

16 December 2011

Resolution
of the Bundesrat

Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy

COM(2011) 625 final; Council document 15396/11

Document: 632/11 to 632/11

and

Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (Single CMO Regulation)

COM(2011) 626 final; Council document 15397/11

Document: 633/11 to 633/11

and

Proposal for a Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

COM(2011) 627 final; Council document 15425/11

Document: 634/11 to 634/11

and

Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy

COM(2011) 628 final; Council document 15426/11

Document: 635/11 to 635/11

and

Proposal for a Council Regulation determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products

COM(2011) 629 final

Document: 636/11

and

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013

COM(2011) 630 final; Council document 15398/11

Document: 637/11 to 637/11

and

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards the regime of the single payment scheme and support to vine-growers

COM(2011) 631 final; Council document 15399/11

Document: 638/11 to 638/11

At its 891st session on 16 December 2011, under Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG), the Bundesrat adopted the following opinion:

Regarding the overall proposals

1. The Bundesrat acknowledges the legislative proposals concerning the Common Agricultural Policy presented on 12 October 2011 by the European Commission. The Bundesrat supports the general objectives of the legislative proposals on the future of the CAP. The EU's objectives of continuing to increase the contribution of agriculture to the environment, improving the competitiveness of food production, supporting the sustainable use of resources and strengthening the contribution of the CAP to balanced development of rural areas, are correct. The Bundesrat considers the proposals to be another step in the right direction with a view to making agricultural policy more sustainable. The Bundesrat believes that the current proposals from the Commission need to be improved further to achieve an agricultural sector which is more consumer-focused, comprehensive, competitive, and environmentally and quality-orientated. According to the Bundesrat, the following principles are crucial for the upcoming discussions on these proposals.
2. The further development of European agricultural policy is a central task for this decade. It will set the course towards achieving a healthy and secure food supply for millions of people living in the EU and across the world, as well as maintaining millions of farms and jobs, protecting and preserving natural resources and maintaining crucial, valuable rural areas in Europe.
3. The role of agriculture is to assure a supply of healthy and sustainably-produced food, make a sustainable contribution to the transition to alternative energy sources, preserve natural resources and the production base with a view also to future generations, whilst helping to maintain and develop attractive rural areas with a medium-sized business structure. The role of agriculture is not to be that of a supplier of cheap raw materials.
4. European agriculture is caught between an increasingly globalised agricultural sector and ever greater expectations that production must be more orientated to global, European and regional demand. At the same time, there are also growing demands from society with respect to the climate, environment, animal welfare, consumer protection and safeguarding jobs. The right framework must be in place

if agriculture, as a multi-functional sector, is to fulfil its various responsibilities, such as developing the rural landscape, contributing to biodiversity, protecting the natural environment and producing good-quality, high-value foodstuffs, as well as renewable raw materials and biomass for generating energy. The CAP has a key role to play in helping the agricultural sector meet these challenges. The upcoming reform of the CAP post 2014 offers many opportunities to improve the prospects for European farms with their different structures and production focuses, and to develop agricultural policy, making it sustainable and viable for the future. The Federal Government and Länder must make use of these opportunities to play an active role.

5. The future Common Agricultural Policy must rise as best as possible to the new challenges, such as climate change, energy transition, loss of biodiversity, preservation of the environment and resources, and securing a good-quality, high-value food supply, whilst at the same time making a significant contribution to the Europe 2020 strategy. The current incentives to farm in a way which respects the environment, climate and resources should be developed further.
6. With the CAP after 2013, an efficient agricultural support system which is accepted by society must be developed. The principle of public money for public goods and services requested by society applies. The approach presented in the legislative proposals must be targeted and practical. This is a prerequisite for being broadly accepted by society. The approach presented by the legislative proposals needs to be better clarified.
7. The Bundesrat has observed that there are seemingly no signs of the CAP having been significantly simplified for beneficiaries of support or in terms of administration. This reinforces the urgent need for the reduction of administrative burdens to be a significant part of the CAP reform, something which has not been taken sufficiently into account in the EU legislative proposals.
8. The Bundesrat is calling for broad legal provisions for the CAP within the basic legislation. The scope of delegated acts should be limited as much as possible. The Bundesrat is concerned that delegated acts could increase the cost of implementing and operating CAP instruments, to the detriment of Länder budgets.

Financial Framework

9. Due to the importance of agriculture and forestry to society and their contribution to the Europe 2020 strategy for smart, sustainable and inclusive

growth, the Bundesrat believes that a strong EU budget for agriculture beyond 2013 is essential. There must not be unilateral discrimination in the allocation of the agricultural budget, as compared to other policy areas where funding is being significantly increased in real terms. In order to stabilise income in the agricultural sector and to compensate for services in the public interest for which there is no return from the market, whilst at the same time supporting the development of rural areas, a CAP comprising two effective pillars will continue to be necessary.

10. According to the Bundesrat, no preliminary financial decisions regarding the CAP should be made before the negotiations on the Multiannual Financial Framework 2014-20 have been concluded. The Bundesrat would emphasise that the contents of the CAP can only be decided once it is clear what the available financial framework is.
11. Owing to the global challenges of climate change, loss of biodiversity, protecting the natural environment, food security, etc., an adequate agricultural budget is of vital importance. European spending on agriculture can only be discernibly beneficial for society and offer high European added-value if it is coupled with the functions being called for by society, such as safeguarding employment and contributing to the development of rural areas.
12. The Bundesrat believes that the proposal to redistribute direct payments between Member States can only be assessed by taking into account the entire agricultural budget, the possible effects of redistribution on the second pillar and support allocated to Member States under other EU funds. Furthermore, as a minimum, the current level of funding for the first and second pillars should be maintained.

Additional financial aspects

13. The Bundesrat rejects market and crisis instruments being financed outside heading 2 of the Multiannual Financial Framework for reasons pertaining to the budgetary system and transparency. See position of 14 October 2011 (Bundesrat-Dokument 399/11 (Resolution)).
14. According to the Bundesrat, the move towards a uniform payment between the Member States by 2019, as proposed by the Commission, must not lead to a further burden on Germany as a net contributor.
15. The Bundesrat believes that Länder budgets must not be put under any further

pressure as a result of the CAP reform. Cuts to the first pillar of the CAP are not to be offset by increasing Länder co-financing under the second pillar. Furthermore, EU funding which is lost in future cannot be replaced by funding from the Länder. Extending the scope for CAP support under the second pillar must be accompanied by a corresponding increase in the level of EU co-financing and EU funding.

16. If funding and support areas are transferred from the first to the second pillar of the CAP, national co-financing in Germany would have to be fully and permanently provided by the Federal Government.

Simplification

17. The Bundesrat reiterates the need for noticeable simplification of the future CAP. The Federal Government is called on to follow this process more closely with a view to this demand, whilst adopting a more results-based approach, and to strive for noticeable simplification for economic operators and administrations alike. The ways of simplifying the CAP, as presented in the legislative proposals, are welcomed. However, the reform of the CAP would increase bureaucracy to the point that it would outweigh the arrangements for administrative simplification. Overall, there is far too little simplification. It must be much more defined within the Regulations.

This must not be left for delegated acts to do. The Bundesrat would particularly expect the following simplification from the reform:

- Practical land parcel identification and control systems with an appropriate cost-benefit ratio are urgently needed. Key to doing so is reducing the number of on-the-spot checks and introducing workable tolerance thresholds. Where Member State administration and control systems are proven to work well, they must be rewarded. The legislative proposals on this aspect need to be defined further.
 - Cross-compliance (CC) requirements must focus on the core areas of agriculture, be simplified and consistent with greening.
18. In the area of agricultural funding, the Bundesrat is concerned to see that requirements on paying agencies and other related Member State bodies will be increased further, even where existing administration systems were working well.

Direct payments

19. Breaking down direct payments into anything up to six individual sub-payments raises concerns for the Bundesrat. Payments for areas with natural constraints, young farmers and small farmers should be granted on an optional basis and within the respective national upper ceilings. It should also be possible for payment entitlements to be allocated on an optional rather than mandatory basis for areas under vines. As they distort the market and competition, coupled payments should be reduced to a minimum and phased out over time across the EU. A burdensome, comprehensive CC and greening assessment under the first pillar, as proposed by the Commission, is firmly opposed, owing to the additional administrative burden it would entail.
20. As direct payments will help to stabilise farm income, they need to be made more legitimate through the provision of public goods. The Commission's ideas for a greener CAP are important steps in the right direction which merit support. Direct payments should be more closely tied to defined environmental services.

In order to compensate for services in the interest of environmentally-friendly and competitive farming which are underpinned by agricultural principles, the following set of requirements should form the basis for receiving direct payments in future:

- a) On holdings, in order to maintain biodiversity and improve soil protection, at least three main crops must be grown on arable land, of which none should predominate, or a three-crop rotation on a three-year cycle should be used.
- b) Every holding, other than those with permanent grassland on more than half of the utilised agricultural area or with less than 15 ha of arable land should use a sufficient percentage as an ecological focus area, in line with the Commission's proposal, with the measures below being recognised. Focus areas should be used for agricultural purposes with a high level of environmental protection and conservation.

The following measures would be recognised:

- I. Areas subject to agri-environmental measures – including areas under contractual nature conservation schemes and organic farmland;
- II. Landscape elements, e.g. bushes and hedges;
- III. Buffer strips and areas requiring special protection under European legislation for improving water quality (Water Framework Directive) or for nature conservation (Natura 2000);
- IV. Other areas subject to environmental and nature conservation measures;

IV. Alternatively, holdings could fulfil these conditions if protein crops are grown on 15 % of arable land, including as part of a mixture (pulses), or if environmentally-friendly renewable raw materials, excluding maize, are grown.

c) The conversion of permanent grassland should be ruled out on principle. Indeed, the reference date should be based on the current status.

The Bundesrat understands the Commission's aim of proposing three measures which can be implemented and monitored across Europe as the premise for the greening component.

21. The Bundesrat does not consider the Commission's proposal for determining 'active farmers' to be appropriate. The idea of determining active farming by using a definition of agricultural activity based on the possibilities which already exist within the direct payments Regulation to define 'active farmers', must be developed further. In Germany, areas which are not directly used for agricultural purposes, such as airfields and golf courses, are already currently ineligible for support.
22. The Bundesrat takes the view that through agriculture, services in the public interest are and will continue to be provided by all farms across the EU, irrespective of their size. The proposal on capping and degressivity of support will lead to a considerable increase in bureaucracy. There can be no degressivity or capping in the implementation of the commonly acknowledged principle of 'public money for public goods'.
23. The Bundesrat calls on the Federal Government to ensure that compensation is paid to small and medium-sized farms as they will experience a sizeable cut in their single farm payment once modulation has been phased out.

Market measures/risk management

24. The Bundesrat agrees with increasing the market orientation and competitiveness of the EU agricultural sector. The extent to which the Commission's proposals correspond to these objectives must be looked into on a case-by-case basis. The current safety net must be developed further and reviewed with the aim of making measures simpler, more flexible and more efficient. A consistent approach to market instruments must be taken.

In extreme crisis situations, it should be possible to allow measures which influence the market to be temporarily deployed.

25. The Bundesrat supports the proposals to give greater power to producers within the food chain. With the milk quota scheme ending in 2015, dairy farmers, in particular, require effective opportunities for improving their position on the market. The producer organisation scheme in the hops sector should be maintained in the single Common Market Organisation, as is the case for the fruit and vegetables sector. It is essential to strengthen the position of farmers within the food chain and to maximise local and regional potential to generate added-value, e.g. by improving cooperation along the entire value chain. Full market deregulation is rejected.
26. Owing to the situation on the European and global sugar market, the Bundesrat is calling for all economic operators to be able to plan with certainty and for adequate supply security to be guaranteed on the EU sugar market. As a result of the 2005 reform, considerable structural changes were made to the EU sugar market, which only concluded in 2010. The success of these structural changes must not be threatened. An appropriate timeframe and transition process is needed for implementing the abolition of the quota scheme.
27. Export refunds must not be used in future, in line with international obligations and commitments. An end in general to use of export refunds and similar instruments is possible through the ongoing WTO negotiations.

Support for rural development

28. The Bundesrat is calling for the second pillar of the CAP to be strengthened by further developing the scope of support. This will make it possible to set up flexible programmes which respond to regional requirements and characteristics. Due to growing demands on the second pillar, the Bundesrat opposes a reduction in funding for the second pillar, from EUR 13.8 billion in 2013 to EUR 12 billion in 2020 (in 2011 terms), as proposed by the Commission's Multiannual Financial Framework for the upcoming programming period 2014-20. This would not correspond with the future challenges.
29. The Bundesrat agrees with the Commission that coordination between funds when allocating financing would be useful for the purposes of strategic planning. Simple, manageable rules on partnership contracts which allow for the federal structure of Germany are essential. The additional expenditure which may result, in particular for determining quantified objectives and indicators or for monitoring and reporting, must be kept to a minimum. In the context of strategic networking of funds, standardisation of programme planning and

implementation procedures across funds is necessary, especially as regards uniform co-financing rates under the EAFRD and the EU Structural Funds, and the categorisation of transition regions. The creation of a performance reserve is rejected as it would lead to a considerable increase in bureaucracy without managing to achieve the aim of improving the quality of implementation of the programme.

30. The Bundesrat opposes ex ante conditionalities as part of the EAFRD. The introduction of comprehensive, additional ex ante conditionalities within the EAFRD, going beyond the draft General Regulation for a common strategic framework for all funds, would increase the complexity of planning and managing programmes and result in immeasurable risks for Länder budgets.
31. Compensatory payments for less-favoured areas should be maintained in the second pillar as they are an effective instrument. They help to allow farming to continue even in difficult conditions, and keep the landscape clear. The new delimitation of area boundaries proposed by the Commission would not be appropriate. Current delimitation using index numbers has produced adequate results.
32. The aim of agri-environmental measures must be to offer a real reward for the environmental service provided, rather than simply compensating for the economic disadvantage. As such, an incentive component must once again be integrated into agri-environmental measures. Furthermore, promotion of nature conservation measures - including in the area of investment - must remain an unrestricted possibility under the second pillar. EU co-financing rates for agri-environmental measures must at least be maintained at their current level.
33. The Bundesrat is convinced that implementation of the Europe 2020 strategy can be supported in an effective way through measures for promoting rural areas and for tackling demographic change, including through diversifying economic activities in sectors outside of agriculture. This must apply to all funds.
34. The Bundesrat is unsure whether the proposal to differentiate co-financing rates is in line with the requirements of the Europe 2020 strategy. A much higher share of EU financing, as well as the possibility for private co-financing is needed for measures with high EU added-value (e.g. Natura 2000, EU WFD). The same co-financing rate across funds should apply here.
35. Areas excluded from the maximum level of support must be recognised as

transition regions and benefit from financial support, in line with the rules for the Structural Funds.

36. The Bundesrat calls on the Federal Government to use this resolution as a basis in future negotiations. The Federal Government is requested to keep the Bundesrat updated on the status of the discussions at European level and to continue to ensure the close involvement of the Bundesrat in the ongoing discussions and decision-making process.

Regarding document No 633/11

Regarding the proposal as a whole

37. The Bundesrat welcomes the fact that the reform of the CAP as from 1 January 2014 also extends to Regulation (EU) No [COM(2010)799] of the Council of [...] establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) and that the reform will as far as possible harmonise, streamline and simplify the provisions, particularly those covering more than one agricultural sector.
38. The Bundesrat recognises the need to review the Commission's implementing powers provided for in the Regulation under the current Comitology Decision and to adapt them to the new situation brought about by the Treaty of Lisbon. The provisions of Articles 290 and 291 TFEU must, however, be strictly observed. In this regard, the Bundesrat refers to its opinion of 18 March 2011 (Bundesrat Document No 97/11 (Resolution)). The Bundesrat requests that the Federal Government, during the ongoing negotiations at EU level, tries in particular to ensure that:
- no additional elements are included which extend the authorisations already granted in Council Regulation (EC) No 1234/2007 or, with regard to the wine sector, which extend the provisions of Regulations (EC) No 555/2008, No 436/2009, No 606/2009 and No 607/2009, and
 - should non-essential elements be determined by means of delegated acts, these are not adopted until a consultation of experts and the Member States has taken place.
39. The Bundesrat takes the view that the extent of the powers conferred upon the Commission to regulate certain essential elements by means of delegated acts

exceeds the limits laid down in Article 290(1) TFEU. In particular, the conferral of powers upon the Commission in Article 59 to adopt delegated acts enabling it to define and implement marketing standards is incompatible with Article 290(1) TFEU which states that the essential elements of an area are to be reserved for the legislative act and accordingly are not to be the subject of a delegation of power.

40. Furthermore, the Bundesrat considers that the proposal is not proportionate. The proposed conferral of powers upon the Commission to adopt delegated acts laying down comprehensive standards for the marketing of all agricultural products constitutes a disproportionate infringement of the existing opportunities for Member State participation. Without the full participation of the Member States it will not be possible to improve the quality of agricultural products or the economic conditions for their production and marketing, however.
41. The Bundesrat therefore requests that the Federal Government, during subsequent negotiations at EU level, tries to ensure that:
 - no additional elements are included which extend the existing authorisations in Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) or the current implementing legislation, and that Article 56 (the 'general marketing standard') in particular is deleted;
 - with regard to sector- and product-specific marketing standards (Article 58 et seq), no additional elements are included which extend the scope of the existing provisions;
 - rules are laid down by means of implementing acts on the administrative aspects of implementation in the Member States, particularly with regard to aspects of provisions on financing, administration, monitoring and penalties; in particular, the provisions on operational funds, operational programmes and financial assistance in the fruit and vegetables sector (see Article 35 of the proposal) are not adopted by means of delegated acts under Article 290 TFEU, but in line with the provisions on the adoption of implementing acts with examination procedure (Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council) pursuant to Article 291 TFEU;
 - should minor amendments or additions be determined by means of delegated acts, these are not adopted until a hearing of experts from the Member States has taken place.

Regarding the milk sector

42. The Bundesrat welcomes the fact that the Commission has incorporated the recommendations of the high level expert group and the measures (which are, in essence, appropriate) for the improvement of the situation of milk producers in the value chain into the draft Regulation amending the common organisation of the markets (single CMO).

The Bundesrat takes the view that the proposed provisions on the sustainable stabilisation of the milk market, which cover contractual arrangements, the balance between supply and demand and the positioning of milk producers in producer price negotiations, must be improved and rendered more effective.

The Bundesrat therefore requests that the Federal Government, during the ongoing negotiations, argues in favour of the following amendments:

- The proposed upper limit on the size of a producer organisation (3.5 % of total EU production and 33 % of national production in a Member State) is completely inadequate. Instead of a rigid upper limit, the potential degree of bundling for milk should be decided on a case-by-case basis, taking into account the respective market structures. The existing national legislation on market structure is effective, however, and should be taken into account.

The bargaining power of the milk producers should be enhanced and farms should be enabled to react flexibly to the market situation in order to spread risk.

- It should remain possible to implement the effective measures for stabilising the milk market on a temporary basis in times of crisis in order to prevent disastrous consequences. In a crisis, these measures must be implemented promptly and in a targeted and flexible manner. The German position on the structure of the safety net mechanism is to be decided in conjunction with the Länder in good time, with a view to aligning it with the structure of the CAP post 2013.

Regarding Article 11(d) (Public intervention periods for milk products)

43. The latest milk market crisis showed that a market crisis can occur at any time. The limitation period provided for in Article 11(d) for intervention for butter and skimmed milk powder (1 March to 31 August) is no longer appropriate given the increasing volatility of the milk market. Public intervention for butter and skimmed milk powder should be possible throughout the financial year.

Regarding Articles 16 to 19 (Aid for private storage of milk products)

44. Aid for the private storage of certain milk products is an important part of the safety net mechanism for milk. For this reason, aid for the private storage of butter should remain obligatory and should not be made optional.

The proposed introduction of optional aid for the private storage of skimmed milk powder is welcomed.

Regarding the wine sector

45. The Bundesrat considers it unnecessary to put forward such extensive proposals for the wine sector within the context of CAP reform. Council Regulation (EC) No 1234/2007 requires the Commission to submit a report by the end of 2012 in particular on the experience gained during the implementation of the wine market reform. Only once this report has been submitted will the European Parliament and the Council be able to evaluate the 2008 wine market reform and reach any significant conclusions.
46. The Bundesrat refers once again to its opinion of 18 March 2011 (Bundesrat Official Document No 42/11 (Resolution)) in which it called for an extension of the transitional prohibition on planting vines (planting ban). Where rules apply to more than one sector, the natural production conditions of the respective sectors should be taken into consideration. Differences in the useful life of production factors justifies the application of different quotas to sugar, milk and wine.
47. The Bundesrat is of the opinion that the division of responsibilities between the Federal Government and the Länder as a result of the wine market reform has proven successful. The Member States should now be required to recognise interbranch organisations in the wine and other sectors. Agreements, decisions or concerted practices agreed on within an organisation can be made binding for a limited period on individual undertakings or groups which are not members of that organisation. Mandatory recognition and the transfer of competencies to interbranch organisations is undesirable. This provision should remain optional.

Regarding document No 634/11

Regarding the proposal as a whole

48. The Bundesrat welcomes the fact that the Commission's proposed amendment to the EAFRD Regulation is consistent with the direction and structure of rural development policy to date.
49. The Bundesrat welcomes the fact that greater emphasis will be placed on rural development in the wider context of a single European strategic framework and the other funds with a view to achieving the 'Europe 2020' targets. The abolition of the three thematic axes which had been in place until now gives the Länder sufficient leeway to formulate their own development programmes and to put in place appropriate combinations of measures which meet the needs of specific regions.
50. The Bundesrat is in favour of horizontal support for the new challenges faced in respect of the EAFRD. Restricting the scope to areas used for agriculture and forestry constitutes a retrograde step in comparison with the existing legislation. Excluding from funding areas which are not used for agriculture is detrimental to the efficient implementation of Natura 2000, the EU biodiversity strategy, the EU climate strategy and the Water Framework Directive.
51. Care must be therefore be taken to ensure that the application of support measures under Natura 2000, the Water Framework Directive and the biodiversity strategy is not limited to strictly delineated sections of the agricultural hinterland. The prescribed exclusion of peri-urban areas from funding in the current programming period renders procedures inefficient and reduces environmental effectiveness. This is particularly clear in the case of river restoration, which, until now, has only been possible in rural areas under the EAFRD and not in densely populated urban areas. This means that river restoration projects are disrupted where the rivers flow through urban areas. In view of the division of responsibilities under the EAFRD, financing environmental water measures in urban areas under the ERDF would generate a hefty additional administrative burden which would be impossible to justify to the general public.
52. Prioritising knowledge transfer requires new forms of cooperation between agriculture and forestry on the one hand and other rural stakeholders on the other. This can only succeed if stakeholders close to agriculture, non-agricultural

stakeholders and other stakeholders are involved in the implementation of information and educational measures, including those aimed at raising awareness of nature conservation and environmental protection. Allowing associations to assist with the promotion of agricultural issues and the presentation of agricultural facilities has proven successful.

53. The Bundesrat emphasises the importance of the second pillar and the role it has played in the achievement of numerous environmental and climate-related targets. It is necessary, however, to make a clear distinction between direct payments under Pillar I and supplementary measures aimed at combating climate change and encouraging the sustainable use of natural resources under Pillar II.
54. The Bundesrat calls for Pillar II to be robustly financed, particularly in light of the increased significance of the new challenges. Climate protection, water table management, biodiversity and renewable energy are no longer simply national or regional issues, they concern the entire EU. The level of importance they are afforded in EU strategy must be matched by appropriate EU contributions.

Regarding the transitional provisions and co-financing rates

55. The Bundesrat points out that the aim of establishing common provisions for the different funds by laying down transitional provisions for regions leaving the convergence support system – and thus losing access to the EU funding associated with it (co-financing rates) – has not yet been implemented. Although transitional provisions (including the safety net mechanism) have been introduced for the ERDF and the ESF, this is not the case for the EAFRD. Implementing funds in the former convergence regions would require completely different funding conditions and this is contrary to the overall aim of harmonisation. The Bundesrat therefore considers it essential that the transitional provisions, including for the EAFRD, are applied to the former convergence regions.

Regarding the individual provisions

56. The Bundesrat opposes the level of detail required in draft operational programmes. This will, until the end of 2013, complicate the programme drafting procedure and thus the authorisation process.

Regarding Article 5 (Union priorities for rural development)

57. Focussing on ecosystems which are dependent on agriculture and forestry would seriously jeopardise the implementation of Natura 2000, the Water Framework Directive and important climate protection measures under the EAFRD. For instance, measures aimed at restoring peat bogs and inshore waters would no longer be eligible for support. The restriction to this effect in Article 5(4) should therefore be deleted.

In line with the closer links between agricultural and water policy which have been emphasised repeatedly by the Commission (see Commission Communication No COM(2010) 672 final of 18 November 2010, Bundesrat Document No 771/10), the implementation and attainment of management objectives under the Water Framework Directive should be promoted as key targets.

Regarding Article 18 (Investment in tangible and intangible assets)

58. The current Article 57 of the EAFRD Regulation (Regulation (EC) No 1698/2005) of 20 September 2005 has proven useful and therefore in principle be retained. Fragmenting this article into several smaller articles would significantly hamper the implementation of environmental protection measures, whilst certain elements would be excluded altogether. Provision should therefore be made in Article 18 to supplement the non-productive investments listed therein with investments and services for protection and management plans, environmental reports, schemes for the protection of endangered species, river and forest restoration under the Water Framework Directive, the creation and maintenance of biotopes including essential record-keeping, monitoring measures and initiatives to raise awareness of nature conservation and environmental protection. It should also be made possible to grant support to public bodies.

Regarding Article 29 (Agri-environmental and climate measures)

59. The restriction limiting measures to 'agricultural land' should be deleted as it would seriously jeopardise important environmental and climate goals. This applies, for example, to the use of land for grazing which is not considered to be agricultural land and the use of agri-environmental measures on pond areas, peat bogs and water buffer strips.

With a view to implementing Natura 2000 and the Water Framework Directive, an incentive component of a maximum of 20 per cent is considered absolutely

essential. Furthermore, it should be made possible to calculate the premium on the basis of the environmental efficacy of the measure rather than income foregone and additional costs. In its report on agri-environmental programmes (Special Report No 7/2011), the European Court of Auditors expressly welcomed such a success-oriented approach.

60. Furthermore, the Bundesrat is in favour of more flexibility with regard to the commitment periods for agri-environmental measures. For measures where the environmental effect remains stable over the time period (e.g. rotation measures), the option of one-year contracts must be made available.

Regarding Article 21 (Basic services and village renewal in rural areas)

61. The Bundesrat considers it extremely important that the current range of funding options for village development is retained. In Article 21(1)(g) the wording 'close to rural settlements' must not result in inward development projects becoming ineligible for support.
62. The Bundesrat opposes the limitation in Article 21(1)(e) of support for the tourism sector to investments by public bodies.

Regarding Article 35 (Forest-environmental and climate services)

63. Here, instead of area-based payments, one-off payments based on tree or deadwood density with long earmarking periods should also be permitted. These would be both much more effective from a nature protection point of view and easier to implement from an administrative/technical point of view than the current forest-environmental measures. In addition, the obligation to submit forestry management plans or similar instruments is considered to be unnecessary bureaucracy.

Regarding Article 50 (Rural area definition)

64. Measures aimed at implementing Natura 2000, the EU biodiversity strategy and the Water Framework Directive should be eligible for funding even outside rural areas. Eligible areas can also be found in the urban environment. It is vital, therefore, that support is also made available outside rural areas to ensure that measures are implemented in a constructive manner.

Regarding Article 82 (Annual implementation report)

65. The Bundesrat requests that the already comprehensive monitoring and reporting requirements are streamlined rather than expanded. The deadline for submitting the annual implementation report should remain the same. In Article 82(1), '31 May' should therefore be replaced by '30 June'.

Additional deficiencies

66. The proposal is not sufficiently compatible with the comprehensive, future-oriented and successful approach to rural development. The Bundesrat therefore believes that the following points in particular should be amended or supplemented.
- Within the context of sustainable development in rural areas, it should be made clear that improving the quality of life in rural areas also remains one of the six EU priorities listed in Article 5.
 - It should also be made clear that the maximum support rates listed in Annex I do not apply to infrastructure measures under Article 18(1)(c) and that there are thus no limits under state aid legislation.
 - The Bundesrat considers it essential that the EU aid instruments 'Integrated Rural Development Concept' (IRDC) and 'Integrated Rural Development Regional Management' are retained.
 - The Bundesrat insists that for the contribution from the EAFRD, it must also be possible to take national private sector funding into account. This is particularly important if Leader is to be implemented successfully.
 - The Bundesrat feels that the provisions on forestry aid measures require significant improvement and clarification. The forestry aid measures should not be weakened in comparison to the existing legislation, particular in terms of amount of aid and the aid conditions. The proposed level of regulatory detail must be streamlined urgently.

Regarding document No 635/11

Regarding the overall proposal

67. The implementation and financing of the EAGF and EAFRD will be managed jointly between the EU and Member States. As in the current programming

period, EAGF and EAFRD expenditure can only be effected if it goes through an accredited paying agency. Paying agencies are responsible for management and controls on expenditure. The Bundesrat rejects any additional provisions from the EU concerning the organisation and structure of paying agencies. The Bundesrat is concerned that declarations of assurance from paying agency management are to be significantly expanded, greatly increasing the workload for paying agencies, especially in the light of Article 8 of the proposed Regulation which empowers the Commission to adopt delegated acts (primarily for clarifying and reinforcing requirements). This fundamentally opposes the principle of simplification. Any additional burden on paying agencies as part of the accreditation procedure and annual accounting is rejected.

The Bundesrat calls for any additional burden on Member States for monitoring and evaluating the CAP to be avoided.

Regarding Article 7: Paying agencies and coordinating bodies

68. The Bundesrat believes the deadline of 1 February of a given year by which paying agencies must submit their annual documents, as laid down by Article 7, and the deadline for the opinion of the certification body, should be staggered. Some of the audit work can only reasonably be carried out once the documents have been drawn up by the paying agency.

Regarding Article 9(1): Certification bodies

69. Owing to the additional burden on Member States, the Bundesrat opposes extending the responsibilities of certification bodies to also include checking the legality and regularity of transactions and sound financial management. The resulting administrative burden on Member States would be unacceptable. Moreover, the current responsibilities of certification bodies allow firm evidence to be supplied as to the activities of paying agencies and the legality and regularity of transactions. As such, reference to 'the legality and regularity of the underlying transactions, as well as the respect of the principle of sound financial management' should be removed from Article 9(1).
70. The Bundesrat does not believe that Member States should be subject to more restrictions in processing payments, neither at a financial nor an organisational level. The Bundesrat therefore opposes a reduction in EAFRD prefinancing, removing the 50:50 rule for recoveries after 4 or 8 years and for various fixed collection costs supported by national budgets. Further provisions concerning payment deadlines, removing the concept of the primary administrative finding,

and paying interest to applicants receiving payments late, irrespective of the cause, are also rejected. De minimis thresholds or amounts applying to the clearance of accounts and payment transactions with applicants should be introduced in order to take into account the point raised by the Commission on sound financial management.

71. The Bundesrat has observed that there are no statements concerning the quantity of on-the-spot checks. This is a decisive factor for paying agencies owing to the bureaucracy involved in implementing the rules at Länder level. The Bundesrat is therefore calling for the scope of on-the-spot checks to be significantly reduced, irrespective of the reward or penalty mechanisms. It should be recognised that on-the-spot checks are not a practical instrument for all projects.

The introduction of de minimis thresholds is urgently needed to ensure on-the-spot checks are carried out cost-effectively.

72. The Bundesrat welcomes the proposal for a universal farm advisory system for use on a voluntary basis by farmers. Any EU provisions that interfere in the way Member State advisory services are organised, structured and designed, are opposed. The advisory services offered to farmers should not simply be limited to rules and standards.

Regarding Article 10: Admissibility of payments made by the paying agencies

73. The Bundesrat considers the proposed provisions for EAGF and EAFRD payments to be effected exclusively by accredited paying agencies, as laid down by Article 10 of the Regulation on financing, management and monitoring, to be too restrictive. This legislation would be stricter than the provisions currently in force. It should at least be possible for payments from the nationally co-financed share to be effected by other bodies than accredited paying agencies. This would be consistent with the existing legislation.

Regarding Article 29: Avoiding double funding

74. Article 29 of the Regulation on financing, management and monitoring stipulates that first pillar payments issued to organic holdings 'for agricultural practices beneficial for the climate and environment' (greening component), and second pillar support for organic farming, are not considered double funding. This means that support for organic farming under the second pillar is admissible in addition to the 'greening premium'.

The Bundesrat calls on the Federal Government to ensure that the remaining

environmental components under the first pillar do not raise the corresponding baseline under the second pillar. The environmental services provided by non-organic holdings should not be treated any differently to the environmental services provided by organic holdings.

Regarding Article 42: Compliance with payment deadlines

75. The Bundesrat believes that pressure will be added on national public funding owing to the risk of the additional requirement to add interest to delayed payments. No account has been taken of the principle that penalties should be proportionate. Late recovery claims should only be possible on sums paid out after the entry into force of the Regulation.

Regarding Article 34(1): Prefinancing arrangements (EAFRD)

76. Given the major significance and wide-ranging impact of measures for rural areas (EAFRD), the prefinancing amount for the participation of the EAFRD in the relevant rural development programme should be maintained at the current level of 7 %. Article 34(1) of the proposed Regulation on financing, management and monitoring, provides only for a prefinancing amount of 4 %. This significant deterioration of liquidity at programme level would lead to unintended delays in the implementation of programmes for rural areas or to significant extra prefinancing costs.

Regarding Article 43(4): Reduction and suspension of monthly and interim payments (performance reserve)

77. For EAFRD measures, the Common Strategic Framework (CSR) for Structural Funds, including the EAFRD and EMFF (fisheries fund), stipulates that reductions are possible if ex-ante conditionalities are not met. Furthermore, a performance reserve of 5 % is set aside, the allocation of which is conditional upon reaching the objectives set. These arrangements are rejected, as they would mean an enormous increase in bureaucracy without achieving progress. Article 43(4) must be adapted accordingly.

Regarding Article 56(2): Financial implications after four or eight years

78. The Bundesrat rejects the new arrangements laid down under the first

subparagraph of Article 56(2) of the proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (COM(2011) 628 final; Bundesrat document 635/11). According to this provision, the Member State assumes 100 % of the financial consequences of non-recovery if recovery does not take place within four years of the date of the recovery request. The risk of recovery not taking place within the given period would now be assumed solely by the Member State, despite having been shared between the EU and the Member State to date. Regardless of the fact that this new arrangement is fully rejected, any such claim for non-recovery should apply solely to those sums paid out following the entry into force of the Regulation.

Regarding Article 57: Flat rate recovery costs for Member States

79. According to Article 57, Member States may retain as flat rate recovery costs, 10 % of the recovered EAGF sums to be credited to the Union budget in the light of irregularities. This represents half as much as the current legislation provides for (20 %) and is not acceptable. The share of flat rate recovery costs should remain at 20 % in future.

Regarding Article 76: Conditions for paying advances

80. According to Article 76, advances on direct payments (of up to 50 %) and on certain EAFRD payments (of up to 75 %) may only be issued in future once administrative and on-the-spot checks have been completed. This is much stricter than the existing legislation, whereby EAFRD payments may be issued as soon as the administrative checks have been completed (Article 9 of Commission Regulation (EU) No 65/2011), and risks delaying the payment of advances. It should therefore remain possible in future for advance payments to be effected as soon as administrative checks have been completed.

Regarding Article 100: Amounts retained by Member States from CC penalties

81. According to Article 100, Member States may retain 10 % of the amounts resulting from the application of CC penalties. Under the current legislation, 25 % may be retained. The existing legislation should be maintained and the appropriate funding provided as administrative costs for recoveries will not be reduced.

Regarding Article 110: Monitoring and evaluation of the CAP

82. The Bundesrat assumes that the CAP performance measurement laid down under

Article 110 will be established by the Commission. In this respect, it is imperative for the EU provisions concerning data which Member States must compile and submit to be limited to what is strictly necessary. This must be done at the latest by the time the Regulation concerning the measures is presented and can no longer be changed. Data for monitoring and evaluating the CAP must be compiled together with the accounting programme so that extending/expanding data sets subsequent to compiling the accounts is no longer possible or only with significant additional bureaucracy.

Further points

83. The Bundesrat opposes the fact that the already bureaucratic information, reporting and control requirements will not only be extended but that funding will be cut and penalties imposed if these requirements are not adhered to or if deadlines are missed.
84. Article 42(2) stipulates that if payment periods are not complied with by the Member States, they shall pay the beneficiaries default interest, supported from the national budget. Interference of this kind in national budgets is rejected by the Bundesrat.
85. Concerning Article 56(1), the Bundesrat calls for an opening clause on the use of de minimis thresholds for recoveries and interest payments.
86. The Bundesrat calls on the Federal Government to ensure that in the subsequent negotiations at EU level, the opening clauses for adopting delegated acts authorised at various points in the proposed Regulation, are reduced to a minimum.

Furthermore, when defining the reporting obligations and controls, their workability in practice must be a key indicator so that no additional burden is placed upon the bodies responsible for implementing the measures.
87. The provision that data as of the marketing year 2000 must be recorded in a database is disproportionate. According to the Bundesrat, the year stipulated under Article 70 must be at least 2009 or later.
88. The Bundesrat also calls on the Federal Government to ensure the following provisions are amended:
 - Under the conditions laid down by Article 91(2) for issuing penalties for

non-compliance with CC, subparagraphs (b) and (c) should be linked with 'or' rather than 'and' so that penalties can also be issued for non-compliance which is not directly related to the agricultural land.

- The transitional arrangements for maintaining permanent grassland under Article 93, for the conversion from CC to greening, should be removed.

The fifth paragraph of Article 93 lays down transitional arrangements for continuing to apply the CC rules on maintaining permanent grassland in 2014 and 2015. Providing the maintenance of permanent grassland is part of greening, this transitional arrangement is superfluous. Otherwise, it must be ensured that the provisions laid down in the future implementing legislation from the Commission are not stricter than those currently in force.

- Article 97(3) de minimis rules should be adapted to Article 5a of Commission Regulation (EC) No 885/2006.

When applying the de minimis threshold of EUR 100, reductions to all payments applied for by the farmer in question should be taken into account. As the payment rules for individual applications vary for the different aid schemes, it must be possible to adapt de minimis thresholds according to the individual application to ensure they are valid in practice.

- Under Annex II, footnote 50 should refer to Regulation (EC) No. 470/2009 of the European Parliament and of the Council and not Council Regulation (EEC) No 2377/90.

89. The Bundesrat calls on the Federal Government to ensure there is exact and harmonised use of certain defined concepts (e.g. the concept of "measure").

90. The Bundesrat reserves the right to comment further on the detailed provisions of the Regulation.

Direct transmission of the opinion

91. The Bundesrat will forward this opinion directly to the Commission.

