

Translation of letter

Dated: 26 March 2010

From: Jens Böhrnsen, President of the Bundesrat

To: José Manuel Barroso

**Subject: Communication from the Commission to the European Parliament and the Council: European Agencies – the way forward
COM (2008) 135; Council document 7972/08**

Encl.: Bundesrat Decision 119/10

Dear Sir,

At its 868th meeting on 26th March 2010 the Bundesrat decided to convey the Decision in Annex to the Commission.

Bundesrat

Drucksache 119/10 (Decision)¹

(Basic doc. 228/08)

26 March 2010

Bundesrat Decision

**Communication from the Commission to the European Parliament and the Council:
European Agencies – the way forward**

COM (2008) 135; Council document 7972/08

At its 868th meeting on 26th March 2010 under Articles 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG), the Bundesrat adopted the following position:

1. On the basis of a study, the previous Commission announced at the beginning of February 2010 that it would examine the possible creation of an EU agency to implement waste legislation and carry out a cost-benefit analysis during the course of the year.
2. Based on the information available to date, the Bundesrat firmly rejects the creation of such an agency:

¹ First Bundesrat Decision of 4 July 2008, BR-Drucksache 228/08 (Decision); see also, Drucksache 228/08 (Decision)

- The Bundesrat would like to remind the Commission that in its Communication 'European Agencies – the way forward' (COM (2008) 135) the Commission itself imposed restrictions on the creation of new agencies and would like to reiterate the opinion it gave on 4 July 2008 in BR-Drucksache 228/08 (Decision). The Bundesrat confirms its view that with regard to deregulation, subsidiarity, proportionality and concentration Community agencies should be created only in justified, exceptional cases, see BR-Drucksache 228/08 (Decision) and 168/05 (Decision).
- The creation of an agency to implement waste legislation contradicts the European principles of reducing red-tape and deregulation. Only local contacts guarantee quick, accessible advice for businesses and quick intervention in serious cases for society as a whole.
- EU agencies, as an exception to the principle of indirect enforcement of Community legislation by Member States, should only be created in exceptional cases where direct Community enforcement offers clear added value. Further centralisation in the area of waste management at EU level is already not consistent with the idea of subsidiarity.
- Member States are responsible for the enforcement of EU legislation. According to the idea of subsidiarity, Europe cannot interfere with this responsibility. Enforcing the waste legislation, as well as the remaining environmental legislation, locally has been successful. Direct experience and continuous advice for individual businesses and checks on them are indispensable if European legislation is to be enforced effectively. Only authorities in the Member States have the geographical proximity and contact with citizens necessary to be able to offer custom solutions to the diverse individual circumstances that appear in practice.
- Direct EU enforcement control in the area of waste legislation is not feasible. Inspection subjects and criteria are rarely directly defined or definable in EU legislation in the area of waste. With the exception of the directly applicable EU Waste Shipment Regulation, it is essentially national law (that transposes EU Directives) that is applicable and this can only be meaningfully monitored by national authorities.
- Member States must respect rigid budgetary discipline. This is also the case for the EU. Costs for the creation of an EU waste agency and a further inspection agency of EUR 16 million annually are not a good investment in terms of a cost-benefit analysis.
- The Bundesrat assumes that the cost savings the Commission hoped for as a result of reduced CO₂ emissions can also be guaranteed with stricter controls and better enforcement of the waste legislation by the Member States concerned, against which infringement proceedings could be used if necessary.
- With a view to avoiding duplication of work and concentration by EU agencies on what is absolutely necessary, discussions at EU level about creating two EU agencies straight away (an EU agency and a European inspection agency) are questionable from the beginning.

3. The Bundesrat is conveying this position directly to the Commission.