



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the proposal from the European Commission for a Council Recommendation on health-enhancing physical activity across sectors {COM(2013) 603 final}.

The Commission is pleased that the Bundesrat shares the Commission's commitment to the promotion of health-enhancing physical activity (HEPA), but it does not share the Bundesrat's reasoning in relation to the legal base chosen.

As the Bundesrat correctly asserts, the societal issues covered by the proposal go far beyond the narrow confines of organised sport and need to be tackled through policy initiatives that are not merely embedded within sport policy. The Bundesrat further notes that public authorities do not always hold regulatory powers, which would enable them to steer the decisions taken by the governing bodies of organised sport. The Commission shares this analysis, but not the conclusion drawn by the Bundesrat, according to which these circumstances make the use of Article 165 irrelevant. HEPA promotion depends on policy coordination across the board. Sport ministries and the governing bodies of organised sport are key actors in this process, even if they are not the only ones who can make a contribution. Other relevant actors in the public and private sectors are called upon to contribute to HEPA promotion. It is for this reason that this initiative is based on Articles 165 and 168 of the Treaty on the Functioning of the European Union, reflecting the close links with public health. The preparation of the initiative took place in close coordination with relevant health structures in the EU and Member States, and the envisaged future coordination of policy efforts would similarly involve inter-sectoral working. The proposed initiative would be placed under the auspices of sport ministers primarily to facilitate monitoring of progress.

As the Bundesrat correctly points out, Article 165 does not confer powers upon the Union to harmonise the laws and regulations of Member States. The explicit ban on harmonisation is laid down in Article 165 (4), which, nevertheless, in equally unambiguous terms, empowers the Council, on a proposal from the Commission, to adopt recommendations. The Commission's proposal contains no provisions for any sort of harmonisation. The chosen form of a Council recommendation, including a light monitoring framework, reflects the aim

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to support and complement Member States' actions in the field of physical activity promotion, but not to harmonise provisions.

The Commission finds that the monitoring framework in the Commission's proposal is necessary and proportionate in relation to the objectives pursued and has received the backing of a broad majority of Member States. Furthermore, it finds that the proposed financial provisions proposed are equally necessary and proportionate in relation to the objectives pursued. The legal base is Article 165 (4), which empowers the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, to adopt incentive measures. It is understood that such incentive measures shall be within the scope of Article 165 (1), which empowers the Union to contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing this political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*