

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: Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook

COM(2014) 368 final

At its 926th session on 10 October 2014, the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG (Act on Cooperation between the Federation and the *Länder* in European Union Affairs):

1. The Bundesrat welcomes the Commission's proposal for a 'Regulatory Fitness and Performance Programme (REFIT)', which aims to make a substantial contribution to reducing the administrative burden entailed by European legislation. It also welcomes the further efforts being made by the Commission to optimise European law on the basis of this proposal.
2. The Bundesrat also fundamentally endorses the objective set by the Commission in this Communication of reducing the administrative burden and associated costs.
3. With regard to the proposal of the President-designate of the European Commission, Mr Juncker, concerning the composition of the new Commission, the Bundesrat welcomes the fact that, for the first time, there will be a Commissioner responsible for better regulation and the REFIT programme. It will be this Commissioner's mandate to ensure that every Commission proposal is really necessary and is designed to achieve only those objectives that could not be more effectively achieved by the Member States.
4. The Bundesrat believes that the plan to give better regulation higher status within the Commission by including it in the remit of the First Vice-President and deputy of the Commission President sends out a positive message. It hopes that the Vice-President will perform the planned strategic screening function effectively at the heart of the Commission.
5. It also notes that the President-designate of the Commission, Mr Juncker, has announced a new partnership between the Commission and the national parliaments, under which the Commission members are to actively pursue dialogue with the national parliaments and explain EU projects. It assumes that direct exchange between the Bundesrat and the Commission on Commission proposals that significantly affect the Federal States will continue to improve in terms of both quality and quantity.
6. The Bundesrat also refers again to its previous opinions on the Commission's REFIT programme (BR documents 718/13 (Resolution) of 19 December 2013 and 771/12 (Resolution) of 1 February 2013. In any case, REFIT must not entail any lowering of existing standards for the protection of the environment, nature, consumers, health and social welfare, nor for public participation.

7. The Bundesrat welcomes the Commission's measures to improve regulation at EU level, and in particular the proposals for reducing the administrative burden on SMEs. However, it believes that, in addition to the Commission's proposals, an external body should be set up to supervise impact assessments for proposed legislation. In this connection, it reaffirms its opinion of 1 February 2013.
8. The Bundesrat regrets that many new proposals for Regulations and Directives still entail a very high degree of red tape for SMEs and the public administration.
9. It agrees with the Commission that red tape and unnecessary regulatory burdens need to be reduced, the design and quality of EU legislation need to be improved, and the goals of legislation need to be pursued as cost-effectively and with as little red tape as possible, while complying with the EU Treaties.
10. In the Bundesrat's opinion, a comprehensive assessment of the efficiency and effectiveness of European regulation should include the 'legislative costs' of legal acts, both at EU level and, in particular, in the Member States.
 - Assessment of the effectiveness of EU provisions should also examine the precision of their wording in terms of whether they provide unambiguous instructions, since the efficiency of provisions is often undermined by a lack of clarity in the legal wording. This reduces their effect and can generate additional costs and delays in implementation - or, indeed, litigation that drags on for years, which has a deleterious effect on businesses, who rely on decisions being taken within a reasonable time horizon.
 - In terms of form, fitter regulation in terms of greater transparency can be served by making it compulsory to include tables of contents at the beginning of long pieces of legislation with many annexes.
 - The very large number of Commission Communications should also be subject to a general review of whether they are necessary and how long and detailed they should be. Although Communications are not binding under EU law, the Commission often cites them, including for the purposes of interpreting existing law. This gives rise to many confusions about the scope of application of Communications, including possible conflicts with the binding legislation in force.
 - To counter this, there should be greater focus on the actual objectives of legislation ('fit for purpose'). It is certainly important to ensure that those affected also have an opportunity to state their opinions in the legislative process.
11. The Bundesrat feels that the current Commission Communication fails to give more precise information about the results of the announced optimisation of reporting requirements for environmental issues (cf. Commission Communication in BR document 718/13 of 3 October 2013, p. 29). Apart from cutting down on the introduction of reporting requirements in new legislation, which the Bundesrat had already requested in its above-mentioned opinion of 19 December 2013, there is the problem of the many existing reporting requirements under environmental law.

12. A thorough stock-taking is called for and fundamental decisions must be taken about the continuing need for these requirements, as well as the required scope, degree of detail and frequency of reports.
13. The Commission plans to observe how EU requirements are implemented in practice in the Member States since, it says, implementation in individual MS can account for up to a third of the administrative burden. In this connection the Bundesrat would refer once more to its opinion of 1 February 2013, and stress that national measures to implement EU provisions are the responsibility of the Member States and not a subject for European regulation. In this respect, the reduction of administrative burdens is a matter for the Member States alone. This does not rule out an exchange of best practices for the reduction of red tape, which could usefully be conducted on a voluntary basis to supplement measures at EU level.
14. At the same time, the Bundesrat calls on the Federal Government to ensure that the Commission's investigation of administrative costs takes account of their impact not only on businesses, but also on the administration and other parts of society. It should consider the burdens on the administration, the economy and/or society as a whole, which are often the undesirable concomitant of reducing the burden on businesses.
15. The Bundesrat welcomes the fact that most of the legislative proposals for simplification and burden reduction identified in the REFIT Communication of October 2013 are planned for adoption before the end of the current year. In principle, this also applies to the announced withdrawal of legislative proposals, amongst which are nine REFIT initiatives, including the initiative for the simplification of VAT requirements, and to the non-presentation of some proposals on which the Commission has already worked in its current term of office.
16. The Bundesrat notes that the requirements introduced by the Commission for the implementation of the European Structural and Investment Funds fail to take account of the objective of reducing the administrative burden; in fact, they constitute a burden bordering on the limits of the tolerable.
17. It asks the Commission to think twice, when further developing the management and control system and carrying out an audit, about introducing more measures that increase the administrative burden for Member State administrations and beneficiaries and reduce the potential contribution of the European Structural and Investment Funds to meeting the Europe 2020 Strategy targets.
18. In the context of the sobering results of the Europe 2020 Strategy mid-term review, the Bundesrat reiterates the need to strengthen the social dimension in the EU. It draws attention to the fact that the standards achieved in European labour and social legislation and their direct impact on EU citizens, as well as their further development, are precious. It must be ensured that this achievement is not undermined by a reduction of the administrative burden that takes account only of the costs, ease of management and administrative work entailed by the provisions being assessed. A labour law or social law provision that is necessary and more effective in protecting the category of persons concerned must not be dropped because it entails more administrative work than a less effective, less administratively burdensome alternative or than no provision at all.

19. The Bundesrat wishes to make clear that good judgment must be applied when it comes to reducing the administrative burden. The objective should be to lighten the burden of excessive regulation on the economy while ensuring that this does not result in stagnation or regression in labour and social legislation, or indeed in the field of health and safety at work. Particularly since recent reviews of legislative acts such as that of the REACH Regulation in 2013 have already shown that they work well and do not need to be amended at present, the Bundesrat sees no good reason at this stage to assess yet again the quality of the most important legislation on chemicals. The Bundesrat would also stress that reducing the administrative burden must not lead to a lowering of standards and new lower-level regulation, for instance as regards professional qualifications.
20. It points out that effective social protection for employees and consumers, i.e. for EU citizens, has an indirect positive impact on competition and growth.
21. The Bundesrat asks the Federal Government to ensure that, in the fields of labour and social policy, including the protection of labour, co-determination and labour law, 'reduction of the administrative burden' does not adversely affect employees. In particular, the obligations of employers concerning information, advice and documentation, perceived as 'red tape', must not be cut back in the interests of reducing administrative tasks, since they are necessary to allow monitoring of compliance with employee protection legislation.
22. The Bundesrat welcomes the Commission's intention to review the Prospectus Directives. Financial products prospectuses are an important source of information for many investors when taking investment decisions. It is therefore important to avert and/or remedy weak points and aberrations.
23. However, the Prospectus Directives are only part of the regulation of financial services. A complete review of all financial services regulation is probably the only way to identify any contradictory incentives, conflicting effects and other aberrations for investors and market operators. In this connection, the Bundesrat welcomes the Commission's Communication of 15 May 2014 (COM(2014) 279 final), which sets out the initial economic effects of the measures it has initiated so far and specifies the further action needed.
24. However, the regulation of financial services at EU level is not yet over. The Bundesrat therefore recommends that the Commission incorporate a review of the Prospectus Directives in the evaluation of EU requirements for financial services announced in its Communication of October 2013 on the REFIT Programme (Bundesrat document 718/13), and that it commence this evaluation in the near future and in parallel with further regulation.
25. The Bundesrat is sending this opinion directly to the Commission.