



EUROPEAN COMMISSION

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C(2014) 820 final

Dear President,

The Commission would like to thank the Bundesrat for its Reasoned Opinion on the Commission proposal for a Regulation of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species {COM(2013) 620 final} and apologises for the delay in replying.

The Commission takes note of the Bundesrat's concerns regarding the compatibility of the Proposal with the principles of subsidiarity and proportionality and would like to provide some clarifications in this respect.

The principle of subsidiarity, established in Article 5(3) of the Treaty on European Union, requires the Union only to act 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 can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The fact that the number of invasive alien species (IAS) and damages incurred have been increasing continuously over the past years across the EU despite national and regional policies and initiatives in several Member States demonstrates that the problem cannot be solved without EU action. Current efforts are highly fragmented and inconsistent, leaving considerable policy gaps and leading to ineffectiveness. They cannot solve the IAS problem. A mixture of EU and national, regional and local measures is thus needed, in line with the principle of subsidiarity. A coherent approach at EU level would increase the effectiveness of the measures. Member States that currently have legislation on IAS would benefit from a common approach, which would guarantee that neighbouring Member States take actions for the same species.

The core of the proposal is a list of invasive alien species of Union concern. According to Article 4(2) of the proposal, those are species (1) alien to the Union, (2) capable of establishing and spreading within the Union and (3) where it has been demonstrated by risk assessment that action at Union level is required to prevent their establishment and spread.

Although the Bundesrat supports the general principle of the proposal, it considers Article 10 to conflict with the principle of subsidiarity and Articles 5(2) and 12 to cause subsidiarity concerns.

Article 10 addresses species that do not comply with the criteria set out in Article 4(2), but are of concern in a part of the Union, inter alia species that are alien and invasive in one part

Mr Michael LAMPEL
President of the Bundesrat
Dr. Karl Renner-Ring 3
A – 1017 WIEN

of the Union but native in another part (e.g. Spanish slug) or species that are alien and invasive in one part of the Union but beneficial in another part (e.g. water hyacinth). Those species cannot be listed as invasive alien species of Union concern, as the provisions involved cannot be applied uniformly in all Member States (e.g. border control and rapid eradication). Nevertheless, the Member States affected by such invasive alien species would benefit from joint action on those species at a sub-EU level. Article 10 was inserted to request Member States to take such action, while leaving them full flexibility as to which species they consider invasive alien species of Member States concern, and large flexibility as to how to address them, as long as the measures remain compliant with internal market and trade rules. The Commission therefore does not see any conflict between this article and the principle of subsidiarity.

Article 5(2) would empower the Commission to adopt delegated acts in order to further clarify (1) admissible scientific evidence to judge whether invasive alien species are capable of establishing and spreading within the Union, and (2) the elements required in the risk assessment demonstrating the need for action at Union level. According to Article 290 of the Treaty on the Functioning of the European Union, a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The cited empowerment would allow the Commission to further elaborate on the required scientific underpinning as science evolves and experience is gained. The Commission therefore sees no conflict between Article 5(2) and the principle of subsidiarity.

Finally, the surveillance system proposed in Article 12 is intended to support the proposed measures on invasive alien species of Union concern, in particular the early warning system proposed in Article 14. Article 12 would leave full flexibility to Member States on how to organise this surveillance within their territory. The requirement for surveillance is enshrined in many pieces of European legislation, e.g. the Habitats Directive and the Water Framework Directive. Therefore, here also the Commission sees no conflict between Article 12 and the principle of subsidiarity.

Whereas compliance with the principle of proportionality is beyond the scope of a reasoned opinion under Article 6 of Protocol No 2 to the Treaty on the Functioning of the European Union, the Commission would briefly note the following: the principle of proportionality, established in Article 5(4) of the Treaty on European Union, requires that the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. When drafting the proposal, the Commission strictly limited the provisions to those absolutely required, giving priority to a list of invasive alien species of Union concern, and only going beyond this list where this would significantly improve the current patchwork of different provisions in Member States. The Commission therefore sees no conflict between the level of detail in the proposal and the principle of proportionality.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*