

Translation of letter

Dated: 24 September 2009

From: President of the Bundesrat

To: Mr Barroso

**Proposal for a Regulation of the European Parliament and of the Council on the Financial Regulation applicable to the general budget of the European Union (Recast)**

**COM (2010) 260 final**

Dear Mr Barroso,

At its 874th sitting of 24 September 2010 the Bundesrat decided to send the Commission the annexed resolution.

Yours sincerely,

## **Resolution of the Bundesrat**

### **Proposal for a Regulation of the European Parliament and of the Council on the Financial Regulation applicable to the general budget of the European Union (Recast)**

#### **COM(2010) 260 final**

At its 874th sitting on 24 September 2010 the Bundesrat adopted the following position pursuant to sections 3 and 5 of the Act on cooperation between the Federal State and the *Länder* in matters relating to the European Union:

1. The Bundesrat notes the Commission's reform efforts to streamline EU budget management procedures.
2. It welcomes the Commission's proposal to discontinue the deduction and recovery of interest generated by pre-financing payments for grants, make more flexible provision for the carry-over of assigned revenue and reduce the administrative burden associated with grants.
3. On the other hand, it sees no need to allow the Commission greater flexibility in the transfer of appropriations. The existing flexibility has proved sufficient. Priority should be given to the stability of budget planning.
4. The Bundesrat acknowledges that there are certain policy areas which, because of a complicated legal situation, are more prone to error than others. It may make sense to set specific levels of tolerable risk of error for these policy areas.

The Bundesrat acknowledges that the planned introduction of tolerable risks of error above the materiality threshold for certain areas will constitute a simplification in certain policy areas.

However, the rate of error should preferably be reduced by simplifying the management and control provisions.

5. The Bundesrat rejects the linking of tolerable risk of error to analysis of the control costs (second paragraph of Article 28b), since the effectiveness of the management and control systems is not directly related to the control costs. The control costs essentially depend on what the Commission requires of the systems (e.g. level of control rates, internal control systems, external control systems, eligibility criteria for funding).
6. The Bundesrat calls for the tolerable risk of error (third paragraph of Article 28b) to be set in consultation with the Member States.
7. The Federal Government is asked to work for the inclusion in the EU Financial Regulation of a provision on *de minimis* limits which is also applicable in respect of shared management of funds. National provisions on *de minimis* thresholds should be recognised if they do not place EU funds in a worse position than national funds as regards writing off entitlements.

The *de minimis* thresholds are intended to simplify proceedings and avoid situations in which the administrative effort expended on recoveries and claims for interest is out of all proportion to the amounts concerned. Expenditure of time and effort within the administration should also be kept as low as possible. The national financial regulations (FR) contain such

provisions. So does the EU FR, but only as regards funding which it has paid out itself. However, the most important cases of funding from the EU budget concern shared management of funds. Yet the Commission, having altered its legal opinion, wishes to withhold the necessary flexibility in this area while retaining it for itself.

8. The Bundesrat sees no need to radically alter the existing well-established system for the shared management of funds. In particular, it rejects the intention of Article 53a to impose new requirements and control obligations on Member States by creating new structures for shared management. Where the system of shared management now being proposed by the Commission has already been applied in the area of agriculture, it has given rise to a disproportionate administrative burden.

9. However, the Bundesrat fears that in the case of the agricultural and fisheries funds (EAGF, EAFRD and EFF), the new arrangements for shared management will create new burdens for Member States' administrations. It therefore asks the Federal Government to ensure in further EU-level negotiations that

- existing reporting requirements are streamlined and on no account extended, and
- no new structures are required for internal controls relating to accredited bodies.

10. The Bundesrat considers that the proposed Regulation would result in a substantial increase in the administrative burden, in particular for the assistance and compensatory measures financed by the Funds (EAGF, EAFRD, ERDF, EFF). It therefore rejects the requirements set out in Article 53a (Shared management with Member States), which go far beyond existing requirements for the respective Funds, for instance in terms of additional declarations, auditing systems, reporting requirements and accounts to be drawn up. In the view of the Bundesrat, the requirements for implementation of the systems for assistance and compensatory measures should if anything be laid down in the sector-specific rules.

11. The Bundesrat is opposed to Article 53a of the proposal, which imposes new requirements and obligations, as well as new control risks, on the Member States for implementation of the EU Structural Funds (ESF, ERDF). It rejects the intended harmonisation with the time-consuming system already in place for agricultural funding.

12. The Bundesrat points out that the management and control structures for the EU Structural Funds for the 2007-2013 programming period (managing authority, certifying authority, audit authority) are by now well established and operating effectively and efficiently on the basis of accumulated experience. It does not therefore consider it reasonable to introduce a new set of fundamental changes to the Structural Funds system, with all the associated uncertainties and start-up problems, substantially heavier input of resources, friction costs, and new risks of error.

13. The Bundesrat notes that Article 53a(3) and (4) of the proposal for a Regulation in particular introduce new administrative structures, responsibilities and procedures which will considerably increase the administrative burden and lead to delays in launching support measures. The Structural Funds' multiannual system for funding and projects is abandoned and projects are broken down into annual financial instalments, which the Bundesrat considers a disadvantage. The Bundesrat therefore rejects Article 53a(3) and (4).

14. The Bundesrat stresses that introducing additional levels/stages of controls will further increase the disproportion between input of resources and the administrative burden. The "audit of the auditors" and the further review of certifications seem clearly excessive for the ESF in view of the already very high level of management and controls, and are diametrically opposed to the EU's objectives of reducing red tape, simplifying procedures and reducing costs for all concerned.

15. The Bundesrat considers that the intended alignment of the agricultural support systems with the tried and tested structures of the EU Structural Funds (ESF, ERDF) fails to take account of the entirely different points of departure and overall context of these policy areas. It stresses that the need to retain a differentiation is evident from the scope and content of the different kinds of support (EU Structural Funds: support for projects with specific objectives), the strategic orientation (EU Structural Funds: innovation, European value added) and the partners involved (EU Structural Funds: economic and social partners, many sectors).

16. However, as the recast of the EU Financial Regulation is supposed to pave the way for future funding procedures, the Federal Government (in consultation with the German *Länder* – e.g. through joint working parties of *Länder* representatives for the Structural Funds and the EAFRD and the competent Federal ministries) is asked to make representations to the Commission to ensure that the implementing provisions to the EU Financial Regulation, which have yet to be drafted, the Commission guidelines and the sector-specific Regulations for the programming period starting in 2014 are made available well in advance. This would enable the Member States to effect simplifications to reduce the administrative burden.

17. The Bundesrat notes that under the new proposal, in particular for the EAGF and EAFRD, the independent audit services would be assigned a new task, on top of auditing the measures and systems for completeness, accuracy and veracity: in future they would also have to check for legality and regularity. The Bundesrat rejects this approach, particularly as the Commission carries out its own audits in addition to those of the independent auditors, and in some fields (e.g. ERDF and EAFRD), extensive action plans and/or system descriptions have to be submitted to the Commission for approval at the start of a programming period.

18. The Bundesrat cannot accept the deadline set for the field of structural assistance in Article 53a(5).

19. On the basis of experience the Bundesrat considers that for the EAGF and EAFRD, a realistic deadline for providing the Commission with the information required under Article 53a(5)(d) would be 1 August.

20. The Bundesrat calls for the deletion of the third sentence (subparagraph 2) of Article 53a(2).

21. The Bundesrat rejects the introduction of increased control and audit obligations in respect of indirect management. This would lead to higher costs and more bureaucracy, without any recognisable advantage over the existing system.

22. In the opinion of the Bundesrat, it is the Commission's task to ensure that funds are managed correctly if the Commission delegates budget implementation to bodies or persons in a Member State that are not part of the State bodies responsible under the shared management arrangements. The Bundesrat rejects the introduction of a management

declaration of assurance, since submitting such a formal declaration of assurance will not improve the control of expenditure of EU funds or of actual expenditure.

23. The Bundesrat objects to the raising of loans by EU institutions to buy office premises. The financing of EU budget expenditure from loans is not provided for in the EU own-resources system and would burden the budget with interest payments. For the EU budget to engage in financing from loans would be a step in the wrong direction, in view of the declared goal of economical budgetary and financial policy.

24. The Bundesrat asks the Federal Government to work to ensure that a control procedure for expenditure by EU institutions is provided for in Articles 88 et seq. of the proposal for a Regulation of the European Parliament and of the Council on the Financial Regulation applicable to the general budget of the European Union.

Grounds for paragraph 24:

Procurement financed in part or in whole from the EU budget must comply with the principles of transparency, proportionality, equal treatment and non-discrimination. Accordingly the same legal provisions for public procurement apply throughout Europe. To secure compliance with these principles and all the legal provisions based on them, effective oversight of contracting authority is needed. When contracts are awarded by EU institutions, so far the EU court has jurisdiction for review procedures. However, an independent, out-of-court control agency in line with national law should be the first stop in review procedures. The national review procedures for public procurement have been shown to work. The aim should therefore be to establish equivalent structures for EU procurement.

25. The Bundesrat is sending this opinion directly to the Commission.