



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the German Bundesrat for its Opinion on the proposal for a Regulation establishing an "Erasmus for All" Programme (COM(2011) 788 final), and apologises for the long delay in replying.

The Commission would like to first recall the need for coherence and simplification of the current programmes, which would be achieved through a single programme covering all sectors of education (higher education, vocational education and training, school and youth), in a lifelong learning perspective and including the integration of the current international programs in place (Erasmus Mundus, Tempus, Alfa and Edulink).

The Commission is convinced that education and training have to play a key role within the Europe 2020 strategy and that the programme "Erasmus for all" will contribute to the Europe 2020 main objectives in a significant way, while fully respecting the principle of subsidiarity.

In this respect, the Commission recalls Article 165 of the Treaty according to which the Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. On this basis, the Commission "shall adopt incentive measures, excluding any harmonisation". The proposal of Regulation "Erasmus for All" fully responds to these criteria by respecting the division of powers established by the Treaty.

The Commission would also like to reassure the Bundesrat that the choice of a Regulation – as opposed to a Decision - as a legal base for the new programme is absolutely in line with the provisions of the Treaty and in particular with the principle of proportionality as established by Article 296. An explanation on the choice of instrument was provided within the answer to the German Bundesrat's Opinion on the "Creative Europe" programme. Those explanations were the following:

The Treaty provisions on which the "Erasmus for All" programme is based (Article 166, 167 and 173 of the Treaty on the Functioning of the European Union) do not set any legal constraints as to the form of the act. It is true that these articles explicitly exclude any harmonisation of the Member States' laws and regulations. However those provisions do not prescribe the form of the act that should be adopted. Thus the use of a regulation is not prohibited as such, including for the adoption of a financial framework.

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This approach was already followed in the public health field, which after the Lisbon Treaty is governed by Article 168(5) TFEU.

Moreover, a regulation is the reasonable choice in order to ensure, without any doubt, its general and direct application. This choice also stems from a smart regulation perspective. Even if the "Erasmus for All" programme is adopted under the form of a general decision the Court of the European Union would recognise and protect possible third party rights as it would do in the case of a regulation.

Therefore, the fact that the Programme takes the form of a regulation does not change the situation in regards to the subsidiarity and the proportionality principle.

The Commission welcomes the favourable comments regarding the proposed role for general and vocational training, including adult education and the youth field, through the consistent alignment of the proposed Programme with the Europe 2020 Strategy, the strategic framework for European cooperation in education and training (ET 2020) and the renewed framework for European Cooperation in the youth field.

It shares the view that general and vocational training within adult education (including the youth field) is of decisive importance for the development of the European economy and also takes note of the concern that support for Member States' action in the field of education and training should not be restricted to improving employability, but should also take into account the personal development objectives.

The Commission takes note of the concerns expressed about the revision of provisions relating to performance criteria and national agencies through delegated acts. In this respect, the Commission would like to reassure the Bundesrat that delegated acts are not a blank check signed by Member States for the European Commission. The systematic consultation of experts will ensure that Member States' and stakeholder opinions will be taken into account. This consultation can also be extended to experts appointed by the European Parliament, if so requested, so as to ensure a high level of representation of the interests of the European citizens. Finally, the right of objection provided by the Treaty to the Council and the European Parliament is another guarantee against any possible misuse of the delegated powers. Moreover, the use of delegated acts for a possible (but not compulsory) review of some specific provisions is clearly indicated in the text of the proposal in order to ensure flexibility, the lack of which has been criticised in the current programmes.

As regards the concerns about the objectives and activities relating to sport and a risk that they could exceed EU competence, the Commission would point out that the specific objectives of the Sport Chapter are based on the areas of intervention tested under the Preparatory Actions implemented from 2009 to 2011. Only areas where EU action has proven to be capable of producing added value have been retained as specific objectives. In these areas, Erasmus for All will aim at coordinating, supplementing and supporting the actions of Member States, fully in line with principles of subsidiarity and proportionality.

The Commission moreover recalls that article 12 of the proposal for a Regulation makes it clear that the main instrument at the disposal of the EU to achieve the specific objectives in the field of sport is support given to transnational cooperation projects. This instrument supports networking and exchange of good practices among actors based in different Member States. The proposed objectives and instruments are therefore not aimed at changing the specific nature of sport or the way sport is organised at

national level, but rather at improving cross-border cooperation to better tackle issues of relevance for sport at EU level.

The Commission also takes note of the Bundesrat's concerns expressed about the funding modalities for mobility, in particular regarding the loan guarantee scheme. The Commission would like to reassure the Bundesrat that funding for credit mobility will continue on the same basis as before: higher education students who spend part of their education and training abroad will continue to receive non-repayable grants. Only in the case of full degree mobility at Master level will the programme offer the possibility of access to a loan for studies abroad. The loan guarantee scheme would thus not replace existing grants, but is intended to provide access to additional forms of financing to support degree rather than credit mobility as in the current Erasmus.

The Commission agrees on the principle of a greater use of a sliding scale of grants and confirms that it is already possible for universities to award a higher level of grants to support poorer students under the existing Erasmus programme. However, it is to be noted that disparities exist in the way this is applied among the different participating countries and also between higher education institutions in the same country.

The Commission is aware of concerns in Germany about the single coordinating national agency and a single committee, as well as of the request for keeping a sectoral approach (with a separate Youth chapter) and the established brand names, establishing a minimum budget allocation per sectors. The discussion on these subjects, which has led to a partial general agreement within the Council and which is currently ongoing within the European Parliament, will take into consideration all views expressed on this matter.

The Commission agrees on the need to provide further clarifications regarding the provisions of the proposal on the specific activities to be funded. This will be done in the framework of the annual work programmes by means of implementing acts, as indicated in the Regulation.

The Commission is confident that the issues raised will be further clarified during the current negotiations with the European Parliament and the Council and is looking forward to further developing the political dialogue with the German Bundesrat.

Yours faithfully,

*Maroš Šefčovič
Vice-President*