

Bundesrat (Upper House of Parliament)

Decision of the Bundesrat

**Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions:
The EU Justice Agenda for 2020 - Strengthening Trust, Mobility and Growth within the Union
COM(2014) 144 final**

At its 922nd session on 23 May 2014, pursuant to 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:

General considerations

1. The Bundesrat welcomes the Commission's Communication on the EU Justice Agenda for 2020 as a contribution to the process of developing strategic guidelines for legislative and operational planning within the area of freedom, security and justice, which, in accordance with Article 68 of the TFEU, are expected to be adopted by the European Council at its meeting in June 2014.
2. It supports, in particular, the political priorities and the measures taken by the Commission in EU justice policy. The Commission addresses current challenges by consolidating its achievements and by adding new initiatives to the current framework.
3. The Bundesrat believes that the EU Justice Agenda for 2020 should give priority to consolidating and implementing existing provisions in the body of EU law in the field of justice before adopting new initiatives in this area. This would help establish and develop the mutual trust needed for judicial cooperation, while ensuring the requisite security.

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4. Against this background, the Bundesrat welcomes the fact that in its contribution to the discussion the Commission gives priority to consolidating by first identifying it, attributing the main role to it and explicitly acknowledging that, first and foremost, it should be ensured that the rights established in EU law are guaranteed.
5. The Bundesrat believes that the achievements of the Stockholm Programme should first be fully consolidated. The strategic guidelines for the justice area until 2020 should also reflect those achievements. Priority should be given to completing legislative initiatives which have already been started (e.g. in the fields of property rights and data protection). At the same time, Commission proposals are needed for necessary legislation where work has not yet begun (e.g. revision of the Regulation on the service of documents).
6. The Bundesrat therefore is in favour of retaining the Stockholm Programme priorities in the field of justice. In this context, the Bundesrat regrets that the Commission proposes a restructuring in its discussion contribution.
7. In the view of the Bundesrat, a low priority should be given to codification and to supplementing in particular. The adopted standards for the implementation of the Stockholm Programme should be thoroughly evaluated before new legislative initiatives are launched at EU level. Only if and to the extent that a need for action is apparent on the basis of this should new legislative initiatives be launched.
8. The Bundesrat considers that the optimisation process of the European law-making should follow the past Commission initiatives (see for example the Commission Communication "Smart Regulation in the European Union" dated 8 October 2010, COM(2010) 543 final (Bundesrat Document 631/10) and Commission Communication "EU regulatory fitness" COM(2012) 746 final (Bundesrat Document 771/12)). The objective of future reforms should be to enhance the acceptance and legitimacy of the EU and its legislation. In view of this, it would make sense to set up an independent external body to monitor the impact assessment, and in particular, to review whether regulation is needed and what added value European legislation would offer. This will also prevent going beyond EU competences.
9. The challenge of strengthening mutual trust, which the Commission considers a first step towards a better functioning of the common European area of justice, seems unproblematic. The Bundesrat also takes the view that EU justice policy in the development of a European area of justice should be based on mutual trust.
10. The connection of justice policy with the mobility challenge and, in particular, the growth-in-the-Union challenge should, however, not be a priority. Nonetheless, justice is a location factor and therefore also affects growth opportunities. However, it would be unacceptable to reduce justice policy to those functions. It is necessary to ensure that the integration of justice policy into general policy issues does not serve extraneous interests.

Substantive civil law

11. The Bundesrat supports the efforts of the Commission to raise awareness and understanding of the consumer protection legislation in place which would in turn strengthen consumer trust in the existing legislation. The Bundesrat also welcomes the aim of strengthening mutual trust, coherence and legal certainty. However, the Bundesrat considers that no further codification initiatives are necessary in this respect. Instead, it would be better to wait for the evaluation of the Consumer Rights Directive and its transposition in the Member States. Thereafter, in order to facilitate effective consumer protection, it would be necessary to consolidate the information obligations and rights in the consumer protection legislation into the existing and future legal acts.

That would be sufficient to achieve an effective consumer protection which would make its application easier for consumers and businesses and will strengthen trust in EU law.

12. The Bundesrat in principle shares the Commission's view that optional contract law regimes may from the point of view of subsidiarity be an appropriate means of providing the parties with a clear and coherent legal framework, without intervening in the different national legal systems. It points out, however, that this instrument can lead to results that satisfy all interests only where the parties are on an equal footing and in fact decide voluntarily on the particular optional contractual regime. However, should there be frequent structural imbalances in an area of law that not inconsiderably complicate such a free decision, then the optional contract law regimes limit the rights of the structurally weaker compared with the rights under national law, are, in the Bundesrat's opinion, objectionable.

Rules of civil procedure

13. The Bundesrat welcomes the Commission's intention to examine the need for strengthening procedural rights in civil proceedings. The measures on cross-border service of documents should thus be developed further since various problems have arisen in practice, for example the delineation between the rules on service of documents in the Regulation on the service of judicial and extrajudicial documents in civil or commercial matters on the one hand, and in the Regulation on the European Payment Order, on the other. The Bundesrat also supports the Commission's commitment to accord greater importance to the interests of children in civil proceedings. However, the Bundesrat considers it necessary to conduct scientifically based research on appropriate methods and measures before any harmonisation of rules on hearing and representing children in family law cases is undertaken. The Bundesrat feels that only future Commission harmonisation initiatives should be preceded by a large-scale consultation, possibly accompanied by research. Harmonisation measures can only build public trust in European law while helping to achieve an effective and coherent European legal area if they are based on sound knowledge.
14. The Bundesrat agrees with the Commission that justice policy initiatives can contribute to economic growth. Therefore it finds it indispensable that the efforts to adjust Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160 of 30 June 2000, page 1) should continue and rules for the rehabilitation or orderly winding-up of insolvent cross-border groups should be established, in order to ensure the smooth functioning and resilience of the internal market in economic crises and more efficient handling of cross-border insolvency cases in Europe. The introduction of EU minimum standards in substantive insolvency law should only be considered after further evaluations and consultations. In view of the close interconnection between insolvency law and other areas of the law (e.g. labour law, company law, substantive) a harmonisation measure should be limited only to the absolute minimum.

Substantive criminal law

15. The Bundesrat welcomes the fact that the Commission refrains from formulating the amendment of certain criminal law provisions as guidelines but sets general targets instead, in particular for strengthening mutual trust and recognition. Existing targets from the Stockholm Programme in the field of substantive criminal law, particularly in relation to combating cross-border crime including cybercrime, can continue to serve as guidelines for EU legislative policy. Among other things, this includes adaptation of substantive criminal law to current developments (e.g. handling stolen data).

16. It welcomes the Commission's viewing of the principles of subsidiarity and proportionality as important elements that are always to be taken into account. The Bundesrat welcomes the efforts to focus on consolidation and effective implementation of the already adopted EU legislation instead of placing a high priority on further harmonisation by means of additional legislation.
17. The Bundesrat notes that EU competences in substantive criminal law should be interpreted and applied restrictively, should additional provisions be considered. European provisions are only justified if existing regulation has been evaluated and enforcement problems have been identified which can only be overcome through EU-wide penalties. Substantive criminal law is the major area of Member States' competence and varies considerably from one culture to another. That is why EU legislation must remain a last resort.

Law of criminal procedure

18. The Bundesrat takes the view that common standards for procedural rights in criminal matters are important to strengthen mutual trust and are the basis for close and effective cooperation in criminal matters. Significant progress has been achieved in recent years in both the rights of the accused and the victims of crime. In the light of the still ongoing transposition of the Directive on the right of access to a lawyer in criminal proceedings and the ongoing negotiations on the proposals for directives in the area of legal aid, the presumption of innocence and the specific procedural safeguards in criminal proceedings for suspects or accused who are children, the Bundesrat is of the opinion that it is too early to consider codification in the near future of, to a large extent, not yet adopted or implemented rules.
19. A further development of the *acquis* on the protection of victims, proposed only after a careful examination, should avoid the adverse impact on parties directly affected by a specific criminal offence and on the criminal investigation and procedure. Member States should also retain the power to decide how to use confiscated assets, and independently of this to ensure effective compensation for victims by providing sufficient budgetary resources.
20. The Bundesrat welcomes the Commission's aim of protecting the financial interests of the EU more effectively by means of criminal law. In that respect it finds in principle appropriate the establishment of the European Public Prosecutor's Office and refers to its opinion of 11 October 2013 (Bundesrat Document No 631/13 (Resolution)). However, its responsibilities should be limited, not only in an initial phase, to the prosecution of offences against the EU budget.

E-Justice

21. The Bundesrat welcomes the Commission's focus on the development of information and communication technology in the field of justice. The objective of e-justice policy should be to give all citizens access to all courts within the EU in a simple and accessible manner. Particular attention will have to be paid to the establishment of uniform standards in e-justice. In order to avoid regression and additional costs, these standards should be based on the sustainable interoperability of existing national solutions rather than on binding technical specifications. For this purpose EU funding should be made available in an easily accessible, low-threshold form.

Exercise of fundamental rights

22. The Bundesrat emphasises the particular importance of the protection of fundamental rights in the EU. European citizens must be able to rely on effective safeguards for their

fundamental rights. Europe can refer here to its exemplary system of protecting fundamental rights. The Court of Justice of the EU, the European Court of Human Rights and the national constitutional courts form a successful European network (the Verfassungsgerichtsverbund), resulting in an effective system guaranteeing human rights on the basis of cooperation. The established practice should continue and the application of the fundamental and human rights provisions in national law as well as the European Convention on Human Rights (ECHR) and the Charter of fundamental rights should remain unchanged. The Bundesrat welcomes the Commission's efforts to accomplish a rapid EU accession to the European Convention on Human Rights.

23. From a gender equality perspective, the Bundesrat gives, in general, a positive evaluation of the objectives and measures taken and supports the Commission's proposal that the EU, together with the Member States, should continue its work in ensuring equality between men and women in pay, pensions and participation in the labour market, including in positions of top management. It shares the Commission's view that this would guarantee that Europe is making full use of all available talent.
24. From an anti-discrimination point of view, the Bundesrat also welcomes the efforts to improve the standing of victims of crime throughout the criminal procedure by means of establishing minimum rights, support, advice and protection for victims and their close relatives.
25. The Bundesrat shares the Commission's view that the joint fight against xenophobic and racist hate speech and crime in the EU should resolutely be maintained.
26. The Bundesrat notes, however, that homosexual and transphobic motivated crimes are widespread in all EU Member States. The results of the biggest survey to date into hate crimes and discrimination against lesbian, gay, bisexual and transgender persons (LGBT) by the European Union Agency for Fundamental Rights, which was presented on 17 May 2013 show that, in their daily lives, many of them cannot be openly LGBT.
27. The Bundesrat therefore considers it necessary that the EU justice agenda for 2020 should focus more on the fight against homo- and transphobically motivated crimes.

Training

28. The Bundesrat shares the Commission's view that training legal practitioners in EU law is already very important and will become even more important in future. That is why traditional training can be supplemented by e-learning sessions, the offer of which should expand accordingly. However, enhanced organisational and financial assistance from the Union is essential to effectively use existing networks and ensure not only the necessary quantity, but also and above all, the quality of the training. Against this background the Bundesrat welcomes the fact that in the Commission decision 35 % of the resources of the Justice Programme for the period 2014 to 2020 is allocated to training. In addition, the Bundesrat warmly welcomes the fact that in the Commission communication no centralisation of training is planned. Member States have the main responsibility for European training measures. That is why the Bundesrat is opposed to standardisation of structure and content of training.

Direct forwarding to the Commission

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