



EUROPEAN COMMISSION

*Brussels, 14.8.2014
C(2014) 5979 final*

*Mr Stephan WEIL
President of the Bundesrat
Leipziger Straße 3 - 4
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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Commission Communication "An open and secure Europe: making it happen" {COM (2014) 154 final}.

The Commission notes the Bundesrat support of the Commission's focus on consolidating and implementing the acquis and on monitoring and evaluating the effectiveness of EU policies. It also welcomes its emphasis on the importance of ensuring that fundamental rights are guaranteed, including data protection. These are principles which are an obligation for all EU institutions and Member States and fundamental in the development of an open and secure Europe, as underlined in the Commission's Communication.

As regards data protection the Commission fully shares the commitment of the Bundesrat to ensuring a high level of data protection in the European Union, including as regards processing by the public sector. The Commission has already underlined in its previous reply¹ to the Bundesrat, that the proposal for a General Data Protection Regulation continues the tried and tested tradition of the current Data Protection Directive 95/46/EC by not drawing a distinction between the public and the private sphere. As regards the protection of personal data, neither Article 8 of the Charter of Fundamental Rights nor Article 16(1) TFEU make any distinction between public authorities or other data processors processing the personal data. Without full harmonisation it is also impossible for the European single market to function properly. If it was left to Member States to add further conditions to data protection that go beyond the uniformly high level of protection, the different requirements imposed on controllers, depending on the Member State, would generate unnecessary costs and avoidable administrative burdens, which undermine the reform's objective of helping to unleash the potential of the digital single market and foster economic growth, innovation and employment. The choice of a regulation will not mean that national Parliaments are denied any room for manoeuvre. The Regulation includes a series of provisions which give Member States the legislative flexibility they need as regards the public sector within the Regulation. These include a specific clause enabling Member States

¹ C(2012) 9638 final of 10 January 2013, reply to the Opinion of the Bundesrat on the EU's data protection reform proposals COM(2012) 10 and COM(2012) 11.

to specify further the application of the Regulation to their public sector in national laws, exceptions to some of the rules provided for in the Regulation, as well as a Chapter with specific rules related to particular sectors.

As regards enforcement, positions in the inter-institutional debate are coming closer to a model for the “One-stop-shop” system, with the general understanding that there should be a “lead authority” which works closely with other concerned data protection supervisory authorities, notably the local authority with which citizens lodge a complaint (to ensure “proximity”). The data protection reform is therefore on the right track to ensure “the completion of the Digital Single Market by 2015” as agreed by EU Heads of State and government in October 2013.

The Commission notes the concerns expressed by the Bundesrat on the lack of statistical data and the possible difficulty it would imply for evidence-based policy-making. The Commission fully agrees on the importance of basing its policy making on facts and evidence. In order to achieve that, further efforts will be needed to develop reliable and comprehensive statistics. However, the Commission would like to specify that the evidence used relies on one hand on statistics, where available, but also on the monitoring and evaluation of the implementation of the acquis as part of a comprehensive analytical approach. Monitoring and evaluating the effectiveness of legislation and policies is part of the usual policy cycle and a task to be done on a permanent basis, in line with EU institutions' commitment to smart regulation. Furthermore, the Commission as guardian of the Treaties has the role of ensuring the coherent transposition and effective enforcement of legislation, including by launching infringement procedures.

The Commission would like also to reassure the Bundesrat that it is fully committed to consultation and dialogue with all stakeholders, including national Parliaments. In order to ensure that all stakeholders can contribute to policy making, the Commission carries out open public consultations on major new initiatives.

The Commission welcomes the support of the Bundesrat to the general priorities outlined in the Communication regarding internal security and policing. Regarding the specific areas where the EU will need to act, the Commission would like to note that it has adopted its third and final report on the implementation of the Internal Security Strategy in action (2010-2014) on 20 June 2014 which presents a more detailed evaluation on the implementation of the strategic objectives identified in 2010. Following this evaluation, and as requested by the European Council, the Commission will work on updating the strategy to address the challenges which would require further action, together with the Member States and the European Parliament. Consultations for that purpose will start during the summer 2014 and will include an open public consultation.

The Commission agrees with the Bundesrat on the importance of fostering information sharing between law enforcement agencies within the EU, one of the key priorities for the future. The improvement of operational law enforcement cooperation is also one of the primary goals of the Europol reform package. However, as regards setting up a possible European Police Records Index System, a Commission study initiated in 2012 underlined that

information exchange could be improved significantly by using existing systems such as the Europol Information System or the Prüm Decision. It showed that despite progress, the former was not yet sufficiently fed with data and the latter not yet fully implemented by a number of Member States. Therefore the Commission is convinced that it is more important to exploit fully existing instruments and support Member States' efforts to implement their obligations in order to improve the efficiency of police data sharing rather than creating a new mechanism.

As regards a possible police code which would in particular codify instruments related to access to information, the Commission considered it was not useful at this stage to proceed considering the process of mapping and stock-taking of existing measures and tools for information exchange among law enforcement authorities carried out in view of the Communication on the European Information Exchange Model (EIXM, December 2012) and the progress made in defining intelligence led policing with the EU Policy Cycle on Organized Crime.

The Commission would like to ensure the Bundesrat that the European Law Enforcement Training programme which aims at contributing to a common EU law enforcement culture and enhancing practical cooperation fully respects the principle of subsidiarity. The Commission acknowledges that law enforcement training at national level is and remains the competence of Member States. The idea of the European Law Enforcement Training programme is to build on existing training at national (and European level) and highlight the areas where support in training at EU level would add value.

As regards Civil Protection, the Commission welcomes the positive encouragement by the Bundesrat and agrees that the coming years will need to be focussed on implementing the new legislation, in particular as concerns prevention and disaster risk management, the Emergency Response Coordination Centre and the voluntary pool. The gap filling provisions will be implemented carefully to avoid wrong incentives and in close cooperation with the Member States.

The Commission would like to emphasise that it fully agrees that, in the field of asylum, efforts should now focus on the coherent transposition and effective implementation of the revised Common European Asylum System and with the Bundesrat's assessment of the need for the EU and its Member States to show responsibility, solidarity and partnership on asylum. The Commission intends to promote assistance to Member States including via EASO, to establish a well-functioning mechanism for early warning, preparedness and crisis management (Article 33 Dublin Regulation) and to use its powers under the Treaties to launch infringement procedures where necessary. The Commission aim is for Member States' practices to converge and for Member States to build trust in each other's asylum systems. In the longer term, the Commission believes that this will provide the basis for the possible mutual recognition of each other's asylum decisions in line with the explicit objective stated in Article 78 para. 2 (a) of the Treaty for the functioning of the European Union. Any possible initiative in this respect will be based on a thorough evaluation of the implementation of the common standards of protection throughout the EU in order to assess

whether these prerequisites are met. A study has been proposed to consider the viability of such an initiative, with a view to identifying all legal and practical challenges.

As underlined by the Bundesrat, our asylum policy also needs a robust international component, including a strong commitment to resettlement, the development of Regional Protection Programmes, and the strengthening of our cooperation with countries of origin and transit. The Commission also shares the view of the Bundesrat that determined action is needed to reduce the number of people making the hazardous journeys to reach Europe. It is in this context that the Commission considers that new ways for legal routes to access asylum in the EU, such as joint processing of protection claims outside the EU or humanitarian visas, need to be further discussed and tested.

The second generation asylum legislation should lead, as hoped by the Bundesrat, to a stronger coordination for the reception of vulnerable persons by individual Member States. The new laws contain far more provisions concerning the protection of vulnerable persons, including in terms of identification and their treatment during the asylum procedure and adequate reception conditions. The Commission is hosting Contact Committees and the European Asylum Support Office is leading workshops specifically with the intention of sharing best practice on the issue of vulnerability with a view to improving the situation for vulnerable asylum applicants across the EU and leading to greater convergence.

On migration, the Commission welcomes the support by the Bundesrat to a migration policy which would allow Europe to face demographic challenges and respond to the increasing shortages of skilled workers in the EU, therefore opening legal channels for migration that takes into account our short and long term economic needs. Proposals such as setting up a platform to make, together with business and social partners, joint assessment of skills shortages and recruitment needs would contribute to ensure that migration has a positive impact on the EU economy, while respecting Member States' competence on the volume of economic migrants admitted on their territory.

With regard to borders, the Commission fully shares the Bundesrat's emphasis on the respect for fundamental rights. Principles of non refoulement and of the obligation to carry out rescue at sea are principles casted in our acquis. Regarding the call to reinforce the activities of the Frontex Agency the Commission would like to underline that this will have an impact on the financial and human resources to be put at the disposal of the Agency by the Budgetary Authority (the Council and the European Parliament).

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue.

Yours faithfully,

*Michel BARNIER
Vice-President*