

Letter dated:

Berlin, 26 November 2010

From:

The President of the Bundesrat

To:

President of the European Commission Mr José Manuel Barroso, 1049 Brussels, Belgium

Subject: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Smart Regulation in the European Union – COM (2010) 543 final

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At its 877th session held on 26 November 2010, the Bundesrat decided to forward the Decision contained in the Annex to the Commission.

Encl.: 1

Decision
of the Bundesrat

631/10 **26 November 2010**

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Smart Regulation in the European Union – COM (2010) 543 final

At its 877th session held on 26 November 2010, the Bundesrat adopted the following opinion in accordance with Sections 3 and 5 of the EUZBLG (Act on Cooperation between the Federation and *Länder* in European Union Matters):

1. The Bundesrat supports the Commission's continued efforts to improve the EU's regulatory framework and welcomes the Commission's new content-based approach to 'smart regulation'.
2. It takes the view that 'smart regulation' concerns the entire policy cycle and represents a common objective, albeit one which lies within the respective responsibilities of the EU institutions and the Member States. In this sense, the Bundesrat sees the improvement of the regulatory environment in the EU, including reducing the costs of bureaucracy, as a key element in the Europe 2020 strategy. This will make an important contribution to increasing the competitiveness of European undertakings, particularly small and medium-sized enterprises (SMEs), and to promoting growth and employment in Europe as a whole.
3. The Bundesrat basically welcomes the Commission's announcement that it intends to carry out systematic *ex post* evaluations of existing legislation and comprehensive fitness checks of selected policy fields as a basis for revising legislative acts. These new instruments can make an important contribution to reducing implementation costs for citizens, business and administration. The *Länder* have extensive knowledge of the implementation of EU law. This could be used by integrating it into the fitness checks in order to combine intelligent regulation with innovative implementation. It is particularly essential here that the regions be involved in evaluating the cost-effectiveness of EU measures in terms of a 'reality check'.

Reducing administrative burdens

4. Combining programmes to simplify EU law and to reduce administrative burdens must not, in the Bundesrat's view, result in the Commission losing sight of actual

demands to effectively reduce bureaucracy at EU level as it affects the individual on the one hand, and to avoid considerable cost implications for Member States' public budgets on the other.

5. The Bundesrat points out that the Commission's proposed reductions so far relate exclusively to burdens on business from the imposition of obligations to provide information. Compulsory statistics and documentation, however, only form part of the actual bureaucratic burden on business, citizens and Member State administrations.
6. Against this background, the Bundesrat calls for an EU agenda on reducing bureaucratic burdens that continues to be ambitious, the expansion of the 'Action Programme on reducing administrative burdens' to include 'compliance costs' arising from following EU content requirements and, in this context, a further ambitious target for reducing overall measured compliance costs.
7. The Bundesrat welcomes the continuation of the mandate of the High Level Group of independent stakeholders in the field of administrative burdens, and in particular the planned structured dialogue with the Commission's Impact Assessment Board. The Group's expertise can thus have greater influence on avoiding new bureaucracy. The Bundesrat takes the view that the High Level Group should present a final report on its activity, with policy recommendations, by the end of its mandate in 2012.

Implementing EU law in the Member States

8. The Bundesrat supports the Commission's efforts to promote a multi-level approach to 'smart regulation' and ensure the continued removal of administrative burdens. It notes in this context that the Commission would more closely examine the alleged practice of national bodies going over and above the requirements of Community law when applying and implementing directives in national law ('gold-plating'). It emphasises that the focus of deregulation activities here should not be solely on the Member States. Care must also be taken to ensure that the Commission does not exceed its powers, which are restricted to monitoring correct implementation.
9. The Bundesrat is well aware that, with regard to reducing bureaucracy, priority is to be given to the 1:1 implementation of EU requirements in the national context. However, it points out that the meaning and purpose of directives is to allow Member States to implement EU requirements in national law independently, appropriately complementing national legislation but not supplanting or replacing it.

In addition, the way they are implemented can only be appropriately determined by the Member States, as they are best acquainted with the context of the respective legal field, especially with regard to existing national legal acts.

Impact assessments

10. The Bundesrat welcomes the announcement of improvements to the impact assessment procedure and the importance the Commission wishes to attach to a sound impact assessment for new EU legislation in the future.
11. In this context, it emphatically supports the Commission's plans to involve stakeholders and interested parties more closely in the European legislative process, for instance by extending consultation periods from eight weeks to 12 from 2012 and by reviewing existing instruments for consultation procedures.
12. One positive aspect is that Commission impact assessments are to contain more cost-benefit analyses in future. What the Commission sees as the difficulty of obtaining data for all 27 Member States must not, however, result in new bureaucratic requirements for national administrations. Rather, it is important to use available data and thus, as announced, to involve more closely the regions of Europe, which are in many ways responsible for implementing and, in particular, enforcing European standards.
13. It also welcomes the fact that the Commission wishes to extend the development of 'road maps' to all projects likely to have 'significant' impact, in order to improve the transparency of impact assessment procedures. Road maps thus offer valuable assistance for the early involvement in the European regulatory process of, for instance, national and regional parliaments and administrations.
14. However, the Bundesrat is again critical of the Commission's intention to continue restricting its impact assessments to initiatives with 'significant impact', 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. At the very least, in accordance with the recommendations from the European Court of Auditors in September 2010 on improving the impact assessment process, the Commission should provide detailed reasons as to why no impact assessment is carried out.

15. The Bundesrat, like the Commission, emphasises the co-responsibility of the Council and the European Parliament for a high-quality impact assessment within the EU legislative procedure. It is again critical of the fact that, in most cases of amendments to the original draft legislation under the legislative procedure, neither the Commission nor the European Parliament nor the Council has analysed the impact of these amendments and updated the impact assessments accordingly. The estimated impact of the final legislative acts, particularly with regard to the bureaucratic costs involved, therefore remain unclear even in the event of substantial amendments.
16. In this context, the Bundesrat again points out that the EU legislator can, under the current Inter-institutional Common Approach to Impact Assessment, call upon the Commission to update its original impact assessment in the light of the amendments adopted by the European Parliament and the Council.
17. Regardless of this, the Bundesrat emphasises the need for both the Council and the European Parliament to create the necessary procedural and staff-related preconditions for drawing up their own impact assessments or to update the Commission's impact assessments in the light of fundamental amendments to the original Commission proposal. In order to avoid duplication of effort within the institutions, it calls upon the Commission to make available to the Council and the European Parliament the collected data used by the Commission in drawing up its impact assessments. The overall objective must be to be able to use up-to-date and meaningful impact assessments as the basis for political decision-making at any time during the legislative procedure through closer inter-institutional cooperation.
18. The Bundesrat regrets that the Commission, despite persistent shortcomings in its impact assessments in the past, continues to reject external (quality) control of its own impact assessments by an independent body, citing its sole right of initiative. It does not share the Commission's view that an external body for monitoring impact assessments is unnecessary. Rather, the Bundesrat's view is that an independent council for reducing bureaucracy should be set up within the Commission along the lines of the *Nationaler Normenkontrollrat* (National Regulatory Control Council). Such an independent body could provide a 'one-stop shop' to ensure high-quality and verifiable impact assessments at EU level without jeopardising the institutional balance of the Community. Moreover, it would prevent any conflict of interests from the outset.

Smart regulation at Member State level

19. The Bundesrat shares the Commission's view that efforts to improve regulation are also required at national level. The plan to examine new regulatory proposals at Federal level with regard to compliance costs represents another important element in freeing citizens, business and administrations from unnecessary bureaucracy.

Direct delivery of the opinion

20. The Bundesrat is forwarding this opinion directly to the Commission.