

06.07.12

Resolution

of the Bundesrat

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU State Aid Modernisation

COM(2012) 209 final

At its 899th sitting on 6 July 2012 the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG (Act on cooperation between the Federal State and the *Länder* in matters relating to the European Union):

1. The Bundesrat welcomes the Commission's intention of simplifying State aid controls. The Bundesrat supports the objectives set by the Commission:
 - to foster sustainable, smart and inclusive growth in a competitive internal market;
 - to focus Commission ex-ante scrutiny on cases with the biggest impact on the internal market whilst strengthening the Member States' cooperation in State aid enforcement;
 - to streamline the rules and provide for faster decisions.
2. The Bundesrat would point out that the assessment of the compatibility of government measures with the rules on State aid should be confined to their effects on competition as it relates to the internal market. Assessing the impact of a support measure on the Member State's budget is a matter for the Member State alone.

3. The Bundesrat asks the Commission to include in the review process the question of the conditions under which there is deemed to be a detrimental effect on trade between Member States, or when an activity has relevance to the internal market.
4. The Bundesrat welcomes the Commission's proposals for identifying and defining common principles for compatibility assessment and revising and streamlining State aid guidelines. This would extend to non-exempted aid the positive approach to streamlining and consolidation already adopted in the General Block Exemption Regulation.
5. The Bundesrat is opposed to the inclusion of quality and efficiency considerations in the compatibility assessment. Quality and efficiency do not in principle fall within the scope of the Commission's competence as established in the TFEU chapter on competition. In addition to the Commission exceeding its powers, the Bundesrat also sees a danger that the discretion available to the Member States in their support policy will be reduced and there will be a disproportionate increase in red tape in connection with notified projects.
6. In identifying common principles, however, particular emphasis should be placed on the concept of 'focus' highlighted by the Commission. It would be desirable to provide a comprehensive explanation of the common principles in a single communication and to use terms consistently and precisely. As far as possible, formulations that require interpretation should be avoided. The attempts occasionally seen in the past to regulate as many conceivable permutations as possible in advance and reflect every possible aspect of EU case law should not be repeated.
7. The Bundesrat supports the Commission's idea of introducing amendments to existing block exemption regulations in order to bring about stronger and better-targeted State aid controls and welcomes the associated increase in Member States' responsibility for carrying out such controls. In the Bundesrat's view, the following points should be borne in mind:
 - any codification of additional exemption options should be sufficiently concise for there to be no uncertainty about their application in practice;
 - Member States' existing room for manoeuvre, as regards social or cultural services, for example, must not be allowed to be restricted by any intended simplification of procedures;

- the uniform handling of State aid controls at EU level must be guaranteed without the ex-post controls by the Commission resulting in a completely two-tier procedure;
 - the aims of simplifying State aid controls and increasing the involvement of the Member States must not be undermined by the introduction of more reporting obligations.
8. Even when examining cases with the biggest impact on the internal market, the programme of checks should be kept as clear and concise as possible. Excessive demands, for example that measures must have an incentive effect, should be avoided in the interests of greater legal certainty and quicker decision making.
 9. The proposed streamlining of the complaints procedure is also in the interests of the *Länder* and is therefore emphatically supported. The Commission's intention 'to obtain all the necessary information from market participants and in good time', however, is firmly rejected. Such investigative powers would conflict with the TFEU, since the State aid rules are directed at Member States and not at undertakings. The process as a whole must remain transparent for the Member States; we are opposed to the Commission contacting those involved without the knowledge and, where appropriate, the presence of the Member States. Moreover, the Bundesrat doubts that undertakings would provide information to the Commission in response to a direct request but would not provide the same information if the request were relayed via the government of the Member State concerned.
 10. The Bundesrat notes that services of general economic interest are not mentioned in the Commission Communication and the impact on those services of the objectives set out in the Communication are unclear. The Bundesrat would refer to its opinion of 27 May 2011 (BR document 177/11 (Resolution)).
 11. Since the Commission, according to its Communication, wishes to clarify concepts, achieve incentive effects and give more weight to the quality and efficiency of public financing, the Bundesrat is concerned that the wide discretion of the Member States in the matter of services of general economic interest could be affected. Article 14 TFEU provides that the competence of the Member States to provide such services must remain intact. Accordingly, the Protocol (No 26) on services of general economic interest stresses the wide discretion of the Member States to provide, commission and organise such services. This being the case, the Bundesrat continues to oppose in particular EU measures concerning the quality of the services of general economic interest offered.

12. The Bundesrat also refers to the exception in Article 106(2) TFEU whereby the general competition rules apply to undertakings entrusted with the operation of services of general economic interest only in so far as the application of such rules does not obstruct the performance, in law or in fact, of the tasks applied to those undertakings.
13. The Bundesrat would point out in this connection that the provision of services of general economic interest is still burdened with a great deal of red tape in the form of monitoring requirements - despite the package revising the rules for such services, made up of the exemption decision and two Communications of 20 December 2011 and the *de minimis* Regulation of 25 April 2012 - even for “cases of a more local nature and with little effect on trade”, to quote the present Communication, and the payment of compensation as “good aid”.
14. The rules on State aid controls must be taken into account for assistance under the structural funds, for which a new programming period begins on 1 January 2014. The Bundesrat asks the Commission to keep to the timetable for adopting the revised rules on State aid by the end of 2013 and to ensure the use of concepts common to the rules on State aid and the rules on other aid.
15. The Bundesrat will forward this opinion directly to the Commission.