

***Bundesrat***  
**(Federal Council)**

**Document 698/10 (Resolution)**

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**Resolution**  
**of the *Bundesrat***

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**Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Towards a Single Market Act for a highly competitive social market economy – 50 proposals for improving our work, business and exchanges with one another**

**COM(2010) 608 final**

At its 879th meeting on 11 February 2011, the *Bundesrat* adopted the following opinion pursuant to § 3 and § 5 *EUZBLG* (Act on Cooperation between the Federation and the *Länder* in European Union Affairs):

General

1. The *Bundesrat* welcomes the Commission's initiative for a Single Market Act of 27 October 2010 and the public consultation it initiated on presentation of the Communication, offering the possibility of revitalising the single market and, in particular, of commenting on the 50 proposals in the document. The Commission rightly notes that the potential of the single market has not yet been fully exploited and it can be revitalised successfully only if the public's confidence in it can be restored.
2. The *Bundesrat* welcomes the fact that the social dimension has been incorporated in the Europe 2020 strategy and that the Commission's proposals paving the way for a Single Market Act are informed by the social market economy model. The *Bundesrat* endorses the Commission's view that the process of creating a Single Market Act will be geared to combining economic performance and social justice. Given the success achieved so far, the untapped potential and the new challenges, *inter alia* in the wake of the economic and financial crisis, the *Bundesrat* continues to see a need for the single market to be developed further.
3. The *Bundesrat* welcomes the Commission's statement that the single market is not an end in itself but a tool for implementing other policies. In its view, this means that the internal market freedoms must actually be weighed against social rights in individual cases. It therefore also welcomes the Commission's statement in this connection that the single market must be supported by all stakeholders: companies, consumers and employees.
4. The Commission rightly emphasises the particular significance of cohesion policy for the further development of the single market. Cohesion policy also makes an important contribution to implementing the Europe 2020 strategy. The *Bundesrat* refers to the common opinion of the *Bund* and *Länder* on the Commission's fifth

report on economic, social and territorial cohesion, according to which the EU's structural policy must continue to provide options for all the regions after 2013 as well. EU-wide support in connection with the "regional competitiveness and employment" objective should be continued. Suitable transitional arrangements must be made for regions which are currently supported under the "convergence" objective but whose GDP per inhabitant is above 75% of the Union average. The funds for this should be made available under the "convergence" objective. Support for cross-border transnational and interregional cooperation must be continued and the European Social Fund (ESF) must also remain an integral part of cohesion policy.

5. Several of the Commission's proposals are not unproblematic in view of how responsibilities are shared between the EU and the Member States and with regard to the principle of subsidiarity. This is particularly true of proposals No 7 (White Paper on transport policy), No 11 (an energy efficiency plan), No 25 (a series of measures on services of general interest), No 28 (Decision establishing a European radio spectrum action programme) and No 31 (portability of occupational pensions). The Commission should comply strictly with the arrangements for sharing powers and the principle of subsidiarity when drafting the envisaged legislative proposals.
6. The Commission's regulatory approach should not resort primarily to regulations but should take into account the principle of subsidiarity and local circumstances and give precedence to directives. The Commission should take care that the highly successful efforts to reduce bureaucracy undertaken by the *Bund, Länder* and municipalities over the past few years are not undermined by additional European regulations.

In accordance with the proposals in the Monti report, the "28th regime" on European social law should be extended to further sectors.

### The individual proposals

#### Re Proposal No 1

7. The proposals on the EU patent constitute an important step forwards and should be taken further. The *Bundesrat* therefore welcomes the fact that the Commission presented a proposal on 14 December 2010 for increased cooperation to create standardised patent protection in the EU. The aim must remain to make available an EU patent which is applicable throughout Europe without validation in all the Member States. Consistency of jurisprudence must also continue to be upheld under the decentralised arrangements for the first instance of patent jurisdiction which is envisaged.

#### Re Proposal No 2

8. The demand for access to online content is still increasing considerably in Europe. However, supply often breaks down at the borders of the Member States because of territorially restricted rights, thereby considerably hindering online access to knowledge, cultural goods and other creative content. For works handled by collection societies or comparable rights agencies, relaxing the complex requirements for declarations of rights in the online sector would be a key prerequisite for creating a genuine digital single market which takes full advantage of the potential of online dissemination of knowledge-based content. It should be

possible for licences to be acquired from a reasonable number of collection societies throughout Europe. The principles of the market economy should apply and monopolistic structures should be avoided. Outside the online sector, however, no need for European licensing is apparent. The *Bundesrat* refers to its comments of 9 July 2010 (*Bundesrat* document 306/10 (Resolution)) in this respect.

#### Re Proposal No 3

9. Robust and determined action against counterfeiting and piracy is indispensable. The *Bundesrat* therefore supports the action plan envisaged by the Commission.

In this connection it should be taken into account that product counterfeiters increasingly dispatch small quantities of plagiarised products via package and freight services in order to make it more difficult for them to be confiscated. If B2B platforms are used, there is no need for a middleman in Europe, so that small and larger quantities can be sent directly to the final consumer market. It should also be possible to confiscate even such small and very small quantities, if they are too large for private consumption, unbureaucratically and at low cost.

#### Re Proposal No 4

10. The Services Directive has so far mainly given rise to administrative work without any clearly recognisable additional benefits. Experience to date shows that very little use is being made of the single contact point. Moreover, the majority of enquiries come from inside the country. An unbiased evaluation of the success of the Services Directive is therefore to be welcomed. If the evaluation does not show that any success or any development has been achieved in promoting a European services market, any further measures which would involve considerable administrative effort should be dispensed with.

#### Re Proposal No 6

11. The *Bundesrat* is in favour of small and medium-sized enterprises (SMEs) in particular having better access to standardisation work. The *Deutsches Institut für Normung e. V.* (*DIN* – German Standardisation Institute) also supports this proposal. However, whatever options are considered, it should be borne in mind that the success of European standardisation is based on the decentralised structure and the commitment of the national standardisation organisations, which are funded by private contributions in Germany. Any centralisation of the structures and increased State influence would have negative repercussions on the European standardisation system's levels of acceptance and performance.

In the ICT sector, new specification development structures have emerged alongside the formally recognised standardisation organisations at global level. Several forums and consortia have developed into global organisations producing ICT specifications which are applied and implemented worldwide. OASIS and W3C, which operate using open and transparent processes and have a broad range of global members, are prominent examples of these. Reference to these specifications from forums and consortia should be admissible for the purposes of public procurement where there is a specific requirement for them, and in the ICT sector only.

Re Proposal No 8

12. The *Bundesrat* is in favour of consistent treatment of energy sources in the Energy Tax Directive, irrespective of the source of the energy consumed. All emissions of CO<sub>2</sub> should be treated in the same way by levying a standard tariff. However, care should be taken to ensure that these measures do not go hand in hand with an overt or covert increase in tax. The total tax burden for final customers should not be increased. A two-fold levy on energy consumption which comes under the EU emission trading system should also be ruled out. Amending the Energy Tax Directive must not force up Europe's already high energy costs even further and undermine the international competitiveness of energy-intensive companies even more. The Commission must therefore create the short-term framework for electricity price compensation in accordance with State aid law pursuant to Article 10a(6) of the Emissions Trading Directive. Energy-intensive sectors of industry require planning and investment certainty for the entire emission trading period at their European sites.

Taxes on electricity and gas also include the concession fee which is payable to cities and municipalities. Revenue was over 3.5 billion euros throughout the country in 2005. This sizeable source of municipal revenue should not be lost or reduced as a result of changes in the taxation system.

Re Proposal No 11

13. The directives for energy services, building energy efficiency and clean and energy efficient vehicles already provide for the public authorities to play a leading part. Many local authorities already do this voluntarily as far as their financial resources will allow them. The *Bundesrat* is critical of the public authorities being pressed into service any more by requirements under European law. In view of the budgetary situation of the *Länder* and the municipalities there should be no compulsory higher standards in energy-efficient renovation of public buildings. Incentive programmes and funding schemes to activate voluntary measures should take precedence over compulsory requirements under administrative policy.

Re Proposals Nos 12, 13 and 14

14. SMEs in particular are often confronted with more difficult framework conditions than large companies. The *Bundesrat* therefore supports all proposals which, like an action plan for improving SME access to capital markets or simplified financial reporting standards, are conducive to creating better framework conditions for SMEs and reducing administrative burdens. The Commission should focus mainly on early-stage financing of start-ups and young companies (up to five years after they are founded), especially in the high-tech sector where there is not inconsiderable demand. The vast majority of medium-sized companies in Germany are against international financial reporting standards (IFRS) being adopted for SMEs, as this would make it necessary to amend major national arrangements under company law such as capital maintenance and the basis for calculating dividends.

This would be a disproportionate encroachment on national legal systems. Moreover, it is feared that this would cause a considerable increase in the work involved in financial reporting.

15. The *Bundesrat* shares the Commission's view that the single market must create especially favourable legal framework conditions for the foundation and development of SMEs if its growth and employment potential is to be fully exploited.

It therefore regrets that the Commission's proposals for the planned Single Market Act fail to mention adoption of the European Private Company Statute. The EPC would considerably reduce the time and costs involved in founding and managing foreign subsidiaries, lead to a simplification in internal corporate structures and provide an appreciable increase in legal certainty. It would be of particular benefit to SMEs that urgently require a supranational legal form with fundamentally uniform structural characteristics to make it easier to conduct business activities in other Member States.

The *Bundesrat* therefore urges that the EPC be introduced quickly as a priority project in the Single Market Act.

In the process of implementation, the basic structural principles of national social, codetermination and other corporate law are to be taken into account without fail.

#### Re Proposal No 17

16. The *Bundesrat* welcomes the fact that the Commission is evaluating existing procurement arrangements and will make legislative proposals after a wide-ranging consultation with a view to simplifying and modernising European rules on public procurement. The *Bundesrat* expects sufficient time to be available for this consultation.

The *Bundesrat* is against the introduction of further "non-procurement criteria". Public procurement is primarily aimed at meeting the needs of public authorities and should not be deployed any further than at present in support of other policies.

#### Re Proposal No 18

17. The *Bundesrat* once again opposes a legislative instrument on the granting of concessions.

The granting of building concessions, which account for a large proportion of public-private partnerships, is already regulated sufficiently in Community law. Safeguards already exist for equal treatment, non-discrimination and transparency in service concessions. The case law of the European Court of Justice requires these principles, which are derived from the basic freedoms, to be complied with here too, and this is quite sufficient for this sector. By contrast, further European regulation which also extends to service concessions harbours the risk of additional bureaucratic requirements which would make it more difficult to use the instrument flexibly and therefore also reduce the appeal of public-private partnerships. As the European Parliament explicitly confirmed in its Resolution of 18 May 2010 on new developments in public procurement (2009/2175(INI)), no distortions have so far been ascertained in the functioning of the single market in connection with the granting of concessions. It is, moreover, not apparent from the Commission's comments how far regulation of service concessions under procurement law could create additional incentives for competition.

However, if the Commission were to present a legislative instrument for the granting of service concessions it ought to give contracting authorities as much scope for design and negotiation as possible and duly take into consideration the special circumstances and interests of individual branches and of the public services sector. The threshold values should be well above the current value of 193 000 euros for service contracts and 4.8 million euros for building contracts and building concessions. The reason for this is the frequently long duration and the limited relevance for the single market on the grounds of the risk for the company granted the concession.

Re Proposal No 19

18. The *Bundesrat* supports the Commission's aim to achieve better coordination of national tax policies in the interests of companies which are active across borders. However, it points out that the EU has powers to harmonise only indirect but not direct taxes.

Re Proposal No 20

19. Despite numerous amendments to EU value-added tax law, the requirements for companies are still complicated and unclear, especially if they do business across borders. Problems crop up repeatedly with, for example, the different delivery and performance locations and hence the taxation law and taxation rates to be applied. The *Bundesrat* therefore welcomes the fact that the Commission has presented a Green Paper on the future of the VAT system of the EU (COM(2010) 695/4) in order, *inter alia*, to reduce the costs of compliance and to make the system less susceptible to tax fraud.

Re Proposal No 22

20. The *Bundesrat* welcomes the decision envisaged by the Commission covering mutual recognition of e-identification and e-authentication based on online authentication services and the creation of a legal framework for international interoperability and recognition of e-authentication systems. The Commission should decide on the requirements as soon as possible and should design them so that application of existing nationally established means of electronic identification and authentication such as the "EGVP (*Elektronische Gerichts- und Verwaltungspostfach* – electronic court and administrative mailbox)" or DE-Mail in Germany is not adversely affected.

Re Proposal No 25

21. The *Bundesrat* is opposed to a series of measures on services of general interest.

The EU has no competence for services of general interest. Article 14 TFEU expressly acknowledges the competence of the Member States for services of general economic interest and for making these services available in compliance with the Treaties, commissioning them and financing them. Protocol No 26 on services of general interest attached to the Treaties also specifies that the Member States have wide discretionary powers to determine how services of general economic interest are made available, commissioned and organised. The diversity of the services in question and a high level of quality, safety and affordability, equal treatment and promotion of universal access and user rights are important priorities

here. The Commission's initiatives in the context of providing public services, including social services, at the appropriate level with clear financing rules and of the highest possible quality (cf. Communication COM(2010) 608 final of 27 October 2010, page 25) do not, as the *Bundesrat* understands it, come under the responsibility of the EU but of the Member States.

22. The *Bundesrat* is opposed both to the use of a "tool box" for the authorities of the Member States which is supposed to allow them to offer local public services of high quality and to measures for evaluating the quality of the services of general economic interest offered. Here again, it is feared that the competence of the Member States is being eroded. The Lisbon Treaty acknowledges the municipalities' right to self-administration. Care is therefore to be taken primarily in their interest that the Commission does not use the new regulatory competence of the EU for services of general economic interest for guidance purposes and attempt to introduce its own quality and social standards for the sensitive area of public services. Public services must remain within the municipalities' remit. This is the only way that the subsidiarity principle can duly be abided by. The *Bundesrat* takes the view that the former Member of the EU Commission for competition, Mario Monti, supports this approach in his report "A new strategy for the single market in the service of the economy and society in Europe" of 10 May 2010, by emphasising that it is primarily a matter for the Member States to determine the quality and the extent of social and local public services. These services are also financed by the Member States and are part of their national identity.
23. The European-wide provision of services and universal services mentioned in the Communication COM(2010) 608 final of 27 October 2010 come under the remit of the Member States, which make available and organise these services of public (economic) interest on their own responsibility. We are opposed to any extension of the EU's activities on the basis of Article 14 TFEU, and also in the light of the principle of subsidiarity.
24. The *Bundesrat* draws attention to the fact that all social services are designed very differently. A standard framework for quality criteria for staff and assistants could, for example, paralyse voluntary social commitment in many instances if the requirements could not be met at all or only with considerable financial outlay.

#### Re Proposal No 26

25. The transport sector has a significant part to play in the context of the proposals for strong and sustained growth. The *Bundesrat* emphasises that the Community's climate protection aims and the overarching sustainability target should be moved higher up the agenda in the process of overhauling the trans-European transport network's structure and alignment (TEN-V) and hence in the selection of and focus on certain corridors in the framework of future TEN-V policy.

The *Bundesrat* emphasises that the core network of the TEN-V should be designed to clearly reflect the importance of sea ports and their inland connections for the Community's economic, ecological and social cohesion in the light of its sustainability aims.

In order to ensure that the service to the European regions is sustainable, efficient and environmentally friendly, and offers the maximum possible cost-efficiency and frequency, priority should be given to the improvement (extension and construction

of new facilities, technical equipment, interoperability) of existing sea port inland connections, specifically by rail and inland waterway. For the purposes of sustainability, the inland connections of European sea ports in particular should be strengthened, whereby priority must be given to the services to and from ports by rail and inland waterway (cf. *Bundesrat* document 130/09 (Resolution), paragraph 8).

The proposals for cofinancing measures under the TEN-V budget heading should be correspondingly weighted to reflect a clear priority for sustainable transport media, especially railways, primarily with a view to the overarching aim of sustainability.

The *Bundesrat* does not believe that the overall framework for financing transport infrastructure envisaged by the Commission is fully developed, but it welcomes and supports the Commission's efforts to markedly increase the transparency of the Community financing basis for the TEN-V, the various financing instruments and their combinations.

#### Re Proposal No 27

26. The *Bundesrat* welcomes the development of a fully operational internal energy market. The existing energy infrastructure must be modernised and better networked throughout Europe, as it will no longer meet all the requirements once renewable energies are developed further. The extension and conversion of the energy networks that this will require are contingent on acceptance by the population and the local authorities concerned, and these are therefore to be duly involved in the planning process.

Decentralised responsibility for and production of energy is an important stabilising factor for the energy markets. Decentralised structures can also break up monopolistic structures of large-scale suppliers and create genuine competition. In Germany, we would highlight the part played by the municipal utilities plants in this connection. The Commission must take these circumstances into account in the communications on energy infrastructure priorities which it has announced.

#### Re Proposals Nos 29 and 30

27. To be successful, an internal market has to be accepted by the public. The *Bundesrat* reminds the Commission in this connection that the internal market review (2007) had already set itself the aim of creating a more social internal market and therefore views as a step forwards the Commission's plan, in the run-up to preparing all legislative proposals which affect the internal market, to conduct a detailed social impact assessment in future with the aim of establishing a consensus on a measure's ability to strengthen the internal market and to ensure that it is socially compatible.

The *Bundesrat* further welcomes the Commission's intention to adopt a legislative proposal in 2011 which aims to improve implementation of the Posting of Workers Directive by including in the Directive a clarifying provision on the exercise of basic social rights in the context of the economic freedoms of the internal market or by supplementing the Directive accordingly.

28. National social legislation and industrial relations must be protected as long as they are not discriminatory. Industrial disputes which are caused by economic conflicts must be assessed in the light of the exercise of basic social rights. What is needed is



an effective legal instrument which maintains national labour standards and labour relations, including the important part played by collective bargaining in the Member States, and strengthens the principle of equal treatment. In the course of revising the Posting of Workers Directive it must, in particular, be made clear that:

- the Directive may regulate only minimum requirements and instruments for laying down minimum requirements for posted workers, and the Member States may specify more favourable working conditions;
- employment relationships which are justified only for the purposes of postings or which are concluded by foreign service providers with employees in the host country are subject to the host country's labour and social legislation.

#### Re Proposal No 31

29. With regard to the Commission's announcement of a review of the Directive on the activities and supervision of institutions for occupational retirement provision, the *Bundesrat* refers to the detailed comments it made on the Commission's Green Paper on pension systems (*Bundesrat* document 419/10 (Resolution)). It expects the Commission to proceed with moderation and to take account of the peculiarities of occupational pension institutions. Costs for companies must be kept within limits and should not jeopardise this additional component of the pensions system. The *Bundesrat* points out that a considerable degree of security is already guaranteed for occupational pension systems in Germany. If the Pension Fund Directive is to be reviewed, the peculiarities of occupational pension systems (subordinate liability and/or compulsory calls for funds for employers, contributions to insolvency insurance) must be taken into account. These have also proved their value in the current financial crisis.

With regard to plans for further proposals to remove supposed obstacles encountered by mobile workers when making arrangements for their retirement, the *Bundesrat* points out once again that responsibility for the differences in national pension systems lies exclusively with the Member States and the social partners' prerogatives may not be called into question. The independence and diversity of existing old-age pension systems in the Member States must be maintained. In this connection the *Bundesrat* reminds the Commission of its critical attitude to portability initiatives at EU level. Faster acquisition of vested occupational pension rights may indeed increase mobility amongst workers but there is a fear that employers who would have to guarantee these claims even when workers leave their company would be less inclined to promise occupational pensions under these conditions.

#### Re Proposal No 32

30. The number of cross-border industrial restructurings is on the increase as a result of increasing economic interconnections in the internal market. This is a problem for all those involved, especially, however, for workers and the regions affected, as there are limits to the purview of national law and national instruments in a cross-border situation. The *Bundesrat* therefore welcomes the Commission's initiative to launch a consultation with the social partners in order to create a European framework for advance planning of industrial restructuring.

The *Bundesrat* emphasises the role of the social partners in advance planning of structural changes in the field of social and labour law and in dealing with the emerging demand for employment and training.

Re Proposal No 33

31. The *Bundesrat* welcomes the Commission's proposal to examine Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications. The Commission should consider whether recognition procedures can be accelerated and whether further occupations in the sectoral part of the Directive can be regulated in order to speed up the automatic recognition procedure. This will greatly facilitate workers' mobility. The current Directive makes it possible to conduct a recognition procedure which covers the regulated occupations. In addition there are requirements for specific occupations which are regulated in a special Community legal instrument. It would be better if there were a single directive. The *Bundesrat* points out that the amendments to the law on recognition of professional qualifications, which is currently being negotiated at federal level, has taken into account the possible requirements of a new directive in advance and negotiations are to be conducted at European level so that no new amendments to the law are necessary.

Re Proposal No 36

32. Many companies have a strong sense of social commitment based on, for example, their tradition. There are already various initiatives at regional, national and European level to support these companies in implementing innovative corporate projects. Promotion of such developments should not, however, lead to additional bureaucracy or, ultimately, arbitrary political favouring of certain companies or company aims.

The introduction of "ethical labels" harbours the risk that companies which do not have such a label will generally be suspected of not acting ethically. A false impression of this type must be avoided at all costs. This process is to be monitored critically, especially with regard to the requirements for public procurement.

Re Proposal No 43

33. The *Bundesrat* welcomes the Commission's intention to amend Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 on establishing common rules on compensation and assistance to passengers. This offers an opportunity to create greater legal certainty.

Re Proposal No 44

34. The *Bundesrat* does not see any need for the arrangements under the Services Directive to be extended for the time being. In practice, the authorities' permanent reporting duties lead to additional bureaucracy which, in the vast majority of cases, is a purely formal exercise from which no benefit accrues. Municipalities in Germany are, for example, obliged to devote time and effort to scrutinising every regulation, right down to the rules governing cemeteries. This commitment of resources would be justified if there were legitimate concerns about major obstacles to free activity in the internal market. This is, however, not generally the case; in fact it would be truer to say that the mere possibility and the very largely theoretical

danger of restrictions in the internal market give rise to more work for municipal administrations. The *Bundesrat* sees no need for a new reporting and control system under the Directive alongside the municipal supervision system.

Re Proposal No 45

35. The *Bundesrat* welcomes an extension of the internal market information system. Efficient implementation of the Services Directive and other European legislative instruments increasingly requires efficient pan-European cooperation between administrations. However, the commitment of resources, especially for training, must be in proportion to the actual numbers of cases. Prior to extending the internal market information system to other sectors, a careful examination should be conducted to ascertain how many cross-border requests for information arise in these areas.

Re Proposal No 46

36. Alternative dispute resolution procedures are a useful complement to court proceedings.

Given the fact that there is a dense network of statutory requirements, approval procedures and checks by the authorities in the EU, the *Bundesrat*, however, is opposed to the introduction of EU collective redress along the lines of the US model.

Direct delivery of the opinion

37. The *Bundesrat* is forwarding the opinion directly to the Commission.