooperation in the health field (proposal 10);
- strengthen cross-border cooperation to enhance cohesion and resilience within and beyond regions, by fostering the European cross-border mechanism and similar tools and enhancing and promoting opportunities for cross-border training to 'upskill' the European workforce (proposal 12);
- facilitate cross-border interoperability (proposal 31).

This European added value assessment (EAVA) is intended to provide in-depth analysis to accompany the European Parliament's legislative initiative (2022/2194(INL)),<sup>9</sup> entitled 'Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context'. The assessment presents an objective, evidence-based review of key gaps and barriers in the status quo and their quantitative and qualitative impact. It identifies three policy options to address these gaps and assesses their potential impacts (including the status quo). It takes the Commission's 2018 proposal as its starting point, and includes the amendments proposed by the European Parliament and the Council. Moreover, the EAVA draws on available evidence and best practices in Member States. The paper also builds on insights from interviews with experts and representatives of other institutions and bodies, including the European Committee of the Regions and the Association of European Border Regions.

The study looks at 'cross-border regions' as defined in the Commission's proposal as 'the territory covered by neighbouring land border regions in two or more Member States at NUTS level 3 regions'. The geographical scope of the Commission's proposal on the ECBM is based on the NUTS3 regional classification level. According to the common classification of territorial units for statistics (NUTS),<sup>10</sup> there were 1 166 European regions at NUTS level 3 in 2021, with 242 regions at NUTS level 2, and 92 regions classified as NUTS level 1. Some EU Member States have a relatively small population or territory and cannot therefore be subdivided according to the different levels of NUTS classification. For example, Cyprus, Estonia, Latvia, Luxembourg and Malta are each composed of a single NUTS level 2 region according to the 2021 version of the NUTS classification, whereas in Germany,<sup>11</sup> NUTS1 regions correspond to the federal States (*Bundesländer*), NUTS2 to governmental regions (*Regierungsbezirke*) and NUTS3 regions are generally districts (*Kreise* or *kreisfreie Städte*).

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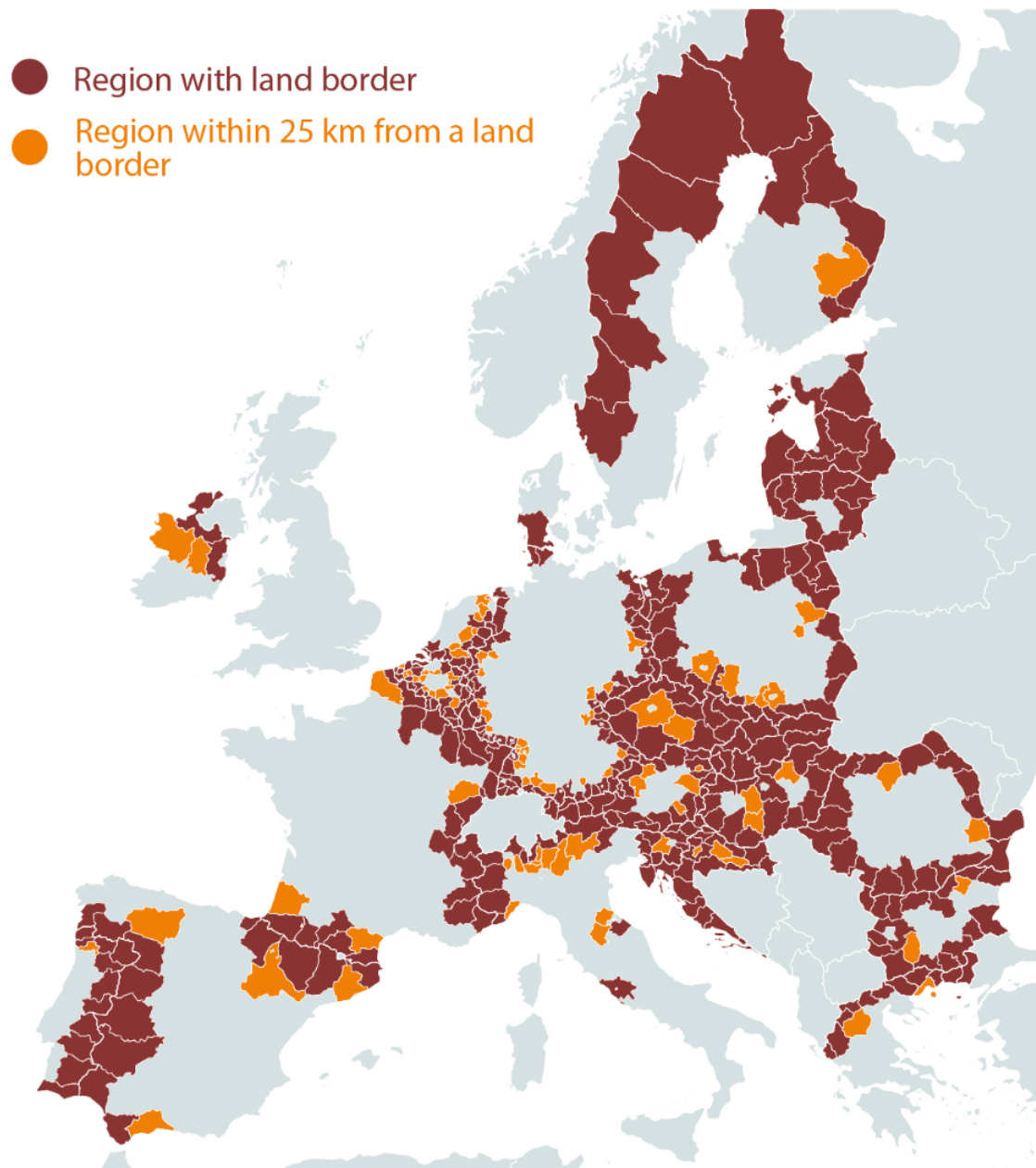
<sup>8</sup> [Report](#) on the final outcome, Conference on the Future of Europe, May 2022.

<sup>9</sup> Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context, [2022/2194\(INL\)](#), Legislative Observatory, European Parliament.

<sup>10</sup> [Regulation \(EC\) No 1059/2003](#) of 26 May 2003, on the establishment of a common classification of territorial units for statistics (NUTS).

<sup>11</sup> [Destatis](#), Statistisches Bundesamt Deutschland.

Figure 1 – NUTS3 regions with land border



Source: EPRS based on Eurostat, JRC and European Commission, DG REGIO, 2023.

In the European Union, the 'cross-border' notion is applied differently, depending on the policy area. According to different EU policies, the definition of 'cross-border worker' also varies greatly. Under social policy, cross-border workers are persons who work in one EU Member State but live in another. Cross-border workers are defined differently under bilateral taxation agreements, when assessing residence rights, or welfare entitlements. Cross-border workers are also distinguished from 'frontier workers', to the extent that they do not necessarily work in the frontier zone of the host country. These differing interpretations could lead to confusion.<sup>12</sup> According to practitioners, it appears that the interpretation of 'cross-border' in EU legislation does not always clearly distinguish between EU legislation that is directly designed for specific cross-border situations (e.g. Directive 2011/24/EU on application of patients' rights in cross-border health-care, or Interreg) and

<sup>12</sup> [Taxation and Customs Union](#) (cross-border workers), European Commission website. [Cross-border workers](#), European Labour Authority website.

EU legislation which has an inherent significance and impact across borders (e.g. mutual recognition across borders in many areas, such as recognition of diplomas, posting of workers, transport, taxation).

Moreover, as mentioned above, the ECBM proposal focuses on 'the territory covered by neighbouring land border regions in two or more Member States'. If legislators desire clarity and legal certainty, the aim that the ECBM should not lead to any interference with national competences and that sovereignty would be respected could be clarified in the new proposal (referred to in this study as ECBM 2.0)

## 1.2. Preparatory work within the EU institutions

Territorial cooperation is an integral part of EU cohesion policy, as it strengthens the territorial cohesion of the Union. The European Parliament acknowledges that cross-border cooperation is a key tool for the development of border regions. According to a 2016 Parliament resolution, the Member States and the European Commission<sup>13</sup> should mobilise efforts for efficient implementation and removal of barriers to cross-border cooperation, as well as for better coordination between managing authorities and actors in macro-regional strategies. Parliament emphasises that cross-border regions often suffer from reduced or poor economic growth and social wealth, due to obstacles impeding cross-border cooperation, and has highlighted that legal and administrative obstacles challenge EU regions' economic development and social cohesion. European territorial cooperation in general, and programmes such as Interreg in particular, have been in place since the 1990s. Despite the progress made over decades, Member States and Member States' regional and local entities have identified persisting weaknesses and gaps in cross-border cooperation.

During its Presidency of the Council of the EU in 2015, Luxembourg therefore prioritised cross-border cooperation, establishing an informal working group of Member States<sup>14</sup> to explore options to develop solutions for persisting border obstacles, which regions face in particular when implementing cross-border projects. The working group, involving representatives of between 10 and 15 Member States, published a report in July 2017,<sup>15</sup> covering its work from 2015 to 2017. This report<sup>16</sup> suggested a European cross-border convention (ECBC) procedure, as a tool to allow local and/or regional authorities and stakeholders to initiate a procedure to address administrative and legal obstacles and to help find a solution to overcome them. Another suggestion proposed in this report was to set up a multilevel European platform. This would serve to exchange problem-solving methods from different parts of Europe and foster the exchange of experiences and best practices. Both initiatives were intended to complement, enforce and support existing decentralised initiatives at the national, local and regional level and facilitate problem solving for citizens in an efficient and effective way.

The Commission presented the proposal for an ECBM regulation,<sup>17</sup> based on the Report of the Council Working Group; stakeholder consultations; the European Parliament's 2016 resolution on European territorial cooperation; the Commission's cross-border review, undertaken by DG REGIO between 2015 and 2017; and its 2017 communication on 'Boosting growth and cohesion in EU

<sup>13</sup> [Resolution](#) of 13 September 2016 on European Territorial cooperation – best practices and innovative measures, European Parliament.

<sup>14</sup> [Working Group](#) of Member States on innovative solutions to cross-border obstacles – Towards the ECBM', website Mission Opérationnelle Transfrontalière ('the MOT').

<sup>15</sup> [Report](#), Working Group on Innovative Solutions to Cross Border obstacles, July 2016-July 2017.

<sup>16</sup> [Report of the Working Group on Innovative Solutions to Cross Border obstacles](#), July 2016-July 2017.

<sup>17</sup> Proposal for a regulation on a mechanism to resolve legal and administrative obstacles in the cross-border context, [COM\(2018\) 373](#) final, 29 May 2018, European Commission.

border regions'. This consultation showed that legal and administrative barriers were perceived as the most relevant obstacle by 53 % of respondents, with language barriers coming second with 38 %. More than 90 % of the legal and administrative obstacles were considered related to labour market and education, social security and health, transport and mobility, industry and trade and policy planning and provision of public services.

The Commission's proposal concentrates on a voluntary mechanism to resolve legal obstacles in border regions, focusing on neighbouring EU land borders at NUTS level 3 and covering joint projects for any item of infrastructure or service of general economic interest operating in a cross-border region. The mechanism would enable the laws of a neighbouring Member State to be applied in a given Member State and in relation to a common cross-border region, if the laws of the latter imply a legal obstacle to the delivery of a joint project. Two main measures are proposed to overcome legal obstacles: i) a self-executing European cross-border commitment, which should allow the 'committing' Member State to transfer a law from a neighbouring Member State (transferring Member State) across the border, thus creating a derogation from national law; and ii) a European cross-border statement, involving a legislative procedure in a Member State allowing it to amend its national law in order to apply, by way of an explicit derogation, the law of a neighbouring Member State.

The European Parliament has repeatedly called<sup>18</sup> for better cooperation and communication between regions and to address the shortcomings of the existing instruments and tools (such as European Groupings of Territorial Cooperation, EGTC), which are considered as insufficient to overcome all existing legal obstacles to cross-border cooperation.<sup>19</sup> In its 2016 resolution<sup>20</sup> on 'European territorial cooperation – best practices and innovative measures', Parliament noted that the EGTCs can play an important role as a tool to create greater efficiency in meeting local needs in cross-border regions.

Parliament again highlighted the added value of territorial cooperation and cross-border cooperation in its 2022 resolution on the 8th Cohesion Report,<sup>21</sup> and observed that border regions were particularly affected by the COVID-19 pandemic, noting that their recovery tends to be slower than that of metropolitan regions. The resolution notes that obstacles to cross-border cooperation should therefore be removed and the ECBM proposed by the Commission would have helped to remove more than 50 % of the existing barriers.

Parliament adopted its position on the Commission's proposal on the ECBM<sup>22</sup> in 2019, calling for the scope to be widened to all border regions, and underlining the voluntary nature of the mechanism and proposing that the Member States or regions involved could decide to create an alternative comparable mechanism in addition to the proposed ECBM. Parliament again emphasised the voluntary nature of the ECBM in its 2022 resolution<sup>23</sup> on 'EU border regions: living labs of European integration', and called on the Commission to amend the current proposal, to take account of the opinions of the legal services of the Council and Parliament in striking a balance between the Council and European Parliament positions and to resume the negotiations. Furthermore, based on

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<sup>18</sup> [Resolution](#) of 11 September 2018 on Boosting growth and cohesion in EU border regions, European Parliament; [Resolution](#) of 14 February 2019 on the European cross-border mechanism, European Parliament.

<sup>19</sup> [Resolution](#) of 15 September 2022 on economic, social and territorial cohesion in the EU: the 8th Cohesion Report (2022/2032(INI)), European Parliament.

<sup>20</sup> [Resolution](#) of 13 September 2016 on European territorial cooperation – best practices and innovative measures, European Parliament.

<sup>21</sup> [Resolution](#) of 15 September 2022 on economic, social and territorial cohesion in the EU: the 8th Cohesion Report, European Parliament.

<sup>22</sup> [Resolution](#) of 14 February 2019 on a mechanism to resolve legal and administrative obstacles in a cross-border context, European Parliament.

<sup>23</sup> [Resolution](#) of 15 September 2022 on EU border regions: living labs of European integration, European Parliament.



an oral question<sup>24</sup> to the Council, Parliament held a debate in Plenary in October 2021, during which all political groups supported the call to recommence discussions on the proposal.

In national parliaments, the Swedish Parliament raised concerns related to subsidiarity,<sup>25</sup> while the Italian Senate and Portuguese Parliament generally welcomed the proposed regulation, with the latter stating that it does not violate the principles of subsidiarity and proportionality.<sup>26</sup>

The Council's Working Party on Structural Measures started the discussion on the proposal in June 2018. The negotiations in the Council revealed that Member States had concerns, in particular in relation to the legal basis, administrative burden, legal certainty of the instrument and its voluntary nature, as well as the legal implications for subsidiarity and constitutional laws. Member States called for the recognition of existing mechanisms and instruments when implementing the proposed regulation.

Table 2 – Overview of key elements of the European Commission proposal and respective European Parliament and Council positions

Aspects	Commission proposal	Parliament position at first reading	Parliament's starting position on INL 2022/2194	Council legal opinion
Choice of an instrument	ECBM complements existing cross-border tools as a voluntary mechanism	Parliament emphasises the voluntary nature	Cross-border coordination points to decide which solution to be used for joint projects in cross-border context	ECBM interpreted as a coordination mechanism
Application	Applies to an 'individual project' or action limited in time.	ECBM to be used for joint projects in cross-border region	ECBM 2.0 to be used for joint projects in cross-border context  Establishment of cross-border coordination points	Joint definition of projects to be sufficiently precise
Scope	NUTS3 Scope also includes cross-border cooperation with third countries.	Scope covers all border regions, including maritime border regions and third countries.	Extension to NUTS2	NUTS3 Against cross-border cooperation with third countries.
Instruments proposed	Two instruments proposed: Cross-border commitment or statement	In addition to the two instruments proposed by Commission: Member States should be free to create or use another instrument.	Ad-hoc legal or administrative resolution	Statements remain within the scope and sovereignty of Member States; commitments outside the scope

Source: Author's elaboration based on the Commission's proposal, European Parliament resolution of 14 February 2019, European Parliament's preparatory work on the legislative initiative 2022/2194(INL), and Council legal opinion from March 2020.

<sup>24</sup> [Question](#) for oral answer (O-000061/2021) to the Council on the Council's lack of will to move the European cross-border mechanism forward, 10 September 2021, European Parliament.

<sup>25</sup> Reasoned [opinion](#) of the Swedish Parliament, September 2018.

<sup>26</sup> C. van Lierop, [Mechanism to resolve legal and administrative obstacles in a cross-border context](#), EU legislation in process, EPRS, European Parliament.



\* Based on latest available information at the time of drafting.

The European Committee of the Regions<sup>27</sup> plays a key role in territorial development and cross-border cooperation, by addressing challenges and emphasising that there is a growing need for the EU to support regional and local entities in overcoming obstacles and in supporting them. It is in charge of managing the European Groupings of Territorial Cooperation (EGTC) platform,<sup>28</sup> a legal instrument used to facilitate and promote cross-border, transnational and interregional cooperation.

The European Committee of the Regions is also one of the founding members of the European Cross-Border Citizens' Alliance,<sup>29</sup> launched in 2020; together with organisations set up by border regions, such as the Association of European Border Regions (AEBR), the Mission Opérationnelle Transfrontalière (MOT), the Central European Service for Cross-border Initiatives (CESCI), all aiming at improving the life of European citizens living in the EU's border regions. The Alliance adopted a declaration on 'Cross-Border regions at the heart of tomorrow's Europe', which led to the adoption of the European Committee of the Regions resolution<sup>30</sup> on a 'Vision for Europe: Future of Cross-Border Cooperation' on 1 July 2021.

The European Committee of the Regions' opinion on the Commission's proposal, entitled 'Cross-border mechanism',<sup>31</sup> suggests applying the mechanism to maritime and land border regions, extending the scope to NUTS2 regions, and to involve the 'competent authorities' of a Member State in the mechanism. It also suggests practical details on the thematic aspects, underlines its support for exchange of best practices and requests clarity regarding the procedural aspects of the proposed commitment and statement.

While welcoming the proposed regulation and its bottom-up approach, a European Economic and Social Committee opinion<sup>32</sup> questioned whether the voluntary nature of the ECBM could lead to a fragmentation of general legal practice.

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<sup>27</sup> [EU Annual Report on the State of the Regions and Cities](#), European Committee of the Regions, 11 October 2022.

<sup>28</sup> [European Grouping of Territorial Cooperation platform](#), managed by the European Committee of the Regions.

<sup>29</sup> [European Cross-Border Citizens' Alliance](#), launched in 2020, by the European Committee of the Regions, Association of European Border Regions (AEBR), Mission Opérationnelle Transfrontalière and Central European Service for Cross-Border Initiatives.

<sup>30</sup> Resolution on a 'Vision for Europe: The Future of Cross-Border Cooperation' ([2021/C 440/02](#)) of 1 July 2021, European Committee of the Regions.

<sup>31</sup> [Opinion](#) of 7 March 2019 on 'Cross-border mechanism' (2019/C 86/10), European Committee of the Regions.

<sup>32</sup> [Opinion](#) of 19 September 2018 on 'Regulation on cross-border mechanism 2021-2027', European Economic and Social Committee.

## 2. Status quo

This section seeks to assess the status quo in cross-border cooperation by providing an overview of the existing legislative framework and identifying existing gaps that prevent further benefits being reaped from cross-border cooperation. This study assesses the cross-border cooperation between cross-border regions, as defined in the Commission's proposal, i.e. "cross-border region" means the territory covered by neighbouring land border regions in two or more Member States at NUTS level 3 regions'. The assessment builds on previous studies and available literature, including recent evidence from the COVID-19 pandemic and its impact on cross-border cooperation. The section also reflects on the impact of the pandemic on the status quo, highlighting the need to address not only existing instruments and tools, but also emerging obstacles due to transposition or implementation of EU legislation into national law, among other things.

When this study was carried out in 2023, challenges including the COVID-19 pandemic, the climate emergency and the crisis following Russia's invasion of Ukraine, have considerably impacted the EU and its Member States; they will continue to be a central topic in daily EU and Member State political decisions and at regional and local level for the near future. Cohesion policy and cooperation across borders are needed today more than ever.

There are 40 internal land border regions in the EU, representing 40 % of its territory and almost 30 % of its population. Border regions, however, perform less-well economically compared to other regions within one country and measures to enhance their performance should therefore go beyond funding,<sup>33</sup> according to the Commission.

These regions account for 30 % of the EU's GDP. One in three Europeans, representing around 150 million people, live in these regions. Around 2 million EU citizens are cross-border commuters, travelling to work or school on a regular basis, – 1.3 million of whom are cross-border workers.<sup>34</sup> Due to diverging national laws and administrative procedures, citizens and businesses face obstacles to access work, education, emergency services, public transport and healthcare.<sup>35</sup>

The literature suggests that border regions are generally negatively affected by their proximity to a border, despite the positive effects of EU enlargement.<sup>36</sup> The pandemic has exacerbated this trend, with border closures affecting border regions disproportionately. In these regions, crossing borders to study, work or access health care became subject to numerous restrictions. Road and railway performance is also lower in border regions.<sup>37</sup> Legal and administrative obstacles also produce economic losses in border regions. Previous studies estimate the cost of such obstacles at 3 % of EU GDP, corresponding to €458 billion in lost benefit per year. In border regions, this amounts to 8.7 % GDP. This calculation represents the difference between GDP growth in land border regions both with and without the presence of legal and administrative obstacles.

The public consultation conducted by the European Committee of the Regions from 2021<sup>38</sup> confirmed the relevance of obstacles faced by citizens and businesses in border regions. The

<sup>33</sup> [Report](#) on Cross-border cooperation in the EU, European Commission, July 2020.

<sup>34</sup> [Report](#) on the Public Consultation on the Future of cross-border Cooperation, Commission for Territorial Cohesion Policy and EU Budget, European Committee of the Regions, 2021.

<sup>35</sup> [Border regions: Measures to boost growth and jobs](#), European Commission, September 2017.

<sup>36</sup> S. Brakman, et al., [The border population effects of EU integration](#), Journal of Regional Science, 52(1), 4059, February 2012.

<sup>37</sup> Eighth [report](#) on economic, social and territorial cohesion – Cohesion in Europe towards 2050, European Commission, April 2022.

<sup>38</sup> The public consultation was conducted by the European Committee of the Regions between December 2020 and March 2021. The Committee received 338 responses from cross-border entities, including regional and local

majority of entities in EU border regions consider cross-border cooperation significantly affects their daily work or lives, or at least selected aspects of their lives. Fewer than 12 % claimed little or no impact of cross-border cooperation. Citizens and businesses face the biggest disadvantages of living in cross-border areas in relation to transport, connectivity and tourism policy. To the contrary, access to healthcare and rural development and agriculture do not appear create significant obstacles, according to a large number of respondents.<sup>39</sup>

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administrations, associations and businesses. With the exception of Lithuania, entities from all Member States participated in the consultation.

<sup>39</sup> [Report](#) on the Public Consultation on the Future of cross-border Cooperation, Commission for Territorial Cohesion Policy and EU Budget, European Committee of the Regions, 2021.

## 2.1. Impact of the COVID-19 pandemic

A number of reports highlight the impact of the COVID-19 pandemic on workers, businesses and society as a whole. Parliament's 2020 resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis notes that the violation of cross-border and seasonal workers' rights in terms of working and living conditions became highly visible, as well as evidence of social dumping and the precarious working conditions for many cross-border and seasonal workers.<sup>40</sup> Parliament underlined the importance of joint European action to fight the pandemic and its consequences in its 2020 resolution<sup>41</sup> on EU coordinated action to combat the COVID-19 pandemic and its consequences, and stressed the importance of open borders for the circulation of goods and the movement of workers. Better coordination, in particular on social and fiscal legislation for cross-border workers, is a fundamental requirement for the smooth functioning of territorial cohesion.

The COVID-19 pandemic had a significant impact on cross-border cooperation, as evidenced in: a 2020 Organisation for Economic Co-operation and Development (OECD) study<sup>42</sup> on the territorial impact of COVID-19 and managing the crisis across levels of government; the Commission's 2022 implementation report on Directive 2011/24/EU on cross-border healthcare; the European Committee of the Regions' opinion; and Parliament's 2020 resolution. Border closures as an immediate reaction to the rapidly evolving pandemic had a negative impact on the circulation of persons, workers and goods. Cross-border migrant workers were blocked in the Member States where they worked and were unable to return to their home Member State, and cross-border workers could not travel to their place of work in another Member State. Transportation of goods within single market supply chains (e.g. food, personal protective equipment, medicine, medical devices), was blocked by closed borders and goods did not arrive in time. It became quickly evident that the single market could not function with closed borders and that borders must remain open within the EU for the coordinated circulation of goods, persons and workers. To cushion the negative effects, the Union reacted swiftly by providing a rapid response to the COVID-19 pandemic crisis with the Coronavirus Response Investment Initiative (CRII) and the Coronavirus Response Investment Initiative Plus (CRII+),<sup>43</sup> focusing on providing support for the health sector, small and medium-sized enterprises (SMEs) and citizens in particular.

The importance of cross-border regional cooperation was particularly visible in the healthcare sector.<sup>44</sup> The implementation of uncoordinated border closures and unilateral measures had a negative effect, with the exception of some cross-border cooperation mechanisms, which functioned well through the crisis and paved the way for reinforced cooperation.<sup>45</sup> A report by the Rio Minho EGTC and Vigo University, quoted in the European Committee of the Regions' 2021 Regional and Local Barometer, shows that the closure of the border in an interconnected area had reinforced the pandemic's negative effect, resulting in losses of €92 million and affecting thousands

<sup>40</sup> [Resolution](#) of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis, European Parliament.

<sup>41</sup> [Resolution](#) of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, European Parliament.

<sup>42</sup> [The territorial impact of COVID-19: Managing the crisis across levels of government](#), OECD, updated 10 November 2020.

<sup>43</sup> [Cohesiondata](#), Overview of cohesion policy coronavirus indicators for the Coronavirus Response Investment Initiative (CRII) and Coronavirus Response Investment Initiative Plus (CRII+), European Commission website.

<sup>44</sup> Report on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border health-care, [SWD\(2022\) 200](#) final, European Commission, May 2022.

<sup>45</sup> [The territorial impact of COVID-19: Managing the crisis across levels of government](#), OECD, updated 10 November 2020.

of people.<sup>46</sup> The European Committee of the Regions' 2021 opinion on cross-border public services in Europe<sup>47</sup> criticised Member States for missing opportunities during the COVID-19 pandemic when closing borders unilaterally, instead of bundling efforts in bordering regions, leading to a very negative impact on the lives of people living in border regions.<sup>48</sup>

## 2.2. Current framework for cross-border cooperation

Territorial cross-border activities have been developed over decades and are supported by the Union with legal and financial instruments leading to a wealth of good practice examples. Studies and evaluations have shown that cross-border cooperation can take place in multiple forms and through different approaches, by using legal instruments, intergovernmental agreements, platforms and networks across many sectors.

### Intergovernmental agreements

Cross-border cooperation can be based on bilateral and multilateral intergovernmental cooperation agreements between Member States to reinforce cooperation in different policy areas. The agreements aim at improving cross-border cooperation, often by establishing cross-border committees to solve cross-border obstacles. A few examples of bilateral agreements concluded between Member States are detailed here, in addition to the Nordic Council cooperation, which is described in Chapter 2.4 below. The French-Spanish Friendship agreement of January 2023 (Barcelona Treaty),<sup>49</sup> or the November 2021 Treaty between France and Italy (Quirinal Treaty),<sup>50</sup> are further examples of reinforced bilateral cooperation. The latter seeks to improve coordination and intensify collaboration in policy areas including cross-border cooperation. The agreement encourages dialogue between administrations and national parliaments, to avoid significant differences with negative practical consequences in border areas when transposing EU law. A cross-border cooperation committee (including all stakeholders concerned at all levels) can propose cooperation projects, including solutions of a legislative or administrative nature for the realisation of projects. The Barcelona Treaty has similar provisions, in particular seeking to avoid problems when transposing EU law. Joint ad-hoc solutions should be elaborated to overcome obstacles by respecting national competences. Through the Treaty on Franco-German Cooperation and Integration (Treaty of Aachen,<sup>51</sup> 2019) a Cross-Border Cooperation Committee between France and Germany was created to set up a common strategy for identifying priority projects, monitoring difficulties encountered in border regions and proposing solutions to address them. The Treaty's Article 13 on Regional and Cross-Border Cooperation states that 'the two countries shall provide local authorities in border regions and cross-border entities such as eurodistricts with appropriate competences'.

### EU legislative framework

Cross-border cooperation is also enhanced by EU legislation regarding existing structures and bodies to provide clarity and transparency, facilitate the involvement of different partners in a border region, as well as create frameworks to improve cross-border cooperation. To enhance and improve cross-border cooperation at regional level and to resolve legal and administrative obstacles, legal instruments were adopted: for example, Regulation (EC) N° 1082/2006 on a

<sup>46</sup> [Regional and local Barometer 2021](#), p. 48, European Committee of the Regions.

<sup>47</sup> [Opinion](#) of 26 March 2021 on Cross-border public services in Europe, European Committee of the Regions

<sup>48</sup> [Opinion](#) of 7 March 2019 on 'Cross-border mechanism' (2019/C 86/10), European Committee of the Regions.

<sup>49</sup> [Treaty of Friendship and Cooperation](#) between the Kingdom of Spain and the Republic of France, 19 January 2023 (Barcelona Treaty)

<sup>50</sup> [Treaty between France and Italy to reinforce bilateral cooperation](#), (Quirinal Treaty, 2021).

<sup>51</sup> [Treaty on Franco-German Cooperation and Integration](#) (Treaty of Aachen, 2019).

European grouping of territorial cooperation<sup>52</sup> (EGTC) in 2006, or the European Economic Interest Grouping (EEIG, Council Regulation (EEC) N° 2137/85),<sup>53</sup> to support cross-border activities which exist since 1985.

The European Grouping of Territorial Cooperation serves to contribute to a comprehensive integrated territorial development and provides a flexible platform for multilevel governance. In the EU, 83 active EGTCs operate as legal entities for cross-border projects. An EGTC register,<sup>54</sup> managed by the European Committee of the Regions, provides an overview of existing EGTCs. Complementing European territorial cooperation, EGTCs often implement EU-funded programmes and projects. The NOVUM EGTC,<sup>55</sup> an Interreg-financed project, for example, was set up by Czechia and Poland to overcome the lack of an intergovernmental agreement regarding emergency service cooperation and to alleviate the impact of cross-border obstacles. Despite their important role, EGTCs still face obstacles in their daily work; they often relate to typical cross-border obstacles or other factors hampering cross-border and transnational cooperation. While EGTCs are useful in overcoming obstacles through solid and sustainable collaboration, setting up an EGTC requires a lengthy start-up procedure – as the Cittaslow EGTC between the Netherlands<sup>56</sup> and Italy, or the analysis of a cross-border case between Poland and Lithuania<sup>57</sup> on 'juridical obstacles in establishment and financing of trans-national business incubator' demonstrate.

While the Commission has recognised the EGTCs' potential, they were not considered a legal instrument for a mechanism to overcome legal and administrative obstacles to manage cross-border projects.<sup>58</sup> According to the Commission's ECBM proposal,<sup>59</sup> the EGTCs<sup>60</sup> do not always have enough competences to serve as a mechanism to solve obstacles to cross-border cooperation. The EESC questions what would happen if no relevant legislation on either side of the border exists, and whether the voluntary nature of the Commission's proposal could lead to fragmentation of legal practice. Despite the interpretation of Article 7, paragraph 2<sup>61</sup> and paragraph 4<sup>62</sup> of the EGTC Regulation, stating that EGTCs have tasks but not competences to exercise any powers conferred by public law, the literature reflects on the role of EGTCs, for example in the essay entitled<sup>63</sup> 'should

<sup>52</sup> Boosting growth and cohesion in EU border regions, [COM\(2017\) 534 final](#), European Commission, September 2017.

<sup>53</sup> [Council Regulation \(EEC\) No 2137/85](#) on the European Economic Interest Grouping (EEIG) .

<sup>54</sup> [EGTC register](#), European Committee of the Regions.

<sup>55</sup> [EGTC monitoring report 2018-2019](#), European Committee of the Regions, Commission for Territorial Cohesions Policy and EU Budget, p. 26.

<sup>56</sup> [EGTC monitoring report 2018-2019](#), European Committee of the Regions, Commission for Territorial Cohesions Policy and EU Budget, p. 15.

<sup>57</sup> Expert [report](#) on a cross-border case between Poland and Lithuania on 'Juridical obstacles in establishment and financing of trans-national business incubator' (undated).

<sup>58</sup> [Regulation \(EC\) No 1082/2006](#) of 5 July 2006 on a European grouping of territorial cooperation (EGTC).

<sup>59</sup> Proposal for a regulation on a mechanism to resolve legal and administrative obstacles in the cross-border context, [COM\(2018\) 373](#) final, 29 May 2018, European Commission.

<sup>60</sup> [Regulation \(EU\) No 1302/2018](#) of 17 December 2013, amending Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC).

<sup>61</sup> J. Peyrony, [Contribution](#) 'Should EGTCs have competences, and not only tasks ? Underlying visions of cross-border integration'; in G. Ocskay (ed.), [15 years of the EGTC. Lessons learnt and future perspectives](#), Central European Service for Cross-Border Initiatives, September 2020, pp. 219-243.

<sup>62</sup> [Regulation \(EC\) No 1082/2006](#) of 5 July 2006, on a European grouping of territorial cooperation (EGTC): Article 7, paragraph 4: 'The tasks given to an EGTC by its members shall not concern the exercise of powers conferred by public law or of duties whose object is to safeguard the general interests of the State or of other public authorities, ...'

<sup>63</sup> J. Peyrony, director general, Mission Opérationnelle Transfrontalière, '[Should EGTCs have competences, and not only tasks ? Underlying visions of cross-border integration](#)', in G. Ocskay (ed.), [15 years of the EGTC. Lessons learnt and future perspectives](#), Central European Service for Cross-Border Initiatives, September 2020.



EGTCs have competences, and not only tasks?' or the article<sup>64</sup> 'Changing interpretation of EGTC tool', summarising the impacts of EGTCs (integration, flexibility, adaptability, representativeness) in cross-border cooperation. The latter pleads for a paradigm shift and recommends the development of local cross-border cooperation governance structures, the systematisation of cross-border multi-level governance, monitoring, and shared scientific support for cross-border cooperation.

The Council Regulation on the European Economic Interest Grouping (EEIG) (ECC) No 2137/85<sup>65</sup> is another legal instrument to support cross-border activities. Its purpose is 'to facilitate or develop the economic activities of at least two members, i.e. companies or legal bodies with their central administration indifferent Member States. By aiming at developing transnational economic activities, the EEIG should create 'a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community'. The EEIG can act in several sectors, including legal advice, marketing or television/broadcasting, as is the case for the Franco-German television channel ARTE.<sup>66</sup> Parliament considered the EEIG a particularly interesting instrument for SMEs, universities and other higher education institutions, in its Parliamentary written question (E-003859/2019) to the Commission on the EEIG.<sup>67</sup> The Commission responded that it does not promote the EEIG, but the Commission website on company law provides information about cross-border cooperation tools, including the EEIG. The EEIG is encompassed under EU company law and mainly serves to assist groupings of companies or legal bodies to carry out and facilitate cross-border economic activities.

Regulation (EU) 2021/1059 of the Parliament and the Council on specific provisions for the European territorial cooperation goal (known as Interreg),<sup>68</sup> established EU support for effective programming and enhancement of legal and administrative cooperation between European territorial cooperation projects at NUTS3 level, through cross-border cooperation, and transnational, interregional and outermost regions' cooperation. The cross-border cooperation strand aims at tackling common challenges identified jointly in the border regions, to exploit the untapped growth potential in border areas, improve cooperation between Member States or their regions, and to support small-scale projects as important and successful instruments for eliminating cross-border obstacles. Under this legislation, cross-border cooperation refers to NUTS level 3 (NUTS3), transnational cooperation to NUTS level 2 (NUTS2).<sup>69</sup>

### Cross-border cooperation is supported by platforms – some examples

Cross-border cooperation has been institutionalised over time, with the creation of Euregios, Euroregions, Eurodistricts, the EGTCs or EEIG. Associations and multilevel platforms such as the Association of European Border Regions (AEBR), Mission Opérationnelle Transfrontalière (MOT) and Central European Service for Cross-Border Initiatives (CESCI) play a vital role in deepening this cooperation. These cross-border networks and associations contribute to promoting territorial cohesion; they serve as a platform to implement EU funds, to identify obstacles and provide solutions, as well as to support exchange of good practices.

<sup>64</sup> Ocskay G., 'Changing interpretation of EGTC tool', in G. Ocskay (ed.), *15 years of the EGTC. Lessons learnt and future perspectives*, Central European Service for Cross-Border Initiatives, September 2020.

<sup>65</sup> [Council Regulation \(EEC\) No 2137/85](#) on the European Economic Interest Grouping (EEIG).

<sup>66</sup> The Association Relative à la Télévision Européenne ([ARTE](#)) was founded in Strasbourg in the form of a EEIG on 30 April 1991.

<sup>67</sup> Parliamentary [question](#) to the Commission E-003850/2019 of 18 November 2019 and the Commission's [response](#), 24 February 2020.

<sup>68</sup> [Interreg, interactive map](#), showing Interreg programmes (cross-border, transnational and interregional borders) at NUTS level 3.

<sup>69</sup> [Cohesiondata](#), European Commission website: The Commission does not allocate EU funding expressly to NUTS2 regions but rather to "programmes" and "categories of region"

Founded in 1971, the Association of European Border Regions (AEBR)<sup>70</sup> represents border and cross-border regions across Europe and acts as a platform to promote and advise local, regional, national and European policymakers on cross-border cooperation-related issues. Its mission<sup>71</sup> is, among other things, to identify legal and administrative obstacles to cooperation and possible solutions, and to promote exchanges between stakeholders with a view to enhancing cross-border cooperation and territorial development. The AEBR is the only Europe-wide organisation representing border and cross-border regions in 25 of the 27 Member States and beyond. Established in 2009, the Central European Service for Cross-Border Initiatives (CESCI Budapest, CESCO Balkans, CESCO Carpathia), promotes and strengthens cross-border cooperation along the Hungarian borders and central and south-eastern Europe by providing its members with research, support for planning and programming, institutional development and knowledge sharing. Created by the French government in 1997, the Mission Opérationnelle Transfrontalière (MOT) supports project promoters in cross-border areas, provides technical assistance, coordinates the needs of its members with the relevant authorities, and promotes the interests of its members at the EU level. In the Interreg Baltic Sea Region,<sup>72</sup> partners work on projects in the same thematic field financed by the EU Interreg or Horizon programmes. However, it should be noted that these platforms do not usually encompass mechanisms to solve legal or administrative obstacles, instead focusing on exchanging good practice.

Gaps leading to legal and administrative obstacles affect many aspects of life in border regions, such as access to employment, healthcare, education and training, use of different technical standards, non-recognition of qualifications, a lack of local cross-border public transport. According to a European Committee of the Regions report,<sup>73</sup> or the Commission's report,<sup>74</sup> these issues persist. Launched as a pilot project in 2018<sup>75</sup> by DG REGIO and managed by the AEBR, 'B-solutions' identified and tested solutions to overcome cross-border obstacles, and provides information on legal or administrative obstacles that hinder cooperation across borders. The project addresses public authorities in border regions and cross-border cooperation actors, information is collected with a bottom-up approach, involving demonstrations of obstacles from practitioners of cross-border cooperation.

## 2.3. Sector-specific legislation: The example of cross-border healthcare

Looking at existing legal instruments enhancing cross-border cooperation between national authorities and service providers in a specific sector, healthcare is considered a representative example. Directive (2011/24/EU)<sup>76</sup> on the application of patients' rights in cross-border healthcare (the Cross-border Healthcare Directive), encourages cooperation between Member States to improve the complementarity of their health services – an EU priority – or Regulation (EC) No 883/2004 on the coordination of social security systems, which enhances cooperation on healthcare between Member States' authorities. This latter legislation provides European citizens with an entitlement for medical care during a temporary stay in another EU country related to work

<sup>70</sup> [Association of European Border Regions](#) (AEBR) and its [network](#).

<sup>71</sup> [AEBR vision and mission](#).

<sup>72</sup> [Programme Manual](#) Interreg Baltic Sea Region.

<sup>73</sup> [Report](#) on the Public Consultation on the Future of cross-border Cooperation, Commission for Territorial Cohesion Policy and EU Budget, Committee of Regions, 2021.

<sup>74</sup> G. Brustia, A. Dellagiacoma, C. Cordes, et al., [B-solutions, solving border obstacles. A compendium 2020-2021](#), Directorate-General for Regional and Urban Policy, European Commission, 2021.

<sup>75</sup> Action plan set out in 'Boosting growth and cohesion in EU border regions', [COM\(2017\) 534 final](#), European Commission, September 2017.

<sup>76</sup> [Directive 2011/24/EU](#) of 9 March 2011 on the application of patients' rights in cross-border healthcare.



abroad, holiday or studying abroad, which cannot wait until their return to their home country, and is complemented by the Cross-border Healthcare Directive.

The Cross-border Healthcare Directive is based on Articles 114 and 168 TFEU. Its objective is to facilitate access to safe and high-quality healthcare in another Member State. It promotes cross-border cooperation in healthcare between Member States for the benefit of EU citizens, covering prescriptions, digital health (eHealth), rare diseases and health technology assessment. The directive contains legal provisions regulating cross-border cooperation at regional and local level, including recognition of prescriptions across borders, reimbursement of the costs of cross-border healthcare, or the designation of cross-border contact points. Moreover, Member States are encouraged to cooperate in cross-border healthcare provision in border regions, to offer an opportunity to improve access to care for patients, to capitalise on economies of scale and to use resources efficiently.<sup>77</sup> The directive highlights concrete measures for cross-border healthcare, establishing national contact points for example, facilitating cooperation between all stakeholders involved. Particular attention is paid to border regions, where cross-border provision of services may be the most efficient way of organising health services.<sup>78</sup> The directive aims at enhancing cooperation between the different national health systems, including joint planning, mutual recognition and adaptation of standards and procedures. A guiding principle is that administrative procedures are based on objective, non-discriminatory criteria, which are necessary and proportionate to the objective to be achieved. In addition, the administrative procedure should be easily accessible and information relating to such procedures made publicly available at the appropriate level.

Despite the cross-border dimension provided by the directive, the Commission's report<sup>79</sup> highlights the barriers to cross-border healthcare, such as extensive use of prior authorisation and the lack of transparency over its application, or the complex invoicing and reimbursement procedures for healthcare services across different health systems. Regions are therefore looking for alternative solutions to overcome administrative or financial obstacles by concluding agreements, e.g. the Upper Rhine region, (the tri-national metropolitan region covering Switzerland, France (Alsace) and German states of Baden-Württemberg, Rhineland-Palatinate and Hesse, established in 2010 as a framework for enhanced cooperation.

Barriers also continue to hamper cross-border healthcare due to a lack of awareness and inadequate information for patients on their rights, disproportionate administrative burdens and uncertainty regarding healthcare costs in another Member State and their reimbursement.

This example illustrates existing regulation on cross-border cooperation in healthcare sector and its gaps. The Commission's proposal on ECBM is based on a similar approach of facilitating cross-border cooperation and overcoming obstacles to address inequalities in access to services in border regions. However, the Commission's proposal entails high complexity<sup>80</sup> (see Chapter 3.2).

## 2.4. Gaps and barriers

This section identifies gaps and barriers in cross-border cooperation using available data and a selection of case studies. A study on behalf of the Commission of March 2017 contains an inventory of 239 obstacles and provides useful insights about the nature and factors producing these obstacles. More than 90 % of the legal and administrative obstacles are present in only five sectors:

<sup>77</sup> Report on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, [COM\(2018\) 651 final](#), European Commission, September 2018.

<sup>78</sup> [Directive 2011/24/EU](#) of 9 March 2011 on the application of patients' rights in cross-border healthcare, recital 50.

<sup>79</sup> Report on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border health-care, [SWD\(2022\) 200](#) final, European Commission, May 2022.

<sup>80</sup> C. van Lierop, [Mechanism to resolve legal and administrative obstacles in a cross-border context](#), Briefing, EPRS, European Parliament, 2021.

labour market and education, social security and health, transport and mobility, industry and trade, and policy and public planning. Two-thirds of these obstacles affect the entire land border and almost 60 % of the obstacles in question produce high negative impact on cross-border integration. This translates as concrete negative impacts on labour market opportunities and citizens' social rights, such as social security. The inventory of obstacles provides a useful insight into the prevalence of the different types of obstacle: 104 obstacles are Member State-related legal obstacles, 99 are of administrative nature and 36 are EU-related obstacles.<sup>81</sup> For the purpose of this study, we simplify the distinction between legislative obstacles (around 70 % of all identified obstacles) and administrative obstacles (30 %).

The 2020 Commission public consultation on overcoming cross-border obstacles<sup>82</sup> notes that, while 45 % of respondents perceive a border as an opportunity, more than a third see the border mainly as an obstacle. Looking at the typology of obstacles, those related to the legislative process represent a major or significant problem for 56 % of respondents.<sup>83</sup>

The b-solutions platform also offers a wealth of evidence on the presence of obstacles and their impact on EU citizens and businesses. In cooperation with 25 cross-border structures, including EGTCs, 7 municipalities, 6 (sub)regional authorities and 5 agencies and institutions operating in border regions, 43 obstacles were mapped and analysed.<sup>84</sup> They drew several observations: there is a high variety of obstacles and they relate to almost all aspects of community life; these obstacles arise due to legal and/or administrative aspects of cooperation and are often accompanied by lack of coordination, high complexity and uncertainty.

The European Committee of the Regions also conducted a public consultation to identify the most significant obstacles to cross border cooperation. The Committee received 338 responses from cross-border entities, including regional and local administrations, associations and businesses. Almost 47 % of participating entities believe that diverging national rules and conflicts between national legislations in neighbouring countries represent the leading obstacle to cross-border cooperation. Looking closer at this category of obstacles, officers face overcomplicated rules and procedures or a lack of understanding of cross-border issues. Often, entities from neighbouring countries do not have the same level of competences, which makes it difficult to cooperate in an efficient manner. Other significant categories of obstacles include differences in standards, language barriers and a lack of information. For EU-funded projects, the lack of financing to continue the project once EU financing ends, poses risks to the long-term profitability and sustainability of cross-border projects.<sup>85</sup>

### 2.4.1. Impacts of gaps and barriers

Available data from the literature confirm the relevance of the impacts of legal and administrative obstacles in border regions.<sup>86</sup>

Table 3 introduces a tentative classification of legal and administrative obstacles, clustered in categories, and identifies the impacts of these obstacles on citizens. Legal obstacles arise mostly from: diverging national rules, different local authority competence levels, and conflicting transposition of EU law. When it comes to administrative obstacles, these occur mainly due to:

<sup>81</sup> [Easing legal and administrative obstacles in EU border regions](#), Final report, European Commission, March 2017.

<sup>82</sup> The public consultation is a follow-up to the 2015 cross-border review by DG REGIO.

<sup>83</sup> [Easing legal and administrative obstacles in EU border regions](#), Final report, European Commission, March 2017.

<sup>84</sup> b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.

<sup>85</sup> [Report](#) on the Public Consultation on the Future of Cross-border Cooperation, Commission for Territorial Cohesion Policy and EU Budget, European Committee of the Regions, 2021.

<sup>86</sup> [Report](#) on the Public Consultation on the Future of Cross-border Cooperation, Commission for Territorial Cohesion Policy and EU Budget, European Committee of the Regions, 2021.

different levels of administrative counterparts' competences; lack of administrative mechanisms, including lack of digitalisation; and lengthy recognition of diplomas or certification. The identified case studies underline the obstacles citizens face in their daily lives, ranging from selling farm produce across borders, to accessing social and healthcare services for children of parents living or working in border regions. In other cases, a diverging level of competences between two regional administrations hampers the start of a bridge construction that would significantly improve traffic situation. Finally, lengthy and complex national administrative procedures could also pose obstacles as in the case of a cross-border hospital in Cerdanya, where due to the complexities of the Spanish administration, the hospital face uncertainty over the recognition of French doctors' qualifications.

Different levels of digitalisation or the lack thereof lead to incompatibility between public administrations systems. Almost 35 % of stakeholders in border regions identify a lack of joint digital services, e.g. limited interoperability, as one of the top obstacles, based on their own experience.<sup>87</sup> For example, different information technology standards and data formats prevent companies in Slovenia from applying for tenders in Italy (due to differences in types of electronic signatures, alphabet, etc.). Another case study shows that varying levels of digitalisation across borders might also complicate reimbursement of healthcare for patients, due to the different formats of medical receipts (record-keeping in Latvia v digital records in Estonia).

Extensive use of administrative procedures, such as prior authorisation of healthcare services, remains a significant obstacle in several border regions. The 2022 report on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border healthcare confirms that extensive use of prior authorisation and the lack of transparency over its application is a major barrier to cross-border healthcare, hampering the directive's effectiveness in benefiting patients.<sup>88</sup>

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<sup>87</sup> [Public consultation on overcoming cross-border obstacles](#), Summary report 2020, European Commission, May 2021.

<sup>88</sup> Report on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border health-care, [SWD\(2022\) 200](#) final, European Commission, May 2022.

Table 3 – Overview of selected obstacles and their impact

Category	Obstacles	Example of border regions	Context	Impact
Legal obstacles	Diverging national rules or technical standards	Croatia/Hungary: Local farmers' markets	Diverging national regulations concerning taxes and non-harmonised procedures for trading permits pose obstacles to cross-border trade of local farm produce	Loss of economic opportunities for local farmers, including impact on employment
	Different legal competences at regional level	France/Italy: Cross-border maritime transport services	Local authorities do not have the necessary legal and administrative competences to deal with maritime transport outside their territorial area and this legal gap de facto prevents them from starting a project	Impact on labour market and traffic congestion
	Conflicting transposition of EU law	Italy/Slovenia: e-procurement	Diverging e-procurement platforms: Different information and technology standards and design for data entry prevent economic actors from applying for tenders from a neighbouring country	Lost economic opportunity of an integrated and fully competitive cross-border market
	Diverging implementation/ application of legislation	Poland/Lithuania: Social security	Both countries establish their own internal legal provisions, differing significantly in transposition and implementation of social security coordination	Uncertainty for cross-border workers regarding the application of the social security system, ultimately limiting their free-movement
Administrative obstacles	Different levels of administrative competences	Germany/Netherlands: Access to childcare	Lack of coordination and inadequate division of responsibilities prevents effective access to social and medical care for children in the Winterswijk municipality	Difficulties in accessing healthcare services for children, including reimbursement
	Barriers through extensive use of administrative formalities	Austria/Czechia: Cross-border healthcare	Incompatibility of Czech and Austrian legislation on reimbursement of healthcare costs prevent citizens from accessing a nearby hospital in the border region	Lack of access to healthcare services for patients in the border region
	Lack of joint administrative mechanisms, including lack of digitalisation	Estonia/Latvia: Local hospital	Lack of coordination for patients accessing the local border hospital, due to lack of coordination of national funds	Negative impact on patients: absence of recognition of

				medical receipt formats
	Lengthy qualification recognition	French-Spanish border: Diploma recognition	The Cerdanya cross-border hospital employs doctors from both Spain and France, but the recognition of qualifications is a complex and time-consuming process	Uncertainty for doctors and risk of disorganisation in the hospital

Source: Author's own elaboration based on [Boosting growth and cohesion in EU border regions](#), 2017, [More and better cross-border services](#), 2021 and b-solutions: Solving Border Obstacles, [Annex](#), European Commission, 2020.

Table 4 – Impacts of gaps and barriers/obstacles in status quo

Estimate of impact	Economic impact of presence of legal and administrative obstacles	Employment losses	Other impacts on citizens and businesses
Commission estimates, 2017	€458 billion	6 million jobs	Social and fundamental rights impacts
Updated estimates by EPRS, 2023	€457 billion/year	4 million jobs	

Source: Author's elaboration based on [Commission Impact assessment](#) and [R. Camagnim, et al.](#)

Table 4 provides an overview of the impact of the presence of legal and administrative obstacles to cross-border cooperation for NUTS3 regions with internal land borders, comparing the Commission's 2017 estimates to estimates carried out by the authors of this paper in 2023 (based on data projections from 2019). The 2017 study estimated the GDP loss due to presence of obstacles at €458 billion per year, corresponding to 3 % of EU GDP and 8.8 % of the GDP of land border regions. This represents a difference between GDP growth between 2008-2013 in the presence of obstacles, and potential GDP growth should obstacles be removed. When it comes to employment, the authors of this study estimate a potential employment loss of around 6 million jobs due to obstacles, representing 3 % of total European employment and 8.6 % of employment in land border regions.<sup>89</sup> The present study aims at updating the previous estimates by using more recent data from 2014-2019. It estimates that a total GVA<sup>90</sup> benefit of removing cross-border obstacles would bring benefits of €457 billion per year, representing 3.8 % of total EU GVA. These estimates confirm the great potential that removing barriers could provide in economic terms. When it comes to employment, the presence of obstacles has a negative impact on job creation, corresponding to around 4 million jobs and representing around 2 % of total EU employment. This confirms a substantial economic and employment loss due to obstacles hampering cross-border cooperation. Section 4.1 provides more details on the quantification, methodology and variables used.

## 2.5. Case studies

This section looks at the different EU instruments considered to have a positive impact on cross-border cooperation, among other things in the fields of healthcare services, labour mobility, education and social security coordination. A short selection illustrates specific examples of the obstacles that cross-border cooperation faces. The selection low is far from exhaustive, as each case

<sup>89</sup> Boosting growth and cohesion in EU border regions, [COM\(2017\) 534 final](#), European Commission, September 2019.

<sup>90</sup> Gross value added, more details in section 4.1 dedicated to quantitative assessment.

### Nordic Council of Ministers

A case study on labour market mobility

Situation/context: Legislative cooperation covers, among other things, labour law and social benefits.

Obstacles: legal and administrative obstacles such as verification of qualifications, as well as obstacles related to taxation, banking or pension payments.

Impacts: restriction of freedom of movement of workers.

Possible solutions: improved access to reliable and comparable statistics, digitalised joint social security systems and e-services.

Source: [website](#).

represents one of many similar cases. Obstacles are neither sector-specific, nor present only in selected geographical areas; they are found in a majority of border regions across Europe.

At European level, the b-solutions initiative by the Commission's DG REGIO and AEBR was established following the 2015 cross-border review. The initiative works with public authorities and cross-border cooperation actors to address legal and administrative obstacles to cross-border cooperation. The b-solutions platform identified a number of good practices from cross-border collaboration activities. The 2020-2021 compendium<sup>91</sup> summarises that in most cases, new solutions are needed, for example by introducing new legislative provisions or by developing

innovative methodologies and action protocols. The use of the ECBM as an additional instrument to enhance cooperation along the EU's internal borders was emphasised by several experts, who outlined its benefits, stressing that its implementation would significantly facilitate the cooperation process in cross-border projects. Nevertheless, a toolbox to increase knowledge and skills to use the ECBM would be necessary. The compendium identifies the constraints of cross-border cooperation, for example: incompatible transpositions of EU legislation, diversity, and centralisation of most administrative procedures at national level. Fundamental elements for well-functioning and successful cross-border cooperation are exchange of information, coordination with competent authorities, a common understanding of the obstacles, as well as mutual trust.

### Case study 1: Nordic Council of Ministers

The Nordic Council of Ministers is one of the most prominent examples of cross-border cooperation at intergovernmental level. The cooperation is based on the Helsinki Treaty, concluded between Sweden, Finland, Denmark, Norway and Iceland. Legislative cooperation can be agreed on education, labour law, social benefits and environmental protection policy, for example. Based on the Helsinki Treaty, the countries agreed to inform each other, when they intend to change legal provisions that are part of the Nordic cooperation. Obstacles to mobility and growth are identified and removed, for example through cooperation on the implementation of Union legislation into national law to facilitate the free movement of people and businesses. The Nordic Council action plan for 2021-2024<sup>92</sup> identifies objectives, among others, of promoting access to digital services across borders in the Nordic-Baltic region, or ensuring the immediate recognition of Nordic vocational and educational qualifications in the other Nordic countries.

The Finnish Government endorsed a report<sup>93</sup> on Nordic cross-border barriers in November 2022, stating that it is Finland's responsibility to remove border barriers resulting from Finnish legislation or its interpretation, which could lead to a change of legislation in some cases. The government will prevent new barriers arising by taking cross-border aspects into account when drafting or transposing Union legislation into national law.

<sup>91</sup> [b-solutions: Solving Border Obstacles. A Compendium 2020-2021](#), Border Focal Point Network, European Commission.

<sup>92</sup> Nordic Council of [Ministers action plan 2021-2024](#).

<sup>93</sup> [Government report](#) of 10 November 2022 on Nordic cross-border barriers, Finnish Government.



Despite the legal cooperation framework, several obstacles remain, such as validation of professional qualifications for certain professions. This hampers workers' right to free mobility. It is estimated that around 25 000 workers are impacted, due to a complex validation procedure in the Øresund region on the Danish/Swedish border.<sup>94</sup> As part of a research project, 'Re-start Nordic competence mobility', a first phase focused on labour market mobility.<sup>95</sup> Although labour mobility represents a cornerstone of Nordic cooperation, it has faced serious challenges due to restrictions related to the COVID-19 pandemic, as well as an influx of refugees.

## Case study 2: European Groupings of Territorial Cooperation

According to the studies and project experiences chosen by the European Commission's b-solutions, the recognition of qualifications and diplomas remains a complex topic in a cross-border situation, despite the existence of Directive 2005/36/EC on the recognition of professional qualifications. The cross-border project has faced two different sets of obstacles since its creation: establishing hospitals and hiring personnel.

### European Groupings of Territorial Cooperation (EGTC)

Situation/context: cross-border hospital integrating Spanish and French systems

Obstacles: lengthy recognition procedure for French doctors' diplomas.

Impacts: proper functioning of the hospital is at risk.

Proposed solutions: ECBM could play an important role in diploma recognition.

Observation: ECBM/tool would play an important role in recognition of qualifications.

Source: [EGTC – Hospital de Cerdanya](#)

To overcome an example of this first set of obstacles, an EGTC was established in Spain. The Cerdanya Hospital EGTC operates as a cross-border hospital, integrating the French and Spanish health systems and hiring personnel from both sides of the border to offer healthcare to citizens of both France and Spain. When it comes to the second set of obstacles, hiring personnel, the hospital faces significant challenges in establishing cross-border teams of doctors. The Spanish Ministry of Education and Vocational Training is the competent authority for the recognition of foreign diplomas. As it could take more than six months for the Ministry to respond to requests for recognition, the Cerdanya Hospital EGTC was seeking solutions to speed

up the recognition process when employing French citizens.

Several solutions were proposed by specialised experts as part of the b-solution project:<sup>96</sup> introducing a 'non-response period' was suggested,<sup>97</sup> or exceptionally delegating qualification recognition to the Girona Medical Association, or to second a ministry official to the hospital. The potential usefulness of a European cross-border mechanism is emphasised here, as it could lead to application of French legislation in recognising diplomas acquired or certified in France. In that case, regional capacities would need to play a stronger role of 'initiators' of solutions under the ECBM. The Cerdanya Hospital EGTC opted to delegate the recognition of qualifications.<sup>98</sup>

<sup>94</sup> [Øresunddirekt: Border issues between Sweden and Denmark](#), Information service website, consulted in February 2023.

<sup>95</sup> A. Lundgren, A. Bogason, [Re-start competence mobility in the Nordic Region](#), Nordregio working paper 2022:4.

<sup>96</sup> b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.

<sup>97</sup> Meaning that, if no response is given in a defined time span, then recognition is automatic.

<sup>98</sup> Ibid.

### Case study 3: Cross-border health and emergency services

In the Karlovy Vary Region of Bohemia in Czechia and Saxony and Bavaria in Germany, patients are transferred to the nearest hospital, either in Czechia or in Germany, in the case of accidents implying emergency healthcare. Despite a well-functioning cross-border cooperation between the hospitals on both borders, the Czech legislation on healthcare reimbursement and emergency services seems to constitute an obstacle due to insufficient transposition of Directive 2011/24/EU on patients' rights in cross-border healthcare<sup>99</sup> into Czech legislation, in particular regarding the reimbursement of patients insured in Czechia seeking treatment in Germany without prior authorisation. The obstacle arises because Czech hospitals and ambulatory care providers are financed through a complicated reimbursement mechanism and not by a case-by-case payment.

#### Emergency healthcare

Situation/context: Good cross-border cooperation between hospitals at the Czech/German border, but problems with cross-border reimbursement for patients.

Obstacles: both legal and administrative, stemming from an insufficient transposition of the EU Directive on patients' rights in cross-border healthcare.

Impacts: insufficient access to medical treatments in border areas, where patients are discouraged from seeking medical care in nearby Germany.

Solution proposed: ECBM could play an important role in overcoming legal obstacles.

Source: b-solutions: Solving Border Obstacles, [A Compendium of 43 Cases](#), European Commission, March 2020.

Possible solutions suggested by experts include amending the existing framework agreement between Czechia and Germany to address obstacles in emergency healthcare services. In cases of planned healthcare treatment, reform would be necessary. However, new, streamlined procedures, entered into force from 2022. Experts agree that the use of ECBM would help to overcome legal obstacles, for both emergency and planned medical services. In an example of concrete steps taken, the Czech Constitutional Court is evaluating the legislation on by-laws on reimbursement and the Czech Public Health Insurance Act 48/1997, to streamline procedures for claims for reimbursement by creating revision committees.

<sup>99</sup> [Directive 2011/24/EU](#) of 9 March 2011 on the application of patients' rights in cross-border healthcare.



## Case study 4: Multilingualism in school/education in Austria, Hungary and Slovakia

The automatic recognition of diplomas is a cornerstone of the European Education Area (EEA)<sup>100</sup> and is linked to learning mobility issues. Promoting multilingual competence, providing a better understanding of other cultures, developing citizenship and democracy competences, is at the heart of the EEA. In border regions, the lack of multilingual competence presents an obstacle in interaction between citizens and public administrations. Cooperation between early childhood institutions in border regions and encouraging learning the language of a neighbouring country could help remove such language barriers in border regions.<sup>101</sup> In the border regions between Austria, Hungary and Slovakia, children cannot attend kindergarten or primary schools in the neighbouring country because of legal obstacles related to insurance, financing of school places and mutual recognition of education curricula. The actors involved in the three countries have informed policymakers at all levels in these countries. One solution proposed to overcome the legal obstacles (mutual recognition of teacher qualifications) was to raise awareness of these obstacles by informing the relevant authorities and contacting the Austrian Federal Ministry for Education. No legal options have been identified at the moment. Other possible solutions include funding of bilingual teaching or additional language courses. Inspiration can be drawn from similar cases in other border regions. The authorities concerned can apply for further funding for bilingual teaching and to facilitate teachers' and pupils' mobility, through, for example, the Interreg or Erasmus+ programmes.<sup>102</sup>

### Access to early education in the border region

Situation/context: Pupils from Austria, Hungary and Slovakia cannot attend kindergarten and schools in a neighbouring country.

Obstacles: legal obstacles (such as insurance and financing) and administrative obstacles (such as recognition of education pathway).

Impact: restriction of multilingual education, discrimination in access to early and primary education.

Solutions proposed: awareness raising and further funding.

Source: b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.

## Observations from the case studies

The selected case studies illustrate a variety of obstacles citizens and businesses in border regions face – but they are far from exhaustive. The existence of obstacles and their impact on citizens in border regions highlight the discrimination<sup>103</sup> they face when it comes to accessing public services, compared to citizens living in other regions. Moreover, businesses enjoy fewer opportunities.

The European Commission supports selected projects in removing obstacles. The 2020 b-solutions compendium includes an overview of 43 cases of cross-border obstacles, lessons learned and policy recommendations.

<sup>100</sup> Report on the implementation of the Council recommendation on promoting automatic recognition of higher education and upper education and training qualifications and outcomes of learning periods abroad, [COM\(2023\) 91](#), 23 February 2023.

<sup>101</sup> [Council recommendation 2019/C 189/03](#) of 22 May 2019 on a comprehensive approach to the teaching and learning of languages.

<sup>102</sup> b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.

<sup>103</sup> For example, Directive 2011/24/EU notes: 'The principle of non-discrimination with regard to nationality shall be applied to patients from other Member States'.

Analysis of these cases shows that, in 38 % of cases, the ECBM would be an appropriate additional tool to help overcome legal and administrative obstacles, providing support for local and regional authorities. This applies especially for cases where obstacles originate in diverging national legislation or administrative practice across a border. In cases of existing close institutional cooperation or existing bilateral agreements, other solutions seem more feasible. Experts note that where no change of legal framework is required, or the legislation can be amended easily, actors prefer to choose other means to tackle obstacles, such as intensified exchange and cooperation.<sup>104</sup>

The latest 'b-solutions 2.0' call for proposals, open until November 2023, will identify 120 projects in the following areas: institutional cooperation, public service, labour market, education and the European Green Deal.<sup>105</sup> The cases selected will be matched with legal experts who will provide assistance in identifying obstacles, proposing solutions and outlining the legal framework.

There is no single solution to the great diversity of cross-border obstacles, arising in all sectors and various border region constellations. Sharing good practice on successful solutions serves as inspiration for stakeholders in other border regions, but research shows that any good practice needs to be adapted to local, regional and national contexts and border-specific factors. Where cross-border public services are subject to national rules, actors face different counterparts on the other side of the border, which makes harmonisation difficult. If delegation of powers from national to regional authorities is not feasible, national authorities could support regional authorities to bridge the gap. The European Commission's ECBM proposal was intended to overcome such difficulties. Finally, sharing of knowledge and exchange of good practices should be further enhanced. The European Observation Network for Territorial Development and Cohesion (ESPON)<sup>106</sup> has developed a database of 579 cross-border public services, including 29 good practice examples. Access to open data could facilitate the exchange of information and support territorial development in border regions across Europe.<sup>107</sup>

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<sup>104</sup> b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.

<sup>105</sup> Ibid.

<sup>106</sup> [ESPON](#) is an EU-funded programme providing expertise and tools, e.g. maps, data monitoring, analysis, territorial impact assessments.

<sup>107</sup> [Cross-border Public Services](#), Targeted analysis, ESPON, January 2019.

### 3. Need for EU action

The previous sections identified a set of legal and administrative obstacles in cross-border cooperation and their impacts on citizens and businesses living and operating in these regions. This chapter will explore the need for EU action, including the suitable EU legal basis. Based on the identified gaps, this section aims to identify policy options to address the identified obstacles and reduce their impacts.

#### 3.1. EU right to act

The Commission based its 2018 proposal for a European cross-border mechanism (ECBM) on the third paragraph of Article 175 TFEU, defining it as a specific action falling outside the structural funds. The specific action and, consequently, the proposed mechanism, have to be read in the context of Chapter XVIII on economic, social and territorial cohesion of the TFEU. Cohesion policy in the EU is intended to provide solidarity with less-favoured regions, without addressing specific sectors. Reducing disparities between development levels in the various and the most disadvantaged regions is the main objective of EU cohesion policy (Article 174 TFEU). Specific action to solve legal and administrative obstacles constitutes an essential part of cohesion policy; without solutions to these obstacles, economic and social cohesion cannot be achieved in cross-border areas in particular.

Cross-border cooperation and the supply of cross-border public services have a European dimension per definition, therefore, legislation at the EU level is the appropriate way to strengthen close cooperation between national, regional and local authorities and, in particular, to support effective cross-border solutions, in case other instruments do not fit, or are not suitable.<sup>108</sup>

The identification of gaps and barriers (see Section 2.3) related to cross-border activities clearly shows the added value of more action at EU level. The availability of the proposed mechanism to address the barriers and obstacles could help increase clarity, transparency and reduce complexity. It could considerably enhance cross-border cooperation at territorial level and contribute to tackling economic, social and environmental challenges, and in particular address the needs of citizens living in border regions. As the gaps and barriers are of a cross-border nature, their impact can also be observed at EU level. To address them effectively, the need for EU action is evident. This argument is also confirmed by the quantitative outcomes showing a significant economic potential in addressing the present legal and administrative obstacles that hamper cross-border cooperation.

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<sup>108</sup> [Opinion](#) of the European Committee of the Regions on cross-border public services in Europe, 26 March 2021.

## 3.2. EU policy options

The previous chapters showcase the need for specific EU action to overcome persisting legal and administrative obstacles in cross-border cooperation under the existing instruments and legislation. This section proposes a set of policy options that could address these obstacles and benefit citizens and business in cross-border regions. As noted in the Commission's 'b-solutions' case study publication, experts note that in more than one third of cases, a cross-border mechanism would be suitable to overcome cross-border obstacles.<sup>109</sup> The policy options are assessed in both a qualitative and a quantitative manner. Research estimates that there is a significant potential in addressing these barriers.

Looking at data between 2014 and 2019, this study finds that removing obstacles would bring significant benefits for NUTS3 border regions and the entire EU economy. More precisely, a total GVA benefit from the complete removal of legal and administrative barriers would yield around €457 billion per year, representing 3.8 % of total EU GVA in 2019. Looking at a more realistic and feasible scenario of a 20 % removal of obstacles for all border regions, we found a total GVA benefit of €123 billion per year, representing around 1 % of total EU GVA in 2019. Other potential benefits should also be mentioned, such as the positive impact on social rights and removing inequalities in access to public service for citizens living in border regions.

Against this significant potential, this study identifies two policy options (where policy option 1 represents the status quo, meaning no additional EU action). These policy options have the potential to address administrative and legal obstacles and thereby reduce the negative impact caused by the presence of obstacles. Table 6 formulates three policy options. These options differ in the level of their ambition, which is reflected in their potential to bring about positive economic and social impacts.

### 3.2.1. Policy option 1: Status quo

Policy option 1 represents the current situation, with no further EU action taken. Regions can make use of bilateral agreements and benefit from assistance from the various networks, such as the Border Focal Point Network, or experts from the 'b-solutions' network. In the area of cross-border healthcare, the transposition of the currently applicable legislation might diverge across Member States. It appears however, that the full potential of existing legislative and non-legislative instruments is not being reached, as there is a lack of awareness of existing European and national legislation, or a lack of cooperation to address the existing obstacles between local and regional authorities across borders.

Cross-border cooperation between administrations or the exchange of information helps to better understand such obstacles and can lead to a certain flexibility for actors to find an appropriate solution, but there is potential for more cooperation. The literature and practical cases, the Nordic Council of Ministers for example, demonstrate that it is essential to take the specificities of border regions into account when negotiating and applying legislation in a cross-border situation, to minimise friction and obstacles.

The available data and case studies suggest that a lot needs to be done to overcome both existing and new obstacles. Due to limited awareness in some cases, there is potential to raise awareness, share knowledge and better use the existing, although limited, legal provisions and agreements between countries already in place.

Last but not least, looking at sectoral legislation on cross-border cooperation, despite the Cross-Border Healthcare Directive cooperation procedure, barriers continue to hamper cross-border

<sup>109</sup> b-solutions: Solving Border Obstacles, [A Compendium of 43 Cases](#), European Commission, March 2020.

patients' rights, due to a lack of awareness and information on patients' rights.<sup>110</sup> The literature on the legal framework for sector-specific cross-border cooperation, such as the Cross-Border Healthcare Directive or the regulations regarding coordination of social security systems, shows that the way EU legislation is implemented and applied at national level often causes obstacles and barriers in border regions. A disproportionate application of the rules, or high administrative requirements (e.g. prior authorisation or reimbursement procedures, intransparent healthcare costs), contradict compliance with the principle of proportionality and lead, for instance, to restrictions on the free movement of workers. If the directive was applied in a more coherent and flexible manner, citizens in border regions would gain better access to healthcare. Better cooperation and communication between the relevant stakeholders could also facilitate the implementation and application of the directive. Furthermore, according to the 'b-solutions' projects' experiences, numerous cases are related to the cross-border application of social security rights. The Administrative Commission on Social Security Coordination, established by the Regulation of the Coordination of Social Security Systems (EC) 883/2004, is tasked with dealing with administrative questions and the interpretation of its provisions. It should facilitate the uniform application of EU law through the exchange of best administrative practices and foster cooperation between Member States and their institutions, in particular in relation to cross-border cooperation activities. The coordination is complex, often due to poor or differently transposed legislation, as Member States can decide what benefits to grant, to whom, under what circumstances, and for how long. This example shows that more could be done by improving cooperation between Member States, their institutions and administrations, particularly in a cross-border context, where the exchange of experience and good practice is considered fundamental.

### 3.2.2. Policy option 2: Soft-law measures

Policy option 1 demonstrates the limits of existing instruments and legislation. This policy option complements the previous option with the use or adoption of soft-law instruments. Based on the literature review and discussions with stakeholders,<sup>111</sup> policy option 2 presents a more ambitious scenario and could contribute to better awareness raising, and could address the existing administrative obstacles.

Cross-border networks of experts, such as b-solutions, are essential in providing expert advice, assistance and encouraging knowledge sharing. Best practices that work in one region, might not work in other however, and these solutions need to be tailored. This policy option might improve the situation in addressing administrative obstacles, but to a very limited extent, as legal obstacles will remain largely unresolved.

Good practice examples illustrate that a combination of legislation and complementary measures are key to successful cross-border cooperation. To complement legislation or (conclusion of) bilateral or multilateral agreements, or to strengthen the role of existing instruments, such as the EGTC and EEIG, soft-law measures could complement the existing legislative *acquis*, as indicated in Table 6. Measures including capacity building, trainings, workshops, exchange of good practice, addressing multilingual issues, or the use of digital tools, could lead to improved cooperation and mutual understanding, creating trust between stakeholders, which is one of the pre-conditions for good cooperation. Soft-law measures, such as enhanced administrative cooperation and coordination, could contribute to more efficiency – however, they are not suitable for cross-border projects to overcome legal barriers or to solve administrative obstacles.

Digital solutions could facilitate cross-border management. One example of a digital tool is the 2022 legislative proposal for a regulation introducing a high level of public sector interoperability across

<sup>110</sup> [Resolution](#) of 12 February 2019 on the implementation of the Cross-Border Healthcare Directive, European Parliament.

<sup>111</sup> European Committee of the Regions and AEBR.

the Union ('interoperable Europe act'),<sup>112</sup> aiming at promoting cross-border interoperability of network and information systems in the public sector. Establishing common rules and a coordination framework could facilitate the interoperability of public services. Different levels of digitalisation, or the lack of thereof, lead to incompatibility between public administrative systems. Almost 35 % of stakeholders in border regions identify a lack of joint digital services, e.g. limited interoperability, as one of the top obstacles to cross-border cooperation, based on their own experience.<sup>113</sup> Digitalisation of public services to provide better interoperability should consider the specific context of cross-border regions. Digital tools also have the potential to overcome language barriers, promote multilingualism, and enhance trust. Introduction of electronic cards to access cross-border public services and e-procedures could help harmonise administrative provisions and contribute to improving life for people living in cross-border regions.<sup>114</sup>

Experts underline the potential of development and better use of digital tools, as they contribute to a more successful implementation of cross-border projects. The proposed European social security pass,<sup>115</sup> strongly supported by Parliament as a digital means to facilitate cross-border management in the field of social security, is an example that could be further developed and applied in practice. As a pilot project carried out by the Commission, it currently aims at exploring the feasibility of a digital solution to improve the proof and verification of mobile citizens' social security coverage and entitlements across borders, rather than the current reliance on paper-based procedures. It could facilitate the application of social security coordination rules and improve the portability of social security rights across borders, while helping to reduce the risk of errors and fraud in the social security coordination field. The automatic recognition of individual qualifications in higher and upper secondary education could be facilitated through the use of digital tools, which could decrease costs and the administrative burden.

### 3.2.3. Policy option 3: Soft-law measures plus Adoption of 'ECBM 2.0'

Policy option 3 is the most ambitious policy option, entailing adoption of a new instrument ('ECBM 2.0'), the relevance of which was highlighted in more than one third of cases by experts.<sup>116</sup> To formulate ideas for the new ECBM 2.0 mechanism, this study departs from the original Commission proposal. The 2018 ECBM proposal was very comprehensive in trying to meet the needs of Member States and their internal governance structures and competences, by guaranteeing sovereignty in case of a transfer of legislative powers. The inclusive approach serves to take account of the diversity of governance structures and levels of distribution of competences in the EU. The proposal appears rather complex and some provisions remain unclear, as stakeholders have concluded.<sup>117</sup> Furthermore, despite its innovative approach to help overcome the cross-border obstacles that stakeholders face, it is argued that implementing ECBM in practice might prove to be complicated.<sup>118</sup>

Some Member States also question the voluntary nature of the Commission proposal. Moreover, the concept that the legislation or administrative rules of one participating Member State would be

<sup>112</sup> Proposal laying down measures for a high level of public sector interoperability across the Union (Interoperable European Act), [COM\(2022\) 720](#) final, European Commission, November 2022.

<sup>113</sup> [Public consultation on overcoming cross-border obstacles](#), Summary report 2020, European Commission, May 2021.

<sup>114</sup> [Opinion on cross-border services in Europe](#), European Committee of the Regions, 2021.

<sup>115</sup> [Resolution](#) of 17 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility, European Parliament.

<sup>116</sup> b-solutions: Solving Border Obstacles, [A Compendium of 43 Cases](#), European Commission, March 2020.

<sup>117</sup> C. van Lierop, [Mechanism to resolve legal and administrative obstacles in a cross-border context](#), EPRS, European Parliament, November 2021.

<sup>118</sup> F. Sielker, [The European Commission's Proposal for a Cross-Border Mechanism \(ECBM\): Potential Implications and Perspectives](#), *Journal of Property, Planning and Environmental Law*, vol. 10, no 3, 2018, pp. 219-239.



transferred ('pulled-over') to another Member State for the purpose of a cross-border project seems to present a threat for some countries. To improve the acceptance of the proposed mechanism, it is advisable to clarify and communicate clearly that the mechanism would only be launched upon the request of the participating Member States or their regions. Member States participating in a cross-border project would have the power to decide whether it suits them to launch or to participate in the process for establishing the mechanism; thereby maintaining their sovereignty and ownership of the process.

Based on the literature review and interviews with stakeholders, this study formulates some aspects to consider for a new ECBM 2.0 legislative proposal. These include:

- **Simplification:** to streamline the language/terms and procedure for launching and conducting cross-border procedure to resolve obstacles;
- **Member State toolbox:** Place a toolbox at Member States' disposal. Member States to retain their ownership over the possible approach, and the decision remains solely within Member States' competence;
- **Cross-border contact point(s):** Member States to designate and set up a 'cross-border cooperation point' (this could be a part of a ministry, local agency or an existing EGTC), which would be competent to assess the nature of an obstacle and assess which solution would be most suitable in a given context;
- **Ad-hoc agreements to derogate from regular procedure:** ECBM 2.0 could be used to resolve the diverging rules of two neighbouring countries in a form of ad-hoc legal or administrative resolution based on derogation (project specific and limited in time);
- **Extension of the scope:** to extend the scope from NUTS3 regions to cover NUTS2 as the currently proposed scope for NUTS3 does not reflect the administrative reality of all Member States; the NUTS2 level is considered to be the more appropriate level to resolve obstacles;
- **Role of regional authorities:** in designing, implementing and evaluating policies with territorial impact and when negotiating and implementing EU legislation at national/regional level.
- **Funding assistance:** to ease the implementation of ECBM 2.0.

The above recommendations aim to provide key elements for a possible ECBM 2.0 proposal, as identified by experts, and discussed within the REGI committee at the time of drafting of this study. They are therefore neither exhaustive nor final.

Table 6 – Overview of identified policy options

Policy option	Examples	Assessment of the policy option
<b>Policy option 1</b>  Status quo	Bilateral/multilateral agreements between Member States	Gaps in implementation, for example due to a crisis situation (e.g. during COVID-19 pandemic)
	EGTC: Possibilities to set up a (legal) entity to handle obstacles	Absence of legislative competences in case of EGTC
	B-solutions: sharing of expertise and admin and legal assistance	B-solutions: sharing of best practices but targeted approach needed for tailored solutions to address the specific obstacles in different regional contexts; limited to best practice sharing.
	Border Focal Point: facilitating access of border regions to (re)sources and networking	
	Using the existing provisions on cross-border cooperation in sectoral legislation (e.g. on cross-border health)	Existing provisions in sectoral legislation provide legal certainty but are sector-limited, not always properly implemented at national level

<b>Policy option 2</b>  Soft-law measures	Raising awareness and capacity building through workshops and knowledge sharing  Capacity building for local stakeholders, <sup>119</sup> training staff in administrations dealing with cross-border issues; workshops and exchange of best practices, multilingual documents and guidelines  Guidelines provided by the Commission to enhance the application of existing legislation	Improved cooperation/exchanges between competent authorities, building trust as a pre-condition to cooperation  Better evidence, but absence of an instrument to overcome legal obstacles  Solving/addressing legal or administrative barriers
	Development and better use of digital instruments for improving cross-border public administration <sup>120</sup>	More efficiency in administrative procedures
	ESPON: data collection and exchange	Better informed decision making due to more data and evidence
	Enhanced coordination between national/regional authorities: possibility of administrative ad-hoc conventions	Limited to administrative obstacles  Problem of varying level of competences of regional administrations
<b>Policy option 3</b>  Soft-law measures  plus  Adoption of ECBM 2.0	A common universal tool enabling obstacles to be overcome across sectors  Establishment of cross-border contact points  Enhancing the role of EGTCs to launch and lead the procedure  Use of funding instruments for Member State authorities  Derogation from existing law or ad-hoc solution	Need to streamline the 2018 proposal and address concerns voiced by some Member States  The choice of a solution, such as activation of the ECBM 2.0, would remain in hands of Member States  Derogation and ad-hoc solutions could provide flexibility and efficiency in overcoming obstacles

Source: Author.

As most of the obstacles are of a legal nature,<sup>121</sup> simply enhancing administrative cooperation or strengthening the role of ECTG would not resolve the obstacles in all cases. In most cases, projects face a combination of administrative and legal obstacles, rather than one single obstacle, which makes it difficult to find ready-made solutions. A combination of solutions is therefore required to effectively overcome such obstacles. Experts assisting with measures to overcome obstacles in cross-border regions also conclude that solutions need to be tailored to each case.<sup>122</sup> A caveat: a multiplication of tools and structures might lead to unnecessary bureaucracy and difficulties, which should be avoided.

Different administrative frameworks and divergent legislation, or different transposition and implementation of laws across borders can hamper cooperation. The experience of projects

<sup>119</sup> b-solutions: Solving Border Obstacles, [A Compendium of 43 Cases](#), European Commission, March 2020.

<sup>120</sup> Proposal for a regulation of the European Parliament and of the Council laying down measures for a high level of public sector interoperability across the Union (Interoperable Europe Act), [COM\(2022\) 720](#) final, European Commission, 18 November 2022.

<sup>121</sup> b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.

<sup>122</sup> Ibid.



selected by b-solutions shows that exchange of information between stakeholders and coordination with competent authorities are considered fundamental requirements; well-researched and evidence-based understanding of the obstacles is another prerequisite for successful implementation of a cross-border project. Stakeholders often lack capacity for this, and deem Union instruments essential for cross-border cooperation.

### Scope extension

Another aspect to consider is the geographical coverage of a possible new instrument (ECBM 2.0). Broadening the geographical scope by extending the application of the ECBM 2.0 from NUTS3 to NUTS2 was suggested by the European Parliament and the European Committee of the Regions, in its opinion on the 2018 ECBM proposal. The NUTS3 scope is used for the purpose of the Interreg programme, as well as for the 2018 proposal on ECBM.<sup>123</sup> However, the competences of NUTS2 and NUTS3 regions differ enormously among Member States (see overview in Chapter 2). As evidence provided by the b-solution cases shows, projects implemented at NUTS3 level might be limited in their ability to solve legal or administrative obstacles, as they might not possess the requisite legislative power. In the case of cross-border obstacles, NUTS3 level is not always the most appropriate to solving legal and administrative issues in all cross-border situations. Cases show that the involvement of all appropriate levels, for example the NUTS2 administrations from the beginning and planning stages of the project, might help solve legal and administrative obstacles and barriers at an early stage. Experts consider involving the NUTS2 level could add value, if appropriate in a given case, as it would better reflect the distribution of power for some Member States. An extension to NUTS2 regions would, in certain cross-border situations, better reflect the distribution of competences in a Member State. At first glance, it might seem that more complexity is being added, but the extended scope to NUTS2 could be useful, as it might help to involve the appropriate national level from the beginning of some cross-border cases, as they possess the legal and administrative competences for resolving the obstacles.

The literature and available data offer further support for the extension of the definition of the geographical scope of the ECBM instrument. The outcome of the Commission's 2015 cross-border review already showed that only one third of all obstacles (78 cases),<sup>124</sup> are noticed at a small segment of a specific border.<sup>125</sup> More than 60 % of legal and administrative obstacles (152 cases) affected the entire length of specific EU land borders. These concern problems where EU action is needed to overcome the obstacles (cross-border public transport), or where new or revised EU legislation would improve the situation (such as more legal certainty regarding eHealth).

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<sup>123</sup> [In profile: EU cohesion spending by NUTS regions](#), Cohesion Open Data Platform, European Commission.

<sup>124</sup> In total, 239 legislative and administrative obstacles were analysed. These include: EU-related obstacles, Member State-related obstacles and administrative obstacles.

<sup>125</sup> [Easing legal and administrative obstacles in EU border regions](#), Final report, DG REGIO, European Commission, March 2017.

## 4. Assessment of potential impacts and European added value

This section analyses the proposed policy options and assesses the potential impacts in both a qualitative and a quantitative manner. It builds upon previous research estimates<sup>126</sup> that showed there is a significant potential benefit in addressing remaining legal and administrative barriers in land border regions. This study investigates whether this estimation remains valid, using more recent data.

### 4.1. Quantitative assessment: updating the quantification of impact of the obstacles

The aim of this chapter is to provide an update of the evaluation provided in a Commission paper of 2017<sup>127</sup> on the quantification of legal and administrative border obstacles. More specifically, using the most recent available data, we look at the economic and employment impact of the level of legal and administrative border obstacles in land border regions. The scope of the present quantification focuses on land border regions, aligned with the approach set in the 2018 Commission proposal and impact assessment.<sup>128</sup>

#### Conceptual framework and description of data and model used

As highlighted in recent business surveys<sup>129</sup> and explained in previous sections, physical borders or differences in languages are not the only factors responsible for hindering trade and reducing GVA<sup>130</sup> growth. Regulatory barriers, resulting mainly from excessively complex administrative procedures and from fragmentation due to different national legal frameworks, play a central role. The 2017 Commission study largely confirmed that these regulatory barriers continue to affect the EU land border regions (see Figure 1), and thus could hinder GVA growth and employment in these regions. In particular, the study estimated that removing one fifth of the existing obstacles could lead to a 2 % GDP increase in border regions, including the creation of 1 million new jobs.

To evaluate the impact of persisting obstacles more precisely, the authors used a regional growth model specification that aims at quantifying the extent to which the suboptimal use of some assets hinders the GVA growth rate in some regions, due to the presence of legal and administrative barriers. The model took the following form:

<sup>126</sup> Boosting growth and cohesion in EU border regions, [COM\(2017\) 534 final](#), European Commission, September 2019.

<sup>127</sup> A. Caragliu, R. Capello, R. Camagni, et al., [Quantification of legal and administrative border obstacles in land border regions](#), DG REGIO, European Commission, May 2017.

<sup>128</sup> The 2018 Commission Impact Assessment (IA), accompanying the multiannual financial framework (MFF) proposals, was the subject of an [initial appraisal](#) by the EPRS Ex-Ante Impact Assessment Unit, who noted that its format and scope differ from the standard IAs defined by the Commission's Better Regulation Guidelines.

<sup>129</sup> Eurochambres, [Business survey. The state of the Single Market: Barriers and Solutions](#), December 2019.

<sup>130</sup> Gross value added (GVA) is defined as output (at basic prices) minus intermediate consumption (at purchaser prices); it is the balancing item of the national accounts' production account. The sum of GVA over all industries or sectors plus taxes on products minus subsidies on products gives gross domestic product.

### Equation 1

$$\Delta Y = \alpha + \sum_k \beta_k * controls_k + \gamma * border + \delta_i * assets_i + \vartheta_i * border * assets_i + \mu_{ij} * border * assets_i * obstacle + \sum_{c+1..n} \rho_c + \varepsilon_{ij}$$

Regarding variables,  $\Delta Y$  represents the growth rate of the GVA for the period under consideration (2008-2013 in the Commission paper). The first control variable measures the logarithm of the initial (2008) level of GVA in each region,<sup>131</sup> in line with conventional practice for this type of model. Two additional dummy<sup>132</sup> variables control whether the region is predominantly rural or urban. 'Border' is another dummy variable that takes the value 'one' if the region is a land border region. Assets include explanatory variables on agglomeration economies, productive capacity, accessibility, trust, manufacturing activities, product innovation, knowledge, human capital, cultural events, saving propensity, spatially lagged propensity to save and spatially lagged manufacturing activities.

'Obstacle' is a dummy variable that takes the value 'one' when a border region is characterised as a region with administrative and legal barriers. The authors assumed that a region is classified as belonging to 'regions with administrative and legal barriers' when the NUTS3 region scores higher than the EU average in the Eurobarometer question 'To what extent do you consider legal and administrative barriers an obstacle for potential cooperation?'.<sup>133</sup> As a robustness check, the authors also estimated the model with a continuous version of the obstacle variable, as this allows for a more precise estimate. The model also includes countries' fixed effects, to correct if estimation results are driven by some country-specific characteristics.

Regarding parameters in the model,  $\delta_i$  is the average coefficient for the impact of each productive asset ('i') on regional growth,  $\vartheta_i$  is the coefficient for the differential impact of asset ('i') on the growth of border regions, and  $\mu_{ij}$  the coefficient the impact of each asset ('i') on the growth of border regions characterised by legal and administrative barriers ('j'), with respect to all other regions. Crucially for the evaluation, when  $\mu_{ij}$  displays a negative and significant value, this signals that border regions with legal and administrative barriers register a lower impact on growth from a specific asset with respect to all other regions, and therefore that this asset is used in a suboptimal way. In the equation, 'i' refers to assets, 'j' to obstacles and 'c' to countries.

The model used in this paper is based upon the same specification and the same variables and parameters as given in equation 1. We use data covering 1 155 EU regions at NUTS3, 447 being considered land border regions, from 24 Member States.<sup>134</sup> Another difference is that we only estimate the models for three assets' variables that were found to be significant in the 2017 Commission paper,<sup>135</sup> namely agglomeration economies, accessibility and productive capacity. Another difference is that we use the continuous version of the variable on obstacles directly. A final difference is that we update the values for each variable, using the latest information available.

Similar to equation 1, our model, equation 2, takes an extended form.

<sup>131</sup> In logarithmic terms.

<sup>132</sup> A dummy variable takes the values 0 or 1 to indicate the absence or presence of a categorical effect.

<sup>133</sup> [Flash Eurobarometer 422: Cross-border cooperation in the EU](#), European Commission, September 2015.

<sup>134</sup> We do not cover Malta, Cyprus or Ireland. Unlike the 2017 Commission paper, data from the United Kingdom is not included.

<sup>135</sup> We do not include the fourth significant variable on trust, as no updated indicator was available.

## Equation 2

$$\begin{aligned}
GVA_{growthrate} = & \alpha + \sum_k \beta_k * (log\ GVA, rural, urban)_k + \gamma * border + \delta_i \\
& * (agglomeration, accessibility, productive capacity)_i + \vartheta_i \\
& * border (agglomeration, accessibility, productive capacity)_i + \mu_{ij} * border \\
& * (agglomeration, accessibility, productive capacity)_i * obstacle + \sum_{c=1..n} \rho_c + \varepsilon_{ij}
\end{aligned}$$

We use GVA growth rate for 2014-2019 as our dependent variable. The GVA data are taken from Eurostat. We control for 'with initial level of value added' and for whether the region is predominantly rural or urban. According to a Eurostat definition,<sup>136</sup> EU NUTS3<sup>137</sup> regions are labelled as predominantly rural when the share of the population living in the rural areas is higher than 50 %, while the NUTS3 regions are labelled as predominantly urban if the share of the population that lives in rural areas is below 20 %. 'Border' is a dummy variable, with value 'one' when the region is identified as cross-country border region and 'zero' otherwise.

Table 7 – Description of variables

Variables	Unit	Source	Mean	Standard deviation	Min.	Max.
<b>GVA growth rate</b>	% average 2014-2019	Eurostat	0.03	0.02	-0.05	0.10
<b>log GVA</b>	Euro	Eurostat	8.6	1.1	5.1	12.2
<b>Predominantly rural regions</b>	Dummy	Eurostat	0.35	0.48	0	1
<b>Predominantly urban regions</b>	Dummy	Eurostat	0.21	0.40	0	1
<b>Border regions</b>	Dummy	Eurostat	0.39	0.49	0	1
<b>Agglomeration economies</b>	Persons per square km	Eurostat	423	1 079	1.9	20 965
<b>Accessibility</b>	Index	ESPON	93	37	21	285
<b>Productive capacity</b>	Employment/ population ratio %	Eurostat	0.46	0.12	0.19	1.21
<b>Obstacles</b>	%	Eurobarometer	0.43	0.09	0.13	0.63

Source: EAVA unit based on data from Eurostat, ESPON and Eurobarometer.

As explained, assets are the three variables on agglomeration economies, accessibility and productive capacity. Like the Commission paper, the variable on agglomeration economies refers to population density (person per square kilometre) for NUTS3 regions and is taken from Eurostat.<sup>138</sup> Accessibility refers to an index on potential multimodal accessibility for NUTS3 regions. It is taken from the ESPON database,<sup>139</sup> which provides harmonised data on the European Union territory. The

<sup>136</sup> [Rural development > Methodology](#), Eurostat, consulted in March 2023.

<sup>137</sup> The current NUTS 2021 classification includes 1 166 regions at NUTS3 level, 242 regions at NUTS2 and 92 at NUTS1.

<sup>138</sup> [Glossary: Population density](#), Eurostat, November 2013.

<sup>139</sup> [ESPON database](#), 2022.

variable on productive capacity refers to the employment population ratio. Data on employment and population are taken from Eurostat.

Finally, we have a variable for legal and administrative obstacles. In a similar method to that used in the 2017 Commission paper, the underlying data are extracted from the results of a flash Eurobarometer.<sup>140</sup> Using these results, we computed a continuous regional indicator for cross-border obstacles.

We also include country fixed effects. We excluded all countries without land borders. Based on data availability, we collected data for 1 155 NUTS3 regions. All these variables, used to estimate equation 2 at the EU NUTS3 regional classification level, are described in more detail in Table 7.

## Results of the econometric estimation

We estimated the parameters of the growth model using ordinary least square. Model 1 below is the basic model, with GVA growth rate as a dependent variable and the logarithm of GVA, predominantly rural regions, predominantly urban regions and border regions as explanatory variables. Models 2 to 5 progressively include the three assets in the regression model, namely agglomerated economies, accessibility and productive capacity. The results are presented in Table 8.

All else being equal, the results indicate a positive growth effect for border regions, which might indicate a relatively higher dynamism in EU border regions than in non-border regions for the period under consideration (2014-2019). This might be related to increase in intra-EU trade and exchanges with border regions being potentially more susceptible to benefits from the development of cross-border activities. All the models also emphasise that rural regions displayed less economic growth during the period.<sup>141</sup> Urban regions, on the contrary, registered higher levels of economic growth.<sup>142</sup> As urban regional centres are better connected to the transport grid and also concentrate more employment capacities than rural region, this result is not surprising.

Crucially, the coefficient  $\mu_{ij}$ <sup>143</sup> displays the expected signs and significant coefficients in all the models, in line with the results of the 2017 Commission paper. In the case that the value of the coefficient is both negative but also statistically significant, we can conclude that the land border region is not able to use regional assets to grow in the same way as other regions. This corresponds to a situation where the GVA growth rate in the region is negatively impacted by legal and administrative barriers. The results confirm that legal and administrative obstacles hinder fruitful exploitation of agglomeration economies (Equation 3),<sup>144</sup> of accessibility (Equation 4) and of productive capacities (Equation 5).

<sup>140</sup> [Flash Eurobarometer 422: Cross-border cooperation in the EU](#), European Commission, September 2015. More specifically we use the results of the reply to the question 'Thinking about the cooperation between your and partner country x, to what extent are legal and administrative barriers a problem'.

<sup>141</sup> Being a predominantly rural region was not conducive to higher level of GVA growth during the period, although with low significance.

<sup>142</sup> Being a predominantly urban region seemed to have been a positive factor explaining regional GVA growth, although the significance is again low and the effect disappears when including an additional variable on accessibility and productive capacity.

<sup>143</sup> This coefficient is linked to the interaction between the variables on border, assets and obstacles, as described in equation 2. It is the main object of our interest in this work, as it allows assessment of whether remaining legislative and administrative obstacles hinders the optimal development of land border regions.

<sup>144</sup> The model given in Equation 3 is preferred to Equation 2, as it displays a significant coefficient for the variable of interest on the interaction between agglomeration, border and obstacles.

Table 8 – Results of the econometric estimation (dependant variable is the average GVA growth rate)

Variables	(1) Model 1	(2) Model 2	(3) Model 3	(4) Model 4	(5) Model 5
log GVA	8.8E-04*	9.4E-04*	8.8E-04*	3.4E-04	4E-04
Predominantly rural regions	-1.1E-03	-1.2E-03	-1.2E-03	-0.8E-03	-1.3E-03
Predominantly urban regions	7.9E-05	2.3E-04	1.8E-04	-1.6E-03	-1.3E-04
Border regions	0.006***	0.007***	0.007***	0.013***	0.013***
Agglomeration	-	2.6E-07	2.9E-07	-	-
Agglomeration*border	-	3.7E-06	-	-	-
<b>Agglomeration*border*obstacles</b>	-	-1.5E-05	-6.4E-06*	-	-
<b>Accessibility</b>	-	-	-	9.8E-05***	-
<b>Accessibility*border</b>	-	-	-	6.8E-05	-
<b>Accessibility*border*obstacles</b>	-	-	-	-3.3E-04***	-
Productive capacity	-	-	-	-	0.021***
Productive capacity*border	-	-	-	-	0.007
Productive capacity*border*obstacles	-	-	-	-	-0.052***
Intercept	0.016***	0.015***	0.015***	0.012***	0.011***
Country fixed effects	Yes	Yes	Yes	Yes	Yes
Observations	1 155	1 155	1 155	1 155	1 155
R squared	0.39	0.39	0.39	0.40	0.40

Source: EAVA unit; \*\*\* p<0.01, \*\* p<0.05, \* p<0.1.

This approach has several advantages from the perspective of policy analysis, as the model can easily be extended to consider the economic impact of regulatory barriers and of various institutional arrangements. It is also well adapted to investigating direct and indirect effects, including interactions between variables, which was at the centre of our questioning. However, a limitation is that the model is static by nature and that it mostly focuses on the impact on one variable, namely GVA growth. The results thus do not pretend to have the higher level of explanatory

power of more complex models such as general equilibrium models.<sup>145</sup> The results should also be seen as an indication of the potential benefits for a gradual removal of obstacles. Another limitation of our results is that they do not give disaggregated estimations of impact on consumers or on certain types of businesses and stakeholders. Finally, it is important to recall that, while the variables in our model are the most commonly used in similar types of analysis, and in particular in the 2017 Commission study, there are variables that have been excluded from the scope<sup>146</sup> of our analysis, as we deemed them less relevant, or as they proved not to be significant during various rounds of estimation, or as the corresponding updated data were not available. Further complementary investigations could therefore help to improve the estimations provided.

## Quantification of the impact of legal and administrative border obstacles in land border regions

In this section, we detail the methodology of calculation for the final GVA and employment benefits of removing remaining legal and administrative obstacles.

**In a first step**, for each asset and in each region, we compute the predicted growth rate of the GVA between 2014 and 2019 given the existing level of remaining obstacles using the estimated parameters of models 3, 4 and 5. We then simply compute the GVA in 2019 for each asset and in each region by using the predicted GVA growth rates when land border regions are facing legal and administrative obstacles with the following formula:

### Equation 3

$$GVA_{2014,i} + \Delta GVA_{2014-2019,i} = GVA_{2019,i}$$

**In a second step**, for each asset and in each region, we compute the predicted potential growth rate of the GVA between 2014 and 2019 assuming the complete removal<sup>147</sup> of remaining obstacle using the models in equations 3, 4 and 5. This is a very ambitious assumption, which should be taken as an illustration of the total benefits that could be obtained from action in this area. We then simply compute the GVA in 2019 for each asset and in each region by using the predicted potential GVA growth rates when legal and administrative obstacles have been removed:

### Equation 4

$$GVA_{2014,i} + potential\Delta GVA_{2014-2019,i} = potentialGVA_{2019,i}$$

**In a third step**, we compute the GVA benefit for each asset and in each region by subtracting the potential GVA in 2019, in the case that NUTS3 land border regions are facing legal and administrative barriers (results given by equation 3), from the GVA in 2019, in the case that NUTS3 land border regions are not facing legal and administrative barriers (results given by equation 4). The total GVA benefit for each asset is then obtained by adding up the benefit for all regions and the total GVA benefit for the EU is finally simply obtained by adding up the benefit from removing obstacles for each asset.

### Equation 5

$$GVA_{benefit\ from\ removing\ obstacles\ i} = potentialGVA_{2019,i} - GVA_{2019,i}$$

<sup>145</sup> General equilibrium models incorporate all economic markets (labour, capital, goods and services) into the analysis in a dynamic way and integrate the fact that shocks occurring in other markets have implications for the market in question.

<sup>146</sup> Such as for instance trust, propensity to save, human capital, knowledge, lagged variables.

<sup>147</sup> We assume removing obstacles for all regions towards the level of the best performer. In the context of this study, best performers correspond to the average for the land border regions with the lowest measured level of obstacle in the EU.



## Equation 6

$$Total\ GVA\ benefit = \sum_i GVA\ benefit\ from\ removing\ obstacles_i$$

**In a fourth step**, we consider a more realistic scenario and assume, as per the 2017 Commission paper, a uniform removal of 20 % of obstacles in all regions.<sup>148</sup> Steps 2 and 3 are then repeated with this more modest objective. All the results are presented in Table 9.

Table 9 – Assessment of the GVA benefits (€ billion), due to the removal of legal and administrative obstacles for three identified assets

	GVA benefit of complete removal of legal and administrative barriers	GVA benefit as % of total GVA	GVA benefit of 20 % removal of legal and administrative barriers	GVA benefit as % of total GVA
Accessibility	256.2	2.11 %	68.5	0.56 %
Agglomeration economies	20.8	0.17 %	5.7	0.05 %
Productive capacity	180.2	1.48 %	48.5	0.40 %
Total benefit	457.2	3.76 %	122.7	1.01 %

Source: EAVA unit.

We found a total GVA benefit of complete removal of legal and administrative barriers of around €457 billion per year, representing 3.8 % of total 2019 EU GVA. This can be broken down into €256 billion in annual benefits linked to unhindered accessibility, €20 billion linked to the full materialisation of agglomeration economies and €180 billion linked to the optimal exploitation of productive capacities. The total GVA benefit is in the range estimation of the Commission paper, which estimated the total benefits to be between €76 and €844 billion. The breakdown between the three assets is also relatively similar as a percentage. Our estimation is, however, higher than the average value reported in the Commission paper, given that their results also include the impact of other assets. A major difference is that we use a more detailed variable to measure obstacles.<sup>149</sup> We therefore provide a more precise estimation of the GVA linked to removing obstacles, as in our computation some regions that display below-average levels of obstacles will still record a benefit from removing them, whereas in the Commission paper only the regions displaying an above-average level of obstacles would record a benefit.

<sup>148</sup> We assume that this could be considered a realistic and achievable lower bound, in line with EAVA practices and with the previous Commission analysis. Furthermore, a more ambitious target would bring higher estimates, but might be difficult to achieve in a medium-term time frame, while a lower target would prove rather limited in ambition. For instance in its previous drive to reduce administrative burden in the EU, the Commission proposed that the 2007 Spring European Council fix a reduction target of 25 %, to be achieved jointly by the EU and Member States by 2012. See Commission working document COM(2006) 691: 'Measuring administrative costs and reducing administrative burdens in the European Union'; Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions COM(2006) 689: 'A strategic review of Better Regulation in the European Union'.

<sup>149</sup> We use a continuous variable for the obstacle, instead of a dummy taking the value 1 if the level of obstacle for a region is above the average level for all regions and 0 otherwise.

Looking at the more realistic results of a 20 % removal of obstacles for all regions, we found a total GVA benefit of €123 billion, representing around 1 % of total 2019 EU GVA. This breaks down into €68 billion in benefits linked to unhindered accessibility, around €6 billion linked to the full materialisation of agglomeration economies and €48 billion linked to the optimal exploitation of productive capacities.

**Finally, in a last step,** based upon the estimates of GVA benefits in each region for each asset, we compute an employment impact, following up on the procedure used in the Commission's 2017 paper. We thus divide the benefit for each asset in terms of GVA in 2019, in each region, by its productivity levels in 2019.

$$\text{Employment benefit from removing obstacles}_i = \frac{\text{GVA benefit from removing obstacles}_i}{\text{Productivity}_i}$$

This is however a very static way to evaluate employment impact. The results should therefore be taken as giving an indication and could be complemented in future work by a more complete econometric estimation, similar to that carried out for GVA.

Table 10 – Assessment of the employment benefits (thousands of jobs) due to the removal of legal and administrative obstacles for three identified assets

	Employment benefit of complete removal of legal and administrative barriers	Employment benefit as % of total employment	Employment benefit of 20 % removal of legal and administrative barriers	Employment benefit as % of total employment
Accessibility	2 150	1.04 %	576	0.28 %
Agglomeration economies	161	0.08 %	44	0.02 %
Productive capacity	1 639	0.79 %	442	0.21 %
Total benefit	3 950	1.91 %	1 062	0.51 %

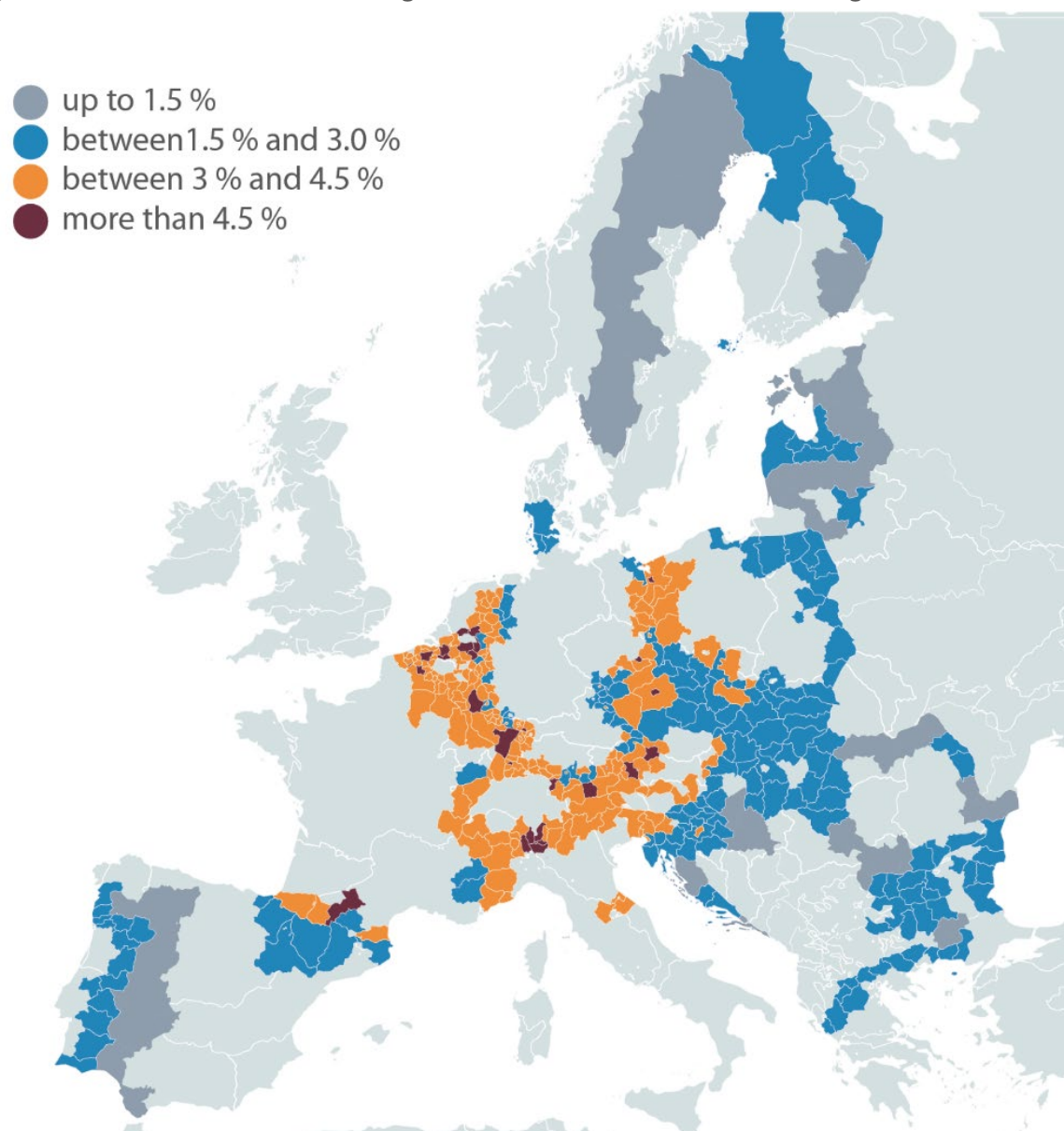
Source: EAVA unit.

We found a total employment benefit from complete removal of legal and administrative barriers of almost 4 million jobs, representing around 2 % of total employment at EU level. This breaks down into 2.1 million jobs linked to unhindered accessibility, 160 thousand jobs linked to the full materialisation of agglomeration economies and 1.6 million jobs linked to the optimal exploitation of productive capacities. The total employment benefit is in the range estimation of the Commission paper, which estimated a total employment impact of around 3 million jobs considering the three assets under consideration. Looking at the more realistic results of a 20 % removal of obstacles for all regions, we found a total employment benefit of 1 million jobs representing around 0.5 % of total employment at EU level. This breaks down into almost 580 thousand jobs linked to unhindered accessibility, 44 thousand jobs linked to the full materialisation of agglomeration economies and 442 thousand jobs linked to the optimal exploitation of productive capacities.

## Spatial distribution of benefits

The analysis of the spatial distribution of benefits that could be obtained from removing legal and administrative barriers offers an important complement to the more aggregated results presented so far. Figure 2 below shows the map at NUTS3 of GVA benefit in percentage of the total GVA for each region.

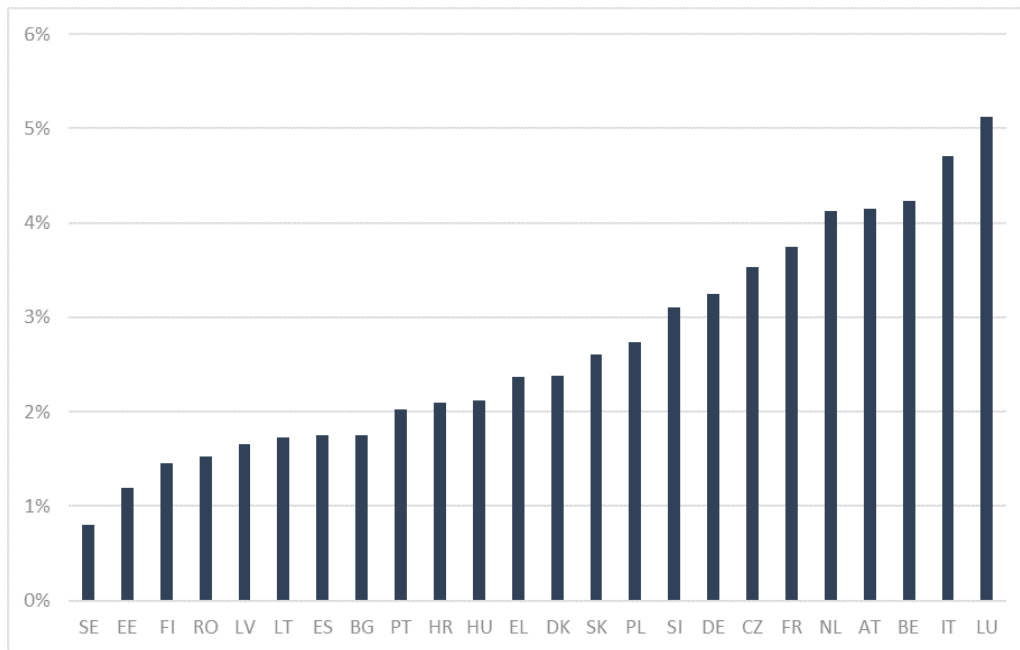
Figure 2 – GVA benefits of removing 20 % of obstacles as a % of total region GVA.



Source: EPRS. The map covers land border regions. Data for Ireland is not available.

Figure 3 below shows the GVA benefit in percentage of the total GVA for land border regions at the level of Member States. These representations help to shed some light on the fact that all Member States would be better off if barriers and obstacles between land border regions were addressed more substantially. They also confirm that some regions and some Member States, such as Austria, Belgium, Italy, Luxembourg and the Netherlands, could expect larger gain, in the order of more than 4 % of their respective total land border region GVA. While still significant, benefits are less important economically for most current peripheral Member States.

Figure 3 – GVA benefits of removing 20 % of obstacles as a % of total land border region GVA.



Source: EAVA unit, EPRS.

## Summary EAVA assessment

We use the same econometric model and estimation procedure as the Commission's paper. Our results confirm a substantial loss of GVA and lower employment due to persisting obstacles. We also found that the presence of legal and administrative barriers continues to generate a sub-optimal exploitation of existing regional assets. Assuming that an ambitious effort to reduce these obstacles by 20 % was implemented, we estimated, that a benefit of around €123 billion per year could be expected in the long term for border regions. This could potentially contribute to creating more than 1 million jobs. Overall, these benefits are associated with a more effective exploitation of accessibility, productive capacity and, to a lesser extent, with agglomeration economies.

Table 11 – EAVA Assessment – Summary

	GVA benefit (billion Eur.) of 20 % removal of legal and administrative barriers	GVA benefit as % of total GVA	Employment benefit (thousands of jobs) of 20 % removal of legal and administrative barriers	Employment benefit as % of total employment
Accessibility	68.5	0.56 %	576	0.28 %
Agglomeration economies	5.7	0.05 %	44	0.02 %
Productive capacity	48.5	0.40 %	442	0.21 %
Total benefit	122.7	1.01 %	1 062	0.51 %

Source: EAVA unit, EPRS.

## 4.2. Qualitative assessment

Table 12 provides a qualitative assessment of the proposed policy options based a set of selected criteria, including both qualitative and quantitative assessment. The qualitative assessment analyses certain non-quantifiable impacts of EU action taken to improve the cross-border cooperation by reducing legal and administrative obstacles. The assessment is based on a literature review of publicly available sources such as papers, studies and reports, published by EU institutions and bodies, international bodies and scientists. The potential impact was assessed according to policy options which differ in their level of ambitions: status quo, soft-law measures, and adopting a new instrument (here referred to as ECBM 2.0).

Table 12 – Qualitative assessment of policy options

Assessment criteria	Policy option 1: Status quo	Policy option 2: Soft-law measures	Policy option 3: Soft law measures + Adoption of ECBM 2.0
Legislative measure	No	No	Yes
EU legal base	N/A	N/A	Article 175 of TFEU
Subsidiarity and proportionality	N/A	Not assessed due to non-legislative nature	Cross-border obstacles can be most effectively tackled at EU level as gaps persist despite the existing framework and agreements between Member States  In respect of the principles due to voluntary activation of an ECBM 2.0 instrument
Impacts on fundamental rights	Negative impacts, e.g. on free movement and unequal opportunities	Potential to lower negative impacts compared to option 1 by addressing administrative obstacles	Positive impacts on fundamental rights, including non-discrimination in access to public services, opportunities for economic operators on border regions.
Social impacts	Unequal access to social protection or access to health care services.	Potential to lower negative impacts compared to option 1 by addressing administrative obstacles	Positive impacts, e.g. on access to public services such as health care, child care or social protection
Gender dimension	Most impacted sectors (health, education, social security, employment) include a gender dimension	Potential to lower negative impacts compared to option 1 by addressing administrative obstacles	Positive impact on gender expected due to better access to public services and therefore more opportunities for women
Impacts on citizens and businesses	Negative impacts on the quality of life in border regions	Positive impacts to a certain extent should administrative obstacles be resolved	Highest positive impacts due to removal of both legal and administrative obstacles
Economic impacts	Lost potential benefits amounting to €457 billion per year and 4 million potential jobs	Potential benefits of addressing administrative obstacles leading to €41 billion benefits	Potential benefits of addressing both administrative and legal obstacles would reach €123 billion per year and

			create more than 1 million jobs
Costs/burdens	N/A	Possible administrative costs	Costs of setting up cross-border points (if none exist), possibility of EU financing assistance

Source: EAVA unit, EPRS.

The proposed EU action has been assessed against the principles of subsidiarity and proportionality in line with Article 174 TFEU. Reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions are main objectives of cohesion policy. Cross-border cooperation and better access to cross-border public services have a European dimension per definition. The current EU framework seems to have limitations when it comes to providing solutions for obstacles in cross-border areas of neighbouring land-border regions in two or more Member States. Gaps persist despite the existing legislative framework for cross-border measures or instruments (e.g. Interreg, EGTC, EEIG, or the Cross-border Healthcare Directive), bilateral and multilateral intergovernmental agreements, or soft-law tools (such as platforms, enhanced cross-border cooperation). A problem-solving mechanism in a cross-border context seems to be missing in certain cross-border constellations; it does not exist in all Member States. The literature<sup>150</sup> has demonstrated that a framework for such mechanism in a cross-border context could be an option for these specific cross-border constellations. In line with Article 5 TEU, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but could be better achieved at Union level.

As cross-border obstacles are of similar nature across the EU, they can be most effectively tackled at EU level. EU action is justified to overcome obstacles and strengthen close cooperation between national, regional and local authorities and support effective cross-border solutions, in particular when other instruments are not suitable. Economic and social cohesion in border regions cannot be achieved without cross-border solutions to the gaps and obstacles. The availability of an instrument such as ECBM 2.0 to address the barriers and obstacles would help increase clarity, transparency and reduce complexity. Activated on a voluntary basis, ECBM 2.0 would respect the principles of subsidiarity and proportionality, as the decision which instrument to use (for example, an existing agreement or ECBM 2.0) would be ultimately in the Member States' hands. It would enhance cross-border cooperation at territorial level, thereby contributing to addressing economic and social challenges as well as the needs of citizens living in border regions. No assessment has been made for policy option 2, due to the non-legislative nature of the option.

## Policy option 1

As long as EU legislation is not transposed correctly, implemented appropriately, or applied in a flexible manner, barriers persist and hamper cross-border activities. Disproportionate administrative requirements for individuals or businesses, an absence of transparency and lack of awareness of existing provisions, or providing inadequate information to citizens, all add uncertainty. As described in the previous chapter, existing legislation and instruments are not sufficient on their own to guarantee the principles of the four freedoms, in particular of free movement, or access to services, due to cross-border obstacles. Despite territorial cross-border activities developed over decades, supported by the Union with legal and financial instruments, citizens from border regions often face discrimination, unable to access their closest public service, which happens to be on the other side of the border, or when doing business. Many sectors suffering from legal and administrative obstacles are those where, mainly women, seek access to the services or sectors in

<sup>150</sup> b-solutions: Solving Border Obstacles, A Compendium of 43 Cases, [Annex](#), European Commission, March 2020.



which they work. The gender aspect is noted here to highlight that gender equality is a policy to be mainstreamed in all policy fields and implemented at all stages of the process of cohesion policy measures.<sup>151</sup> The quality of institutions and governance has an influence on the socio-economic performance of countries and regions and influences the outcomes for women (and vice versa), both economically and socially.<sup>152</sup> Overall, it has been shown that such barriers to access lead to a loss of potential benefits of around €457 billion per year and around 4 million jobs. These estimations confirm the significant potential the removal of barriers would bring in economic terms.

## Policy option 2

Soft-law instruments and tools can provide an added value to complement legal instruments in complex cross-border projects. Many soft-law instruments and tools, which are already available, could be strengthened and improved to cushion the negative effects stemming from the existence of cross-border obstacles. There is higher potential to solve at least some of the administrative obstacles by complementing existing law with soft-law measures and tools. Impact on citizens and businesses regarding the social field (including access to public services such as health care or childcare) and gender dimension, would be better addressed when at least administrative obstacles in a cross-border context could be solved. The economic impact is considered to be higher than in option 1, but lower than in option 3. This scenario assumes a reduction of obstacles by 20 %. Looking at the available data, 30 % of obstacles are of an administrative nature. Removing them could mean benefits of around €41 billion per year.

## Policy option 3

By providing clarity and transparency, legislation on existing structures and bodies facilitates the involvement of different partners in a border region, as well as the creation of frameworks to improve cross-border cooperation. Nevertheless, in a complex cross-border situation, legal obstacles cannot not always be solved through existing legislation or soft-law tools, but would need a mechanism with the legislative power to solve the problem in cases where no procedures or mechanisms exist to solve these kind of obstacles. Policy option 3, proposing the adoption of soft-law measures in combination with the new ECBM 2.0 instrument has the potential to address both legal and administrative obstacles, with a positive impact on fundamental rights, including non-discriminatory access to public services, opportunities for economic operators in border regions, and on activities in the social field through better access to public services such as healthcare, education, childcare, and employment, thereby offering greater opportunities for women in particular. To extend the scope from NUTS3 regions to NUTS2 could provide added value, as this would better reflect the administrative reality of the different Member States. Overall, citizens and businesses could profit from problem-solving mechanisms able to minimise both legal and administrative obstacles, demonstrated by their economic impact. In this scenario, not only 20 % of the existing obstacles would be reduced, but border regions could gain economic benefits of €123 billion per year and around 1 million new jobs could be created. The costs of setting up cross-border points (if not already in place) could be compensated by the use of EU financial instruments.

<sup>151</sup> [Regulation \(EU\) 2021/1060](#) of 24 June 2021 on laying down Common Provisions for funds 2021-2027; [Regulation \(EU\) 2021/1057](#) of 24 June 2021 on European Social Fund Plus (ESF+).

<sup>152</sup> [Working paper WP 01/2021](#), Mapping the glass ceiling: The EU regions where women thrive and where they are held back, European Commission, 2021.

### 4.3. European added value

Based on the outcomes of the quantitative (See Section 4.1) and qualitative assessments (Section 4.2), this section provides a comprehensive overview of the three policy options, compares them and identifies the European added value of acting at EU level to overcome obstacles.

Policy option 1, representing the status quo, provides limited potential for improvement, as the existing legal instruments addressing cross-border cooperation are sector-specific and therefore the majority of obstacles remains unaddressed. The presence of obstacles produces economic losses of around €457 billion per year and a deficit of 1 million that could be created should all obstacles be removed. However, this is not a realistic scenario. Legal and administrative obstacles negatively impact businesses operating in border regions, as well as citizens' access to public services. Policy option 2 represents a scenario where soft-law measures such as enhanced administrative cooperation and coordination could contribute to removing administrative obstacles by 20 %. Soft-law measures could produce positive impacts in terms of reducing obstacles of an administrative nature where no legal change is needed. This study estimates that soft-law measures could contribute to half of the estimated benefits for policy option 3, as around 30 % of all obstacles are of an administrative nature. This would mean potential benefits of around €41 billion per year,<sup>153</sup> should one fifth of administrative obstacles be removed.<sup>154</sup> Finally, policy option 3 seems to provide the highest range of benefits should obstacles be reduced by 20 %. The authors estimate that a combination of soft-law measures to address administrative obstacles and the adoption of an ECBM 2.0 instrument to address legal obstacles could bring benefits of €123 billion per year for border regions and contribute to creating 1 million new jobs.

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<sup>153</sup> We assume soft-law measures would contribute to one third of the estimated benefits for policy option 3, as administrative obstacles constitute 30 % of all obstacles.

<sup>154</sup> The authors assume that soft law measures could contribute to a 20 % decrease in administrative obstacles (as in policy option 3). Based on data by the Commission from March 2017 (see Section 2.4), administrative obstacles represent of around 30 % of all identified obstacles.

Table 13 – Overview of policy options and their impacts: Summary

	Policy option 1: Status quo	Policy option 2: Soft-law measures	Policy option 3: Soft law measures + Adoption of ECBM 2.0
Quantitative assessment*	Lost potential benefits amounting to <b>€457 billion</b> per year and <b>4 million</b> potential <b>jobs</b>	Potential benefits of addressing administrative obstacles of <b>€41 billion</b>	Potential benefits of addressing both administrative and legal obstacles would reach <b>€123 billion</b> per year and more than <b>1 million jobs</b>
Qualitative assessment	Existing legal instruments are sector-specific, while obstacles in other areas remain largely unaddressed  Limited potential to address existing and new obstacles  Existing government agreements, e.g. Nordic Council, also show shortcomings (See case study 1)	Potential reduction in administrative obstacles, but legal obstacles continue to hamper cross-border cooperation  Addressing fewer than half of the existing obstacles	Would help to unleash the potential of single market, more opportunities for businesses in border regions  Streamlining of procedures in cross-border cooperation and capacity building
Impact for citizens and businesses	Negative economic and social impact, for example in form of discrimination in access to healthcare in border regions (See case study 3)	Potential to lower negative impact via more efficient cooperation between public administration bodies and higher awareness of existing provisions or possible solutions at administrative level	Highest possible impact due to the potential to address both administrative and legal obstacles  Removal of obstacles would help facilitate access for citizens and businesses to public services in border regions  Potential to better channel cohesion instruments to border regions  Increased attractiveness of border regions: more incentives for businesses to attract and retain talent

Source: EAVA unit, EPRS.

When it comes to qualitative assessment, the status quo (policy option 1) has serious negative consequences for citizens living in border regions. The presence of legal and administrative obstacles disadvantages such citizens, including through discriminatory access to healthcare services (patients are discouraged from accessing nearby hospitals across borders), as well as unequal access to other public services. Policy option 2, potentially reducing administrative obstacles through soft-law measures encouraging administrative cooperation and promoting more efficiency through the use of digital tools, could therefore contribute to positive social impact at least in cases where solely administrative obstacles hamper cooperation. Since policy option 3 aims at addressing legal as well as administrative obstacles, this study estimates it could have the highest positive impact on social rights, as well as fundamental rights, including gender equality. Removal

of obstacles could help better channel action under cohesion instruments to border regions, facilitate creation of new public service projects and therefore increase the attractiveness of border regions, create more incentives for citizens and businesses and address the risk identified by the Commission that border regions fall 'into a talent development trap'.<sup>155</sup>

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<sup>155</sup> Communication on harnessing talent in Europe's regions, [COM\(2023\) 32](#), European Commission, January 2023.

## 5. Conclusions

This European added value assessment (EAVA) is intended to support the European Parliament's legislative initiative 2022/2194(INL)<sup>156</sup> entitled 'Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context'. The starting point is the 2018 Commission proposal, as well as amendments proposed by the Parliament and the Council, and is drawn on the available evidence and best practices in the EU Member States. While reducing disparities among the European Union's regions and strengthening EU economic, social and territorial cohesion are among key objectives of the Union, EU land border regions often face challenges, including legal and administrative obstacles affecting citizens and businesses. Both are often disadvantaged by barriers when working across the border, looking for the nearest healthcare or access to education and childcare facilities. This study pays particular attention to cross-border obstacles in the broader context of cohesion and non-discrimination. The impact of such barriers highlights the discrimination citizens face when it comes to access to public services compared to citizens living in non-border regions; businesses might enjoy fewer opportunities. Moreover, the demographic situation, with an ageing population and low birth rates, increases rural-urban migration and 'brain drain'. More efficient cooperation between border region authorities and effective mechanisms to overcome administrative and legal obstacles, could make border regions more attractive for people to live in and companies to do business from, increasing the overall level of living standards in border regions. It is important therefore to look at border regions from the broader context of cohesion policy and to address imbalances between countries and regions. A long-term vision is needed for border regions, in particular in the post-pandemic context where these regions were disproportionately impacted, to support job creation, business opportunities and improve citizens' daily lives.

This study analyses the status quo of existing legislation and instruments and tools and how they are implemented and applied in practice. It pinpoints the following obstacles: diverging national rules and standards; different legal competences at national or regional level; diverging transposition of EU laws by Member States contributing to creating barriers and obstacles in a cross-border situation.

Building on the European Parliament's 2018 resolution on boosting growth and cohesion in EU border regions and its 2019 resolution on the proposed mechanism to resolve legal and administrative obstacles in a cross-border context, this study investigates how to strike a balance between the positions of the legislators and proposes policy options.

This study argues that a 'one size fits all' approach would not be sufficient to resolve the current obstacles, in a majority of cases, for two reasons: border regions usually face a combination of legal and administrative obstacles; and administrative reality differs across the EU. This study compares three options (differing in their level of ambition), assesses their potential impact and identifies the European added value of a potential regulatory action. Option 1 represents the status quo and its likely development; option 2 proposes a set of soft-law tools to address administrative obstacles; option 3 complements options 1 and 2, suggesting the adoption of a streamlined proposal for a new cross-border mechanism (ECBM 2.0). Policy option 3, therefore, combining both legislative instruments and non-legislative tools, would have the greatest potential to cover the wide range of different obstacles and the variety of border region contexts. This study puts forward examples of complementary tools, such as cooperation and coordination between competent authorities, creating of coordination structures, capacity building, exchange of information, use of digital instruments, and data collection. It assumes that Member States might be more inclined to

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<sup>156</sup> Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context, 2022/2194(INL), [Legislative Observatory](#), 2023.

implement the European cross-border mechanism proposed by the European Commission, if it is simplified and addresses their concerns. With a new instrument (ECBM 2.0), Member States would have a choice whether to apply it or opt for another suitable solution.

The added value of EU action has been identified in enhancing a combination of solutions, to effectively overcome cross-border obstacles and offer tailored-made solutions. The existing legislative framework for cross-border measures or instruments do not cover all cross-border situations. Gaps therefore persist and a Union-wide problem-solving mechanism in a cross-border context seems to be the missing link to tackling obstacles in specific cross-border contexts. Inspiration can be drawn from existing best practices of cross-border projects. Extending the scope from NUTS3 regions to cover NUTS2 would be an added value to resolve obstacles, as this would better reflect administrative reality and regional authorities' competences, which vary across the different Member States.

Considering 2014-2019 data, this study finds that removing obstacles would bring significant benefits for NUTS3 border regions and the entire EU economy. More precisely, a total gross value added (GVA) benefit of a complete removal of legal and administrative barriers would yield of around €457 billion, representing 3.8 % of total 2019 EU GVA. However this ideal scenario is not feasible. Looking at a more attainable scenario of a 20 % removal of obstacles for all border regions, this study estimates a total GVA benefit of €123 billion, representing around 1 % of total 2019 EU GVA. These estimations confirm the considerable potential that removing of barriers could create in economic terms. It is important to highlight other effects on social rights (equal opportunities, social protection, access to healthcare or childcare facilities), as well as on fundamental rights (non-discrimination and freedom of movement). Our analysis illustrates that the status quo has a tangible negative impact on EU citizens and businesses, resulting in lower attractiveness for border regions, and an impact on quality of life or businesses opportunities. As cross-border obstacles are of a similar nature across the EU, they can be most effectively tackled at EU level. EU action is therefore justified to overcome obstacles where other instruments are not suitable.

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EU border regions encounter legal and administrative obstacles in their cooperation. Citizens and businesses face unequal access to public services and fewer economic opportunities. COVID has highlighted the urgent need to address the remaining cross-border obstacles and define a long-term vision for unleashing the potential of border regions to become the drivers of European cooperation.

The study identifies three policy options: status quo, soft-law measures, and adopting a new instrument (ECBM 2.0). Policy option 3 has the highest potential impact, addressing both legal and administrative obstacles, bringing benefits of €123 billion per year, as well as positive social impacts.

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