

*Brussels, 2/03/2011  
C/2011/1083*

*Dear President,*

*Thank you very much for transmitting the Bundesrat's position on 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 (Recast) {COM(2010) 260}.*

*In line with the Commission's decision to encourage national Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response and hope you will find this a valuable contribution to your own deliberations.*

*I look forward to developing our policy dialogue further in the future.*

*Yours sincerely,*

*/-/ Maroš Šefčovič*

*Ms Hannelore KRAFT  
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## COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE GERMAN BUNDESRAT

### COM(2010) 260 - 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)

The Commission thanks the Bundesrat for its resolution on the proposal COM(2010) 260 for a triennial revision of the Financial Regulation. For the sake of legal clarity and in order to facilitate the negotiations of the European Parliament and the Council, the Commission adopted a new proposal on 22 December 2010 (COM(2010)815). This proposal merges into a single text the changes proposed to translate the requirements of the Treaty of Lisbon into the Financial Regulation (so called 'Lisbon Revision') and the proposal for the triennial revision of the Financial Regulation (COM(2010) 71 and COM(2010) 260). Additionally, it incorporates the changes to the Financial Regulation following the adoption of Regulation No 1081/2010<sup>1</sup> regarding the creation of the European External Action Service. The proposal does not entail any change in *substance*. Therefore, the Commission considers your observations, which relate to COM(2010) 260 to be still applicable.

The Commission notes that the resolution of the Bundesrat welcomes the Commission's efforts towards simplification which is a key goal of the proposal. In this respect the positive reactions to the proposal to release beneficiaries of EU funding from the requirement to reimburse **interest on pre-financing**, to render more flexible the carry over of assigned revenue and to reduce administrative burden in the area of grants, are particularly welcome.

As regards the issue of greater flexibility in the area of **transfers of appropriations**, the proposed changes are motivated by the desire to improve budgetary management and to make best use of available institutional resources. This is in light of the fact that there are always variances between actual execution and that which is budgeted for along with the resource implications of each transfer. It is important to bear in mind that the changes proposed in no way seek to affect the prerogatives of the Budgetary Authority which shall continue to decide on the important and political transfers.

Concerning the **tolerable risk of error** the Commission agrees that simplification of eligibility rules is an important factor for reducing the risk of error rates in certain policy areas. Tolerable risk of error is not contradictory or mutually exclusive to simplification, but rather a balancing factor between the complexity in current legislative provisions and the costs of controls. Bearing this in mind the Commission is currently preparing the post 2013 legislative period and in this context the cost of controls is a key factor to take into account when setting a level of tolerable risk of error. Yet, there are also aspects of control that cannot be quantified (deterrent effects, reputational risks) but which should be taken into account by the legislative authorities' decision on tolerable risk of error.

The Commission is not opposed to examining the possibility for MS to apply *de minimis* rules. However, such *de minimis* rule would only be acceptable under the condition that ceilings and criteria are harmonised at EU level. In such a case the principles would have to be enshrined in the Financial Regulation (FR) and the harmonised modalities in the Implementing Rules (IR).

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<sup>1</sup> European Parliament and Council Regulation No 1081/2010 of 24.11.2010

In respect to the Bundesrat's view that certain elements of the proposal regarding **shared management** would create a disproportionate administrative burden, running counter to the EU objective of eliminating red tape and simplification, the Commission believes that it is possible to preserve those elements of the current system which have been operating successfully in the management by Member States of Union funds.

At the same time, the Commission, having the final responsibility for the implementation of the Union budget, is committed to work towards an unqualified statement of assurance from the Court of Auditors. Evidence<sup>2</sup> shows that the main causes of errors are deficiencies in first level management verifications. While a recent Commission audit indicates that the 2007-13 rules are resulting in reduced error rates, the real impact will only become fully clear in the light of future DAS results.

On the basis of the requirements of the Treaty of Lisbon (Article 317 TFEU) the Commission is proposing an evolution of the current management and control systems clarifying the responsibilities of the various actors and introducing instruments to obtain a better assurance for the funds managed. Provision for this has to be made in the FR, leaving specific provisions, i.e. on the modalities of the clearance of accounts procedure or the accreditation process, to sectoral legislation. The Commission believes that this approach will lead to more consistency across all policy areas under shared management and thus, ultimately, to simplification and increased accountability for the management of EU funds.

Concerning the issue of **indirect management in accordance with Article 53b FR** (Article 57 according to proposal {COM(2010)815}) the Commission would like to stress that it is precisely because it bears final responsibility for the implementation of the Union budget that it has to develop instruments enabling it to assume this responsibility. The Commission considers that an annual management declaration would be such an instrument. It is convinced that, holding the entity or person managing the funds responsible by means of an annual management declaration would improve sound financial management without changing the Commission's final responsibility for the implementation of the Union budget.

With regard to the Bundesrat's critical stance on the question of **raising loans to buy buildings**, the Commission would like to emphasise that the proposal aims at rationalising the Institutions building policy. In general, the purchase of a building is a better option than a long term rent (-/+30 years). The proposal aims at allowing the Commission to borrow directly from a bank or any financial institution in order to acquire, construct or renovate a building and benefit from its triple A rating, thus lowering the financial costs of the transaction and saving EU taxpayer's money. The loan would be raised from the bank or financial institution offering the best rate, based on a competitive procedure (tender).

It is important to note that the operation does not break the budgetary equilibrium principle. The amount of the loan is not recorded in the budget as revenue, nor is the value of the building recorded in the budget as expenditure (but as an asset in the inventory). From an accounting point of view, the loan does not finance the budget expenditure but the acquisition of an asset. The loan (debt) is compensated by the value of the building (asset).

Hence, only the annual instalments to be paid to the bank are included as expenditure and these are matched by the annual administrative budget for buildings (revenues). This logic is also

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<sup>2</sup> Court of Auditors Opinion 1/2010 paragraph 6

found in the building rents: while the Commission may legally commit for 10 years to rent a building, only the annual rent is booked as expenditure.

Finally, concerning the establishment of an independent authority reviewing complaints against **public procurement procedures** by the Institutions, it should be mentioned that any economic operator can already address his grievances about a particular procurement procedure to three organs: the contracting authority itself, the Ombudsman and the Court of Justice. The latter two are independent of the contracting authority and provide remedies in compliance with their competences. The Court, in particular, may order interim measures, annul award decisions and award damages. A complaint to the Ombudsman can be filed at zero cost and the investigation (collection of evidence) is carried out by the Ombudsman's services, so that the barrier to complain (financial, in particular) is very low.

The rights of any aggrieved economic operator are hence, in the Commission's view, effectively and sufficiently protected.

Furthermore, the creation of such an independent body with the right to issue decisions binding upon the Institutions would be problematic in the institutional framework created by the Treaties.

Lastly, the creation of such a body would generate additional administrative costs without clear advantages. It would not be efficient to establish such a body for a relatively low number of contracting authorities purchasing mainly office supplies in addition to the existing independent organs based on the Treaties.

The Commission hopes that these explanations satisfy the expectations of the German Bundesrat as expressed in its opinion.