

7 May 2010

Decision
of the Bundesrat**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:****Commission Work Programme for 2010 – Time to act****COM(2010) 135 final**

At its 869th sitting, held on 7 May 2010, the Bundesrat, acting in accordance with sections 3 and 5 of the Act regulating Cooperation between the Federation and the *Länder* in Matters concerning the European Union (EUZBLG), adopted the following opinion:

1. The Bundesrat takes note of the Commission Work Programme for 2010. It attaches particular importance to this programme, as the new Commission is now in office and the Treaty of Lisbon has entered into force.
2. The Bundesrat supports the focus announced by the Commission on four main strands, namely tackling the crisis, building a citizens' agenda, developing an ambitious and coherent external agenda and modernising EU instruments and ways of working. It is particularly gratified that, in its future activities, the Commission intends to continue prioritising enhanced competitiveness as the key to more growth and employment in Europe.
3. The Bundesrat welcomes the fact that the Commission has included in its work programme a multiannual summary of the tasks it plans to undertake in the coming years. This makes the actions of the Commission more foreseeable and transparent. Moreover, the Commission Work Programme thereby renders a major contribution, in principle, to the strategic political dialogue between national parliaments and the Commission.

4. The Bundesrat regrets that the Commission intends to forego the presentation of an annual policy strategy, which has hitherto served as a preliminary step towards the legislative and work programme. For this reason, the annual updating of the work programme will become the focal point of deliberations. The Bundesrat senses a danger that the new procedure will sharply reduce the scope which the annual policy strategies have always given the European Parliament, the Council and national parliaments to influence the work programme in its early stages. The Bundesrat proceeds on the understanding that the new procedure will not involve any curtailment of its own constructive influence.
5. The Bundesrat is critical of the fact that the work programme, which is a 'central building block for inter-institutional programming', has been presented in an incomplete German version. It calls emphatically for full translation into German of the programme, including the annexes. This applies particularly to the planned monthly progress reports on the implementation of the work programme. The Bundesrat deplores the Commission's intention to classify these as internal working documents and therefore present them in the original version, which is mostly written in English.
6. The Commission rightly regards the flagship initiatives and measures it previously announced in its communication on the Europe 2020 strategy. as a priority of its work in 2010. The Bundesrat points out that, when the requisite steps are taken to flesh out these measures, the division of powers between the EU and the Member States must be strictly observed. Moreover, the implementing measures must effectively contribute to the achievement of the objective set by the European Council at its meeting of 25 and 26 March of boosting the competitiveness, productivity and growth potential of the EU.

Re. item 2.1. – Exiting from the crisis (ECFIN, BUDG, MARKT, SG D1)

7. The Bundesrat welcomes closer coordination in the realm of economic policy among the Heads of State and Government as part of the Europe 2020 strategy. It rejects any exertion of political influence, however, that would jeopardise the independence of the European Central Bank, particularly in the euro area. It

remains essential to ensure that the budgetary sovereignty of Member States is preserved.

8. Current developments reveal inadequacies in the application of the rules governing economic and monetary union. Since problems experienced by individual Member States ultimately impact on the other eurozone countries, there is a need to examine how critical developments could be nipped in the bud. The Bundesrat calls on the European Commission to be strict in applying Article 121(4) of the Treaty on the Functioning of the European Union (TFEU), which was introduced by the Treaty of Lisbon, to Member States which vastly and continuously exceed the budget-deficit ceiling and the maximum debt-to-GDP ratio while failing to make the essential reform efforts designed to restore the health of their public finances and make their economies more competitive and thereby jeopardise the proper functioning of monetary union. The Commission should issue formal warnings to such Member States, give them specific detailed targets and monitor and assess their achievement of these targets at brief intervals with the aid of special representatives of the EU who have their own staff. In addition, the Bundesrat proposes that the Commission make more timely and systematic use of the scope for an early-warning report under the second subparagraph of Article 126(3) of the TFEU where there is the risk of an excessive deficit.
9. The Bundesrat also welcomes the Commission's intention to tackle macroeconomic imbalances, including divergences in competitiveness. The objective of the EU in such efforts must be to increase the competitiveness of the EU in its entirety. The result must on no account be a weakening of the economic capacity of countries with trade surpluses. Imbalances must therefore be tackled in such a way that less competitive Member States converge towards the more competitive ones.
10. The Bundesrat supports the Commission's initiatives designed to guarantee stable and responsible financial markets in future. In this context it endorses the proposed measures for increased transparency and stable futures markets. These will make a vital contribution to security and stability in the financial markets. In particular, central clearing offers financial institutions decisive benefits in terms of improved internal risk management, market integrity and reduction of systemic risks. The Bundesrat also welcomes an improvement of the present

rules to curb economically damaging practices with regard to credit derivatives. It draws attention to the need to find ways of making trade in credit derivatives more transparent, ways which put safety in the foreground and limit purely speculative dealing. The Bundesrat also supports the plans to create an efficient framework for cross-border crisis management when banks run into trouble, the proposal for an internationally coordinated bank levy as an appropriate and competitively neutral means of ensuring that the financial sector pays its share of the cost of current and future measures for the prevention of financial crises and the options for future crisis prevention.

11. In principle, the Bundesrat favours the new proposals for deposit-guarantee schemes. At the same time, it is against a fully harmonised maximum cover of EUR 100 000, which could jeopardise voluntary additional deposit guarantees provided by private banks and the institutional guarantees provided by public and cooperative institutions. The supplementary guarantee schemes operated by German credit institutions are a particularly important pillar of stability, creating confidence among bank customers in the security of their deposits, and must be preserved.
12. The Bundesrat welcomes in principle the new proposals for more stringent capital and liquidity requirements for banks. The demand that is currently being made in the G-20 framework for a restricted definition of core capital for the purposes of banking regulation would mean that equity elements of particular importance to German banks would be downgraded to tier-2 capital for no apparent reason. These demands come from the Anglo-American jurisdictions and disregard the specific features of other countries' banking systems. The necessary changes to capital requirements ought to be based on the principles of sustainability and subordination of loss absorption and leave scope for the acquisition of capital outside the capital market. In addition, the rules must apply regardless of the legal form in which undertakings are constituted.

Re. item 2.2. – Advancing the Europe 2020 flagship initiatives

Strategic initiative 9: a digital agenda for Europe (INFSO)

13. The Bundesrat refers to its comprehensive opinion of 16 March 2010 on the Europe 2020 strategy and the individual flagship initiatives (see Bundesrat printed paper 113/10 (Decision)).
14. The Bundesrat supports the Commission in its aim of fully exploiting the potential of the digital economy and therefore welcomes the ambitious project of creating an EU online internal market, which is the purpose of the announced digital agenda. Like the Commission, the German *Länder* believe that the project offers great development opportunities for SMEs in particular. Fundamental importance attaches in this context not only to blanket broadband coverage but also to efforts to encourage the European public to embrace the Internet. With regard to the broadband strategy, the Bundesrat believes that real progress in reducing the number of areas with insufficient broadband provision cannot be achieved unless the legal restrictions designed to safeguard competition are managed judiciously with due regard to the need for better broadband provision.
15. Public acceptance of a digital agenda is also dependent on due consideration being given to other social interests when the potential of digital technology is economically exploited. The protection of personal data, for example, is an extremely important aspect of the desired use of modern online services. The development of an efficient policy on frequency distribution, however, remains the responsibility of the Member States. The extent to which the Commission's proposed measures are likely to shape the future of the Internet and to stimulate growth and investment will depend on their actual substance. In the formulation of these measures, due consideration must be given to the reality of the national telecommunications markets.

Strategic initiative 10: an industrial policy for a globalised era (ENTR, CLIMA)

16. The Bundesrat welcomes the planned presentation of an industrial policy for a globalised era. It takes the view that a strong and diversified industrial base is the key to Europe remaining economically successful and internationally

competitive. In particular, the policy must take account of the particular potential of key industries and technology for a competitive industrial policy that fosters growth and employment. In the view of the Bundesrat, technology designed to protect the climate and to promote efficient use of resources and sustainable consumption assumes particular importance in this context. In general terms, it would be right to preserve the integrated approach of recent years, which allows sufficient scope for supplementary sectoral initiatives, so that due regard can be given to the particular characteristics of individual industries. The Bundesrat rejects the concept of 'steering the reconstruction of sectors towards future-oriented activities' as announced by the Commission in Annex I. The economic structure of Europe should continue to be determined by market activities.

17. In view of the importance of SMEs in the economy and as a factor for growth in Europe, the Bundesrat believes that special recognition should be given to the role and contribution of SMEs both within and beyond the industrial sector. Further development of the Small Business Act, the lead-market initiative and more measures to cut red tape are some of the ways in which a major contribution could be made to the strengthening of SMEs. The idea behind the Commission's Small Business Act that future rules should be shaped in accordance with the principle of priority for SMEs must become the guiding maxim for action at every political and administrative decision-making level. The special characteristics of SMEs must be taken into account, and the current regulatory environment must be simplified. To this end, planned legal provisions and administrative measures must be subjected to an impact assessment focusing particularly on their effects on SMEs, and measures specifically tailored to SMEs must be developed.

Strategic initiative 11: a European plan for research and innovation (RTD, ENTR)

18. The Bundesrat welcomes the Commission's plan to present, in implementation of the Europe 2020 strategy, a communication on an overarching development plan for the European Research Area and to integrate further the 'knowledge triangle' of education, research, and innovation within the bounds of its competence. The research and innovation partnerships envisaged by the Commission, which would include green innovations, can, in principle, help significantly to overcome major social challenges, such as an ageing society and

the protection of natural resources, the climate and the environment, and to make the EU more competitive. When a political framework is developed for research and innovation partnerships, it must not be forgotten that various approaches and sets of priorities adopted by the Member States as well as independently managed research funds promote healthy competition among Member States as an essential cornerstone of successful cooperation (see Bundesrat printed paper 113/10 (Decision)), and these must be preserved. National spheres of competence in matters of research and innovation policy must not be undermined.

19. The Bundesrat is critical of the Commission's intention to develop at the present time the existing range of instruments for research activity at EU level. We support the principle of simplifying the EU instruments by means of mutually beneficial interaction and integration of existing specialised programmes. The establishment of new instruments, however, should be left to the planning of the next EU framework research programme, since that is the central strategic medium of European research support.

Strategic initiatives 12 und 13: youth on the move and youth employment (EAC, EMPL)

20. The Bundesrat shares the Commission's objectives of increasing the employment rate, promoting the mobility of labour within the EU and striking a better balance between supply and demand in the labour market. It is aware that the Commission would like to encourage the European social partners to engage in the pursuit of a strategic framework for cooperation in the field of education and training for the purpose of promoting the acquisition and recognition of specialised knowledge and skills. The Bundesrat will be following developments closely and will be especially vigilant in its efforts to ensure that the process does not entail any encroachment on the spheres of competence of the Member States.

Strategic initiative 14: an agenda for new skills and jobs (EMPL,EAC)

21. The Bundesrat welcomes the Commission's efforts to support the younger generation in the realms of training and employment. It is in favour of encouraging mobility among students and trainees and of support measures for

the integration of young people into the labour market. The Bundesrat supports the aim of linking these political objectives more closely to the corresponding European funding instruments, especially the European Social Fund (ESF). The Bundesrat notes that the Commission is planning coordination, i.e. non-legislative, initiatives. The Bundesrat would, however, point out that areas of activity are involved, in the realm of education for example, for which the Member States are competent and reserves the right to keep a close eye on these initiatives and the ways in which they are developed.

Strategic initiative 15: a European Platform to combat poverty (EMPL)

22. The Bundesrat notes that the Commission intends to announce, in a communication, changes to the open method of coordination (OMC) in the field of social welfare. In this context, we wish to reiterate that the OMC must remain a voluntary political framework for cooperation and voluntary mutual learning and that, even after the entry into force of the Treaty of Lisbon, EU activity in this domain must remain confined to the provision of assistance and support. The Bundesrat expects the Commission to respect this division of responsibilities when shaping the announced changes and so preserve sufficient flexibility and scope for action by the Member States. The Bundesrat asks the Commission to clarify the relationship between the European Platform to combat poverty and the OMC. It doubts whether another coordinating instrument within the EU is likely to yield benefits or achieve a level of efficiency that the OMC could not deliver.

The flagship initiative *Resource-efficient Europe* (ENER, ENV, CLIMA, MOVE, TAXUD, AGRI, REGIO)

23. The Bundesrat welcomes the fact that the Commission intends to forge ahead with the flagship initiative entitled *Resource-efficient Europe*. The purpose of the initiative is to sever the link between resource consumption and growth, not least in order to give Europe a competitive edge. In particular, we welcome the fact that the Commission intends to present at an early date its vision for the future energy policy which will establish a low-carbon, resource-efficient and climate-resilient European economy by 2050. The paramount objective is to release energy and transport systems from dependence on the use of fossil heating and motor fuels. In this way, timely action can be taken to make the

essential strategic choices and create the requisite basic conditions that will provide the certainty which is imperative for planning and investment. In the view of the Bundesrat, care must be taken to ensure that all plans and measures guarantee action to combat climate change as well as safe, economical and climate-friendly energy supply. In the widely diverse individual measures, it is absolutely essential that a line be drawn carefully between the powers of the EU and those of the Member States and that the subsidiarity principle be respected. Moreover, special attention must be paid to the efficiency of the wide range of measures that have been taken.

24. In order to combat climate change and avoid competitive disadvantages for Europe's energy-intensive industry, the Bundesrat considers it indispensable that a binding international climate-protection convention be concluded for the period after 2012. We are gratified that the EU intends to continue playing a pioneering role in the international effort to combat climate change and that it seeks to expand that role. We would stress, however, that energy and climate policies require an equitable distribution of burdens in Europe and the world and that this distribution must not unfairly restrict the economic capacity of individual national economies..
25. The targeted taxation of energy use and CO₂ emissions does not distort competition in principle and is a recognised means of achieving the aims of saving energy and protecting the climate. It must be said, however, that Europe has opted primarily for the system of greenhouse-gas emissions trading to limit CO₂ emissions. Before a system of energy taxation is introduced, the potential adverse effects of each system on the other must be examined, and the legislation must take them into account.
26. For the planned revision of the Energy Taxation Directive, it remains the case that the Commission must refrain from any action that would impair the competitiveness of Member States. In particular, energy prices including tax must be internationally competitive. In the planned amendment of the Directive, which would introduce the taxation of energy products on the basis of their energy content and carbon-dioxide emissions, care must be taken to ensure that the new provisions do not harm any industry in Germany.
27. The Bundesrat welcomes the Commission's desire to ensure a sustainable.

productive and competitive agricultural sector with all of its beneficial effects on the growth and employment potential of rural areas as well as safeguarding economic, social and territorial cohesion and guaranteeing food security. The Bundesrat takes the view that the common agricultural policy (CAP) is a major policy of the EU. It makes a decisive contribution to the continuing development of rural areas, a contribution that goes far beyond the farming sector. That is why the CAP must safeguard vital rural areas within the EU. Changes to the system that endanger vital rural areas are indefensible. Moreover, the CAP must contribute actively to the pursuit of food security for a growing global population. The Bundesrat calls for further development of the European agricultural model and its continuation beyond 2013. To this end, it is essential to establish appropriate objectives and instruments that also take account of new challenges such as climate change and the need for better management of water resources.

Re item 2.3. – Tackling Europe’s bottlenecks and missing links

Strategic initiative 16: communication on the relaunch of the single market
(MARKT, SG D2)

28. The Bundesrat welcomes the Commission’s intention to mark the 20th anniversary of the completion of the single market in 2012 with a wide-ranging initiative to breathe new life into the single market. The single market has stood the test as a guarantor of growth and prosperity. This role must be preserved for the future.
29. The Bundesrat awaits with interest Professor Mario Monti’s report on the relaunch of the single market and the communication announced by the Commission, which is intended as the basis for a comprehensive package of measures, and we shall participate in the work on this initiative by making proposals of our own.

Services of general interest (Annex II) (MARKT, SG D2)

30. The Bundesrat awaits with interest the communication announced by the commission on the Protocol on services of general interest annexed to the Treaty of Lisbon but objects to any introduction of binding quality and safety

standards in that domain. Decisions on the provision of services of general interest must remain the unequivocal preserve of local authorities.

31. The Bundesrat refers to the explicit recognition in the Treaty of Lisbon of national constitutional structures, including regional and local self-government, and to the Protocol on services of general interest annexed to the Treaty. The Treaty assigns greater weight to the local tier of government and its services of general interest. The German *Länder* expect the Commission to explain how it intends to reflect this shift of emphasis.
32. The discretionary powers of the local authorities in the performance of their duties with regard to services of general interest must be maintained and further strengthened. The recent case law of the European Court on the issue of in-house contract awards and on procurement from other public entities has created greater legal clarity and confirmed the discretionary powers of local authorities. It remains to be assessed whether further legislative action is required..
33. The Bundesrat welcomes the Commission's intention to review the 2005 Monti package of state-aid legislation and to make adjustments to it if necessary. We await the findings of this evaluation with great interest and can already state that the implementation of the Monti package and the provisions on state aid have considerably increased the administrative workload for local authorities. Every legal relationship between a local authority and its municipal enterprises and direct-labour organisations has to be checked and adapted, which is a permanent task. The local authorities frequently have to seek advice from external experts, partly because of a plethora of unclear and undefined legal terminology. This is costly and time-consuming. The interaction of state-aid, fiscal, company and municipal law leads to decisions that are comprehensible to none but a few insiders. This weakens local councils and hence the system of local government.
34. A European contribution designed to ease the burden on local authorities and to safeguard local self-government is urgently required. As part of the review of the Monti package, there should be a sharper focus on the fact that these burdens often affect tasks of the local community. It would be useful to have a general rule clarifying Article 107 of the TFEU based on the principles set out

in the Commission's decision of 12 January 2001 in the case of Dorsten Swimming Pool (COM SG(2001) D/285046). Practical difficulties arise in the application of the Monti package in many cases because of the stipulation that the parameters governing the calculation, monitoring and, where appropriate, alteration of the compensatory payment must be specified in advance, because it is impossible to anticipate precisely enough the relevant data, such as the number of recipients and hence the cost of paying compensation. The possibility of providing for *ex post* adjustment mechanisms in such cases, as proposed in the Commission's working paper of 20 November 2007, should be incorporated into the Monti package for the sake of clarity. It would also provide some relief if the rules on small aid payments laid down in the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis were introduced on a permanent basis for application to services of general interest.

Public procurement (Annex II) (MARKT)

35. Reflections and activities in other specialised policy areas within the ambit of the Commission must be better coordinated with European initiatives in the sphere of public procurement so as not to undermine consistency with the directives on public procurement and confront users with more and new legal problems. Compulsory coordination of the activities of Commission departments for the purpose of increasing the transparency and user-friendliness of legislation is of the essence in this domain. In general terms, it may be assumed that instruments such as the European Directive on the coordination of procedures for the award of public contracts already offers broad scope for the application of environmental, innovation-related and social criteria to the awarding of public contracts. It must ultimately be up to the contracting authorities to decide which criteria can be usefully applied in specific procurement procedures and in what measure. In this context, the provision of assistance through information gateways and in the form of benchmarks should make it easier for users to comply with such criteria. The Bundesrat recalls, however, that the essential aim of public procurement must be the effective satisfaction of demand.
36. The Bundesrat reiterates its opposition to a legislative act on the granting of concessions. The principles of equal treatment, non-discrimination and

transparency by which public authorities are bound under the case law of the European Court are entirely adequate for the realm of services. The awarding of works concessions is already sufficiently regulated by Community legislation. Another set of European rules would raise the spectre of additional bureaucratic hurdles, which would make it more difficult to apply this instrument flexibly. Further regulation would also diminish the appeal of public-private partnerships.

Strategic initiative 17: Translation of future EU patents (MARKT)

37. The Bundesrat awaits with interest the proposal announced by the Commission for a regulation on the translation requirements for future EU patents. The Bundesrat also wishes to reiterate its position in the current debate on a European patents system. An effective, affordable and legally protected Community patent and Europe-wide jurisdiction in patent matters are fundamentally conducive to the cohesion of the single market and can contribute to a further reduction in the cost of patent applications and to greater legal certainty.
38. In connection with any change to the judicial system, it is imperative that local and regional divisions comprising panels of judges experienced in patent matters be established in the Member States to deal with infringement litigation. These panels would, as a matter of principle, conduct proceedings in the official language of the relevant Member State. Recourse to the court with jurisdiction in the place of infringement must be open to plaintiffs. The factor determining whether local and regional divisions are established in Member States and how many divisions are created must be the caseload of patent disputes in the respective countries. The Bundesrat continues to deem it imperative that Germany should, from the outset, be allocated a number of decentralised divisions that reflects its heavy caseload and that each of the established German patent courts should become the seat of a local panel of first instance.
39. In addition, if the legal protection of patents is to be effective, it is essential to have a flexible system of separation and combination; in other words, the court must at all events have the power to rule on infringement disputes at its own discretion without prejudice to any counterclaim for revocation of the patent, which would subsequently be heard separately by the central division. The

Bundesrat considers that the revision clause proposed in the Council conclusions of 4 December 2009, which is targeted primarily against such flexibility, is liable to deprive companies in Europe of an effective system of patent jurisdiction.

Strategic initiative 18: White Paper on transport (MOVE)

40. The Bundesrat welcomes strategic initiative No 18 for a White Paper on transport. We emphasise the need for a strategic reorientation of European transport with due regard to the economic, environmental and social aspects of sustainability and refer to our opinions of 18 September 2009 (Bundesrat printed paper 603/09 (Decision)) and of 16 March 2010 (Bundesrat printed paper 113/10 (Decision), paragraph 57).
41. Particular attention should be paid to the fundamental importance of an overall transport system that satisfies demand as a key to the economic development and the convergence of Europe. The efforts of the EU in the field of transport policy should be focused even more sharply on the implementation of the priority Trans-European Network projects. The second pillar of EU transport policy should be a drive to introduce state-of-the-art technology in vehicles and transport systems so as to foster efficient and environmentally sound mobility options. With regard to the subsidiarity principle, the Commission should focus its efforts on central supranational tasks and allow the Member States and their regional and local authorities more latitude in the other areas.

Future strategic initiatives relating to water resources (Annex II) (ENV)

42. In future strategic initiatives relating to water resources (Annex II), greater importance should be attached to the principle of subsidiarity. In particular, the Bundesrat sees no need for the creation of a directive on the water efficiency of buildings. Experience shows that an EU-wide instrument would burden the German *Länder*, like other territorial authorities, with disproportionately high inputs of time and money for building surveys, action plans and mandatory reports to the EU.

Strategic initiative 19: package on energy infrastructure (ENER)

43. The Bundesrat welcomes the plan to present a package of measures on energy infrastructure. If Europe's energy supply is to be guaranteed in the medium and long term, if a full and competitive single energy market is to become a reality and if the system of energy production is to be restructured, there will be an

urgent need for demand-driven development of the energy infrastructure – networks, power stations and storage facilities – within Europe and of the supply lines entering Europe. Smart grids are one way of improving energy efficiency and boosting competition. An appropriate long-term strategy must also cover the underlying conditions and incentives for investment in smart grids, demand management, energy efficiency and the targeted use of storage technology as well as support for renewables technology. The Bundesrat urges the EU and the Member States to support, by means of policy measures and the necessary regulations, the implementation and funding of the relevant projects by the energy industries. These efforts must take due account of the subsidiarity principle and regional characteristics.

Re. item 3.1. – building a citizens' Europe (JLS, EMPL, SANCO)

44. The Bundesrat is gratified that the Commission, in its Action Plan implementing the Stockholm Programme, has presented concrete proposals for the further elaboration of the multiannual programme for justice and home affairs. The Bundesrat also refers to its opinions on the Stockholm Programme (see Bundesrat printed papers 792/07 (Decision) and 616/09 (Decision)) and announces a comprehensive opinion on the Action Plan.
45. The Bundesrat recognises the Commission's efforts to accompany the economic recovery measures with measures designed to prevent or overcome undesirable social consequences. European social policy can render a great contribution to social cohesion while increasing public acceptance of the competition ethos and generally making a people's Europe more of a reality.
46. The Bundesrat welcomes the tendency to exercise restraint with regard to new social legislation and the recognition of the Member States' competence that this reflects. Deliberations on the introduction of a binding right to paternity leave, however, are inconsistent with this approach, and we reject such a move. A binding right to paternity leave is inconsistent with the principle of freedom of choice for men and women.
47. The Bundesrat welcomes in principle the Commission's announcement that it intends to publish an impact assessment of the Working Time Directive and to revise the Directive accordingly. The Bundesrat calls on the Commission,

however, to ensure that its 'flexicurity' strategy reconciles the needs of employers and employees for flexibility and security.

48. The Bundesrat thanks the Commission for the initiatives it has already launched to bring Europe closer to the people and refers to its opinion of 12 February 2010 on this matter (Bundesrat printed paper 841/09 (Decision)). Public involvement in the legislative process is an important step towards a people-centred EU.
49. The Bundesrat welcomes the announcement regarding the development of a reference framework for the law of contract and the aim of initiating a discussion on the further use of the Draft Common Frame of Reference, which was presented in the form of a research study at the end of 2009. The Bundesrat also appreciates the desire to unify the law governing cross-border business transactions, thereby making them simpler and more transparent to facilitate the efforts of economic operators to make better use of the potential of the single market. In this context, the Bundesrat takes particular note of the Commission's idea of developing the frame of reference into an optional European code of contract law (the 28th regime) and thus creating a separate system of civil contract law, by which parties could agree to abide when concluding a contract.

At the same time, the Bundesrat is anxious to point out that the Member States themselves have primary responsibility for civil law and the law of contract and that they must retain their present right to shape their own civil codes (see the latest Bundesrat opinions on this issue, dated 6 March 2009 – Bundesrat printed paper 765/08 (Decision) – and 18 September 2009 (Bundesrat printed paper 616/09 (Decision)). The Bundesrat notes that the Commission refers explicitly to the creation of a European Civil Code as a possible objective of its communication on European contract law, and such a code would evidently be designed to transcend the scope of a European law of contract. In the light of this fact, the Bundesrat wishes to stress that the foremost purpose of the planned common frame of reference (CFR) should be to improve the quality of European legislation in terms of definition, rationale and structure. As the Commission rightly indicates, this urgent requirement applies to the current legislation of the Union through the mechanism of *ex post* review, but it relates in equal measure to future legislative acts. It seems to be in the interests of those who apply European law that the development of practical and coherent

regulatory instruments should take precedence over codification efforts that are hardly likely to succeed at the present time.

50. With regard to collective redress, the Bundesrat is gratified that the Commission intends initially to conduct a detailed analysis of political consistency and a public hearing on common legal principles and specific issues before introducing collective rights of redress to enforce consumer rights and entitlements to damages arising from infringement of competition and anti-trust law. The Bundesrat takes the view that the only way to introduce collective redress is through a uniform European framework and that the Member States' past and future experiences of forms of collective redress should be evaluated as thoroughly as possible in order to arrive at a European approach. In particular, proven principles of the Member States' codes of procedural law should be incorporated. In the light of these considerations, the Bundesrat rejects so-called opt-out procedures, since the resulting involvement of parties in proceedings without their knowledge, including their being bound by the judgment of the court, conflicts with the system of individual petitioning that prevails in Germany and most other Member States as well as with mandatory provisions of Member States' national law and of the European Human Rights Convention, particularly the right to a fair and public hearing.
51. The Bundesrat approves the intention of the Commission to ascertain consumers' expectations in terms of legal protection with the aid of the Consumer Market Scoreboard in order to be better able to take account of their interests and give real meaning to the concept of public participation. The Bundesrat expects that, to keep costs down and avoid additional administrative burdens, the findings of the existing, regularly conducted consumer monitor surveys in the *Länder* will be used. The Bundesrat believes that this monitoring must not entail compulsory additional expenditure for Member States and external organisations, which would run counter to the efforts to cut red tape. From this perspective, the Commission's reflections on harmonised methodology for classifying and reporting on consumer complaints invite particularly critical scrutiny, partly because consumer complaints alone do not seem to be a suitable means of ascertaining the percentages of unsafe products and dubious services on the internal market.
52. In the past, the Bundesrat has always urged that greater emphasis be placed on

the application and evaluation of European legislation in the coming years. The crucial object of this exercise would be to ensure that legislative progress is being translated into practical benefits and that new legislative acts are being well prepared. For this reason, the Bundesrat sees no need at the present time to propose the transfer of additional powers to Eurojust. Eurojust is a coordinating rather than an investigating authority, as is reflected in its structure and staffing. The national members of Eurojust have just obtained extended powers by virtue of the new framework decision. Once the decision has been transposed into the national law of the Member States, it would be wise, in the first instance, to observe and assess how it works in practice and then use these findings as a basis for the examination of new options. This would also include the establishment of a European Public Prosecutor.

53. The Bundesrat welcomes the Commission's projected revision of the Data Protection Directive and emphasises the special importance attaching to the protection of personal data in the European legal system. In particular, the Bundesrat expects the Commission to launch an initiative to resolve the unanswered questions regarding the application of the Data Protection Directive in the realm of the former third pillar and to keep the national parliaments informed and involve them from an early stage in the revision process.

Re. item 3.2. – ensuring an open and secure Europe (JLS)

54. The Bundesrat welcomes the Commission's efforts to develop an internal security strategy for the EU. At the same time, the Bundesrat reminds it of the internal security strategy adopted by the European Council at its meeting in March, which should be taken into consideration in the context of the Commission's strategy.
55. The Bundesrat welcomes the Commission's plans to prevent illegal immigration – the Entry/Exit System – but regrets the absence of improvements with regard to repatriation. Moreover, the Commission's measures raise questions because of the onerous reporting duties they impose on Member States.

Re. item 3.3. – addressing long-term societal challenges (JLS, ENV, ECHO)

56. The Bundesrat shares the view of the Commission that the aim of the common immigration policy should be to encourage legal immigration governed by clear, transparent and fair rules. To this end, however, there is no need to assimilate the legal status of non-EU nationals to that of EU citizens. It is essential not to lose sight of this point when adopting the planned measures for legal immigration for the purposes of intra-company transfers, seasonal employment and education or training. The development of a policy of circular migration also gives rise to strong reservations regarding its practical implementation. The Bundesrat also urges respect for national and regional spheres of competence in the field of integration policy. Under the demarcation of powers laid down in Article 79(4) of the TFEU, a European integration policy may be used in support of national and regional policies.
57. The Bundesrat regrets that the international, European and national efforts to preserve biological diversity and to curb the continuing loss of biodiversity have not met with the success desired by the Commission. The Bundesrat believes it is necessary to analyse and assess the original reasons for the loss of biodiversity in order to pursue the development of political instruments designed to provide an effective remedy. We refer to the Bundesrat opinion of 26 March 2010 (Bundesrat printed paper 29/10 (Decision)).
58. Efforts on the part of the Commission to improve the EU's disaster response and preparedness must be rejected as far as the building blocks of civil protection and increased civil-military cooperation are concerned, because they compromise the principle of subsidiarity. The Federal Republic and the *Länder* remain in agreement that operational powers for the EU must be strongly resisted. The Member States must not be released from their obligation to provide on their own responsibility for adequate contingency planning for both preventing and responding to major emergencies and disasters. Rapid and hence effective action to avert danger can only be achieved by specially trained units that are immediately available on the ground.

Re item 4.1. – strong and coherent external representation – the EU as a global player (RELEX)

59. With regard to the foreign policy of the EU, the Bundesrat emphasises that, with the new remit of the High Representative and the European Foreign Service which is to be created, the EU will have coherent external representation, which will lend it more weight. As regards the establishment of the European External Action Service, the Bundesrat considers it absolutely essential that German be enshrined as a working language alongside English and French. It asks the Federal Government not to approve the Council decision on the organisation and functioning of the European External Action Service until a solution is found which befits the importance of the German language in the EU.
60. The Bundesrat welcomes the clear emphasis placed by the Commission on its intention to link progress in enlargement negotiations to the progress made by applicant countries and will be focusing especially on the key issue of the rule of law.

Re item 5. – modernising EU instruments and ways of working (DGT)

61. The Bundesrat regrets that the new Commission, like its predecessor, has not included the long-overdue revision of its translation strategy in its work programme. It calls on the Commission to tackle this important task with fresh vigour and reaffirms its own willingness to engage in constructive cooperation.
62. The Bundesrat takes the view that the full and timely translation of all politically relevant EU documents into German as well as the present working languages is crucial to the effective exercise of the new participatory rights of the Bundesrat and Bundestag in the European legislative process resulting from the early-warning system on subsidiarity and the German acts accompanying the ratification of the Treaty of Lisbon. This specifically includes the translation of annexes and working papers containing politically significant information, such as the annexes to the Commission Work Programme.
63. In the case of other EU documents which are not subject to the full language configuration, if a national parliament has cited a special need to discuss a

particular document, the Bundesrat suggests that flexible solutions be developed for such an eventuality. For example, the favourable experience that has been noted since the introduction in 2004 of the market model for interpretation services for certain Council working groups could be transferred to the translation of EU documents that are not subject to the full language configuration. The Bundesrat calls on the Commission to draw up, in consultation with the national parliaments, proposals for the implementation of such a procedure with undiminished preservation of the full language configuration.

Re. item 5.1. – smart regulation - ensuring that policies are effective (SG C2)

64. The Bundesrat is gratified that the Commission, in presenting its plans for smart regulation – hitherto known as ‘better lawmaking’ – has emphasised, in a separate section of its work programme, the high political priority attaching, both now and in the future, to the pursuit of smart regulation in the EU, including the reduction of red tape. We urge the Commission not to relax its efforts to achieve smart regulation as well as sustained and palpable relief for businesses, individuals and administrations from superfluous bureaucracy. The Bundesrat will continue to help shape this process with additional suggestions. With regard to the envisaged strategic initiative on smart regulation, we shall make a particular point of pressing for an ambitious pursuit of the efforts to reduce administrative burdens and simplify procedures.
65. In this context, the Bundesrat welcomes the extension in mid-April 2010 of the mandate of the Stoiber Group until 2012. This means that the expertise of the Stoiber Group will remain available for consultation on new legislative projects that are launched by the Commission. The informal dialogue between the Stoiber Group and the Impact Assessment Board for which the new mandate provides is a first step towards giving the Group a more active role in checking the quality and validity of the Commission’s legislative impact assessments, which the Bundesrat most recently advocated in its opinion of 18 December 2009 (Bundesrat printed paper 795/09 (Decision)).

Impact assessment (SG C2)

66. The Bundestag welcomes the prime importance which the Commission intends

to attach in future to a sound impact assessment of new EU legislation, not only in view of the goal of a sustained reduction of administrative burdens but also for the sake of the quality and practicality of EU legislation in general. The Bundesrat is critical of the Commission's intention to go on restricting its impact assessments to initiatives with 'significant impacts', in spite of repeated appeals. We reiterate that it takes an impact assessment to establish whether an initiative will have a significant impact and what that impact will be. For this reason, every new regulatory proposal from the Commission should include a verifiable statement on its implications, particularly in terms of administrative burdens for the various decision-making and administrative levels.

67. The Bundesrat wishes to remind the Commission that an impact assessment must contain a balanced analysis of the economic, social and environmental consequences associated with a regulatory initiative. The Commission's declared intention of focusing primarily on employment and social implications in its impact assessments must not result in skewed assessments.
68. The Bundesrat welcomes the Commission's intention to extend the preparation of roadmaps in future to all initiatives likely to have a significant impact as a means of improving the transparency of impact-assessment procedures. The roadmaps will thus provide valuable assistance for stakeholders such as national and regional parliaments and administrations in the early part of the European legislative process.

Ex post evaluation and fitness checks (SG C1)

69. The Bundesrat welcomes the Commission's announcement that it intends to subject existing legislation to *ex post* evaluations and fitness checks as a basis for the revision of legislative acts. We appeal to the Commission in this context to try to maintain close contact with the German *Länder*, which are responsible for the enforcement and, in some cases, the legislative transposition of EU law in Germany. In that way, the *Länder* can lend the expertise and experience of the local administration to optimise these new instruments by means of a sort of 'reality check'. With regard to the evaluation of administrative burdens in the framework of the Commission's impact assessments, the Bundesrat likewise suggests that the Commission provide better opportunities for the involvement of regional and local administrations.

Reduction of administrative burdens (SG C3)

70. The Bundesrat wishes to remind the Commission once again that it has not done enough to meet the target of a 25% reduction in administrative costs by 2012. In fact, the Bundesrat considers that the Commission remains duty-bound to play an active part in expediting the implementation of the Action Programme and to present new proposals without delay for the achievement of the 25% objective.

Re. item 5.3. – adapting the EU financial framework to serve policy priorities (BUDG, SG B1)

71. Like the Commission, the Bundesrat sees that the future cohesion policy of the EU must contribute to the Europe 2020 strategy and to modernisation of the economy. At the same time, it remains the undiminished aim of the policy to pursue economic, social and territorial cohesion. The Bundesrat is surprised that, in its work programme, the Commission has only mentioned cohesion policy as a subsidiary element of the flagship initiative *Resource-efficient Europe* and in connection with the adaptation of the EU financial framework, whereas the tasks and the activity spectrum of the cohesion policy go far beyond these confines.

72. The Bundesrat reiterates that the cohesion policy must be pursued after 2013 in the regions with development deficits as well as in the regions falling under the Regional Competitiveness and Employment objective. It is essential that the regions falling under that objective should also be assisted in order to reinforce competitiveness and growth in Europe. For regions that are no longer eligible for maximum support, including the so-called statistical-effect regions of the current support period, appropriate and fair transitional arrangements must be devised within the convergence objective. The European Social Fund must remain within the sphere of the cohesion policy.

73. The Bundesrat points out that the cohesion policy makes an important contribution to both the pursuit of the Union's objectives and the mastery of new challenges, especially by enhancing competitiveness, innovation and employment as well as measures to promote resource efficiency, energy efficiency, green innovations and energy savings in the regions of the EU and contributing to the management of demographic change. Efforts to meet new

challenges can be integrated into the cohesion policy without the need to create separate new objectives or centralise the administration of funds..

74. The Bundesrat welcomes the Commission's intention to continue conducting the cohesion policy on the basis of cooperative partnership with national, regional and local players. It calls on the Commission, when drafting its proposals for the post-2013 cohesion policy in the fifth cohesion report (strategic initiative 34) to preserve the integrated regional approach to the programming and implementation of cohesion policy so as to continue guaranteeing the effective mobilisation of local potentials and stakeholders.
75. In the planned review of the EU budget, a balance must be struck between the existing priorities and new challenges in order to do justice to the objectives of the EU. The Bundesrat sees important future tasks in the promotion of innovation, of a knowledge-based economy and of research, development and training as well as in the provision of regional support. In this context, the Bundesrat reminds the Commission once again that not all European tasks and future challenges require European funding. Accordingly, when restructuring the EU budget, the Union should give primary consideration to internal financial transfers or the use of instruments that entail little or no additional expenditure. There must be no increase in the percentage of the economic output of the Union that is allocated to the EU budget.
76. The Bundesrat shall transmit this Opinion directly to the Commission.