

## Resolution

on the Motion from the CDU Parliamentary Party and the SPD Parliamentary Party  
Document 6/13843

Subject: **Subsidiarity concerns with regard to the proposal for a European Parliament and Council Resolution on a mechanism to resolve legal and administrative obstacles in a cross-border context; COM No. (2018) 373 final**

The Saxon State Parliament passed the following resolution on 28 June 2018:

1. In principle, the Saxon State Parliament welcomes the European Commission's concept of developing mechanisms to resolve legal and administrative obstacles when implementing cross-border projects. Mechanisms of this kind could lead to the application of legal provisions of a neighbouring Member State in another Member State for a cross-border region, where the application of its own laws would represent a legal obstacle for implementing a joint project.
2. The Saxon State Parliament notes that this legislative project by the European Union impacts the Saxon State Parliament's legislative powers and can require it to take legislative action. As a result, it is of fundamental significance.
3. However, the Saxon State Parliament has major reservations with regard to the proportionality of the proposed provisions. This is particularly true of the right of legislative initiative, which is to be granted to initiators in deviation from the existing constitutional provisions (Art. 8 Par. 2. in conj. with Art. 9 Par. 1. letter b of the draft regulation). It also applies in the procedure for conclusion and signature of a Commitment or for signature of a Statement. The Saxon State Parliament also notes that the application of the legal instrument does not satisfy the principle of voluntariness.

4. In particular, the Saxon State Parliament is of the opinion that the procedure following the determination of a legal obstacle is unreasonably complex and subject to deadlines and constraints, which at least make it appear dubious whether application of the mechanism takes the principle of voluntariness into account sufficiently.
5. In their density, patchwork structure, deadlines and mandatory application, it establishes rules at an EU level for a legislative or regulatory activity which are in direct competition to existing procedures or are to have priority over them as European law. These procedures are present at Member State, regional or where appropriate even at municipal levels; infringements of the subsidiarity principle appear likely.
6. The Saxon State Parliament therefore calls on the State Government to raise the Saxon State Parliament's above concerns in an appropriate manner in the Federal Council, before the Federal Government, at Council Meetings with the Ministers in attendance or in the advisory bodies of the European Commission, or to have representatives of the Federal States raise them and insist that the draft directive be adapted taking the principles of subsidiarity and proportionality into account to the required extent.
7. The Saxon State Parliament calls on the State Government in particular to strive to ensure that the application of the proposed mechanism to resolve legal and administrative obstacles in a cross-border context satisfies the principle of voluntariness without reservation and in every stage of the procedure.
8. We ask the President of the State Parliament to send this resolution and justification to the European Commission.

**Justification:**

The draft regulation of the European Parliament and Council submitted by the European Commission on a mechanism to resolve legal and administrative obstacles in a cross-border context restructures legislative powers and rights of legislative initiative at a Federal, state and municipal level. That impacts the constitutional powers of the German Federal Government and the Federal States. In its impact – depending a joint project – it can interfere with the legislative authority of the Saxon State Parliament or the decision-making and regulatory powers of the municipalities, and therefore is of fundamental significance.

In recent decades, the European integration process has helped transform regions at internal borders from largely isolated areas into areas offering growth and opportunities.

Since 1990, cross-border cooperation programmes have been supported in the Union's border regions. Thousands of projects and initiatives have been financed, which have contributed to better European integration.

It has also been found that there are still some legal obstacles in these regions which render cross-border cooperation difficult.

Through the legislative proposal, the European Commission seeks to create a voluntary mechanism to resolve legal and administrative obstacles in all border regions.

This mechanism is intended to make the legal provisions of a neighbouring Member State applicable in another Member State for a common cross-border region, where the application of its own law would represent a legal obstacle for implementation of a joint project (e.g. an infrastructure measure or a service of general economic interest).

The mechanism consists in conclusion of a cross-border Commitment ("Commitment"), which is directly applicable, or a European cross-border Statement ("Statement"), which requires a further legislative procedure in the Member State.

Where an initiator, i.e. a public or private body responsible for initiating or implementing a joint project (Art. 8 Par. 2 of the draft regulation) determines the existence of a legislative obstacle, it is entitled to produce a draft containing a list of the specific legal provisions of the transferring nation state, with which the obstacle is to be resolved. If there are no suitable legal provisions, the initiator can suggest a suitable ad-hoc provision (Art. 9, in particular Par. 1 letter b of the draft regulation).

This structure alone makes clear that the initiator could be given the opportunity to choose the country with the most favourable administration for the project from the neighbouring countries, and, if this country does not have provisions that eliminate a legal obstacle, to make ad-hoc proposals.

If the subsequent procedure leads to a "Commitment", which results in legislative action, the right of proposal in the accepting country is a de facto right to initiate legislation. Even if this contradicts the constitutional prohibition of legislation for individual cases, an approximately generally abstract provision would be reached at least under the aspect of equal treatment of similar cases. However, a right of initiative of this kind is apparently not intended as part of the Commission draft; the resulting constitutional implications have not been considered.

The subsequent procedure itself is intended to be voluntary, but is subjected to the mechanism's constraints once it is introduced. The draft describes a governed comprehensively process, which is subject to deadlines. It creates coordination bodies and inspection authorities, and governs periods and deadlines. Comprehensive assessment and justification obligations are introduced and the Member State and/or the region with legislative power is required to develop a legislative solution for the legal obstacle within six months.

Overall, the above procedural provisions lead to serious misgivings regarding compliance with the principle of proportionality.

It therefore appears dubious whether the proposed provisions make it even seem desirable for the Member States to utilise the mechanism in its proposed form, although, in principle, a mechanism of this kind could make a valuable contribution to improving cross-border cooperation.

Accordingly, the State Government is called upon to take these concerns into consideration in further proceedings, and to assert them at an appropriate stage of the proceedings.

In addition, the European Commission should be informed directly of the Saxon State Parliament's concerns regarding the proposal.