



EUROPEAN COMMISSION

*Brussels, 10.12.2015  
C(2015) 9055 final*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinions on the Commission's Communication "Better regulation for better results – An EU agenda" and on the Commission's proposal for an Interinstitutional Agreement on Better Regulation {COM(2015) 215 and 216 final}.*

*The Communication forms part of the Better Regulation Package, presented by the Commission on 19 May 2015. It outlines the proposed measures to deliver better results for citizens and businesses through better EU rules. To this end, the package includes a proposal to replace the 2003 Interinstitutional Agreement on Better Law-Making with a new agreement. It also explains how the Commission intends to further open up its policy making and interact better with stakeholders and the general public. The measures proposed focus on greater transparency around policy-making, wider public consultation, improved impact assessments and a stronger approach to evaluating the existing stock of EU legislation.*

*The Commission welcomes the broad support of the Bundesrat for the goal of better regulation and in particular for making the regulatory process more open and transparent. It notes the doubts of the Bundesrat concerning balanced analysis in impact assessments, respect for the principle of subsidiarity and the impact of this Commission policy on the work of the European co-legislators. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposals and trusts that these will allay the concerns of the Bundesrat.*

*The Bundesrat indicates concerns that impact assessments could prioritise assessment of impacts on enterprises, to the detriment of the assessment of social impacts or the regional dimension. The starting point of all Commission impact assessments is a broad assessment of the relevant environmental, social and economic impacts. The assessment of impacts on competitiveness and small and medium-sized enterprises (SMEs) takes place within this integrated assessment, as part of the economic pillar, alongside all other relevant impacts.*

*Mr Stanislaw TILLICH  
President of the Bundesrat  
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*The Commission would also like to clarify that better regulation is not about deregulation; it is simply about delivering policy objectives more efficiently. In this sense, evaluation exercises first look at whether policy goals have been achieved and then whether they have been achieved in the most efficient way. The long-term impacts of not regulating are also assessed as relevant in impact assessments.*

*The Bundesrat raises concerns about respect for the principle of subsidiarity. The Commission would like to stress that better regulation precisely aims at ensuring the full respect of this principle. The revised guidelines on impact assessment emphasise the importance of assessing the added value of action being taken at the EU level compared to what could be achieved on the national and/or regional level. Better regulation procedures and proposals do not in any manner aim at restricting Member State prerogatives to add additional requirements when transposing EU directives into national law (so-called "gold-plating"). However, the Commission invites Member States to transparently acknowledge and explain to their citizens which provisions have been added and what their estimated impacts are.*

*The Bundesrat also expresses concerns as to the role of impact assessments during the legislative process in the European Parliament and the Council. The Commission confirms that better regulation does not require or imply any reduction in the authority and competence of the EU legislators to exercise their full discretion in the EU legislative procedure, nor will it slow down the political process. Better regulation is an aid to political decision-making; it is simply about making relevant information available to decision-makers so that choices are made on a well-informed basis. The Commission proposal for an Interinstitutional Agreement on Better Regulation, which builds on the existing 2003 Interinstitutional Agreement on Better Law-Making, aims to promote the consideration of better regulation aspects throughout the legislative process. The role of impact assessment during the legislative procedure is an issue which is currently being addressed in the ongoing negotiations on a new interinstitutional agreement. The Commission remains hopeful that an agreement will be reached before the end of this year.*

*In response to the more technical comments in the Bundesrat's opinions the Commission refers to the attached annex.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

## Annex

As regards the points to which the Bundesrat has drawn the Commission's particular attention, the Commission would like to make the following comments:

- **Consultation of social partners:** the Bundesrat emphasises that public hearings and consultations are only permitted to supplement, and not to substitute, the consultation of the Social Partners (Article 154 TFEU) or their possibility to conclude agreements (Article 155 TFEU). The Better Regulation Guidelines confirm this important principle. The Better Regulation Tools (annexed to the Guidelines) dedicate a specific tool (nr. 7) to impact assessment and consultation requirements for Social Partner initiatives<sup>1</sup>.
- **Language regime for public consultations:** the Commission ensures full respect for the right of all citizens, enshrined in the Treaties, to communicate with it in any of the EU official languages. This also applies to replies to public consultations: stakeholders contributions can be submitted in any of the EU official languages. However, resources available for translation are limited and primarily needed to meet the Commission's legal obligations. Therefore, not all consultation documents can be made available in all EU languages. The choice of languages is then determined on the basis of criteria like the target audience(s) and the length of documents. Whenever compatible with the reach and quality of consultations, other measures taken to ensure a wider translation of consultations within budgetary limits are the shortening of consultation documents and the use of online questionnaires in order to make translation less resource-intensive and to facilitate the use of machine translation for specific documents.
- **Independence of the Regulatory Scrutiny Board:** the Bundesrat calls for an independent external body to supervise impact assessments. The principal task of the Regulatory Scrutiny Board is to assess the quality of draft impact assessments and evaluations which are prepared first and foremost to support the decision making process inside the Commission and the exercise of the Commission's right of initiative guaranteed by the Treaty. To do this efficiently and credibly, the Board needs to be independent but not necessarily external as also indicated by the OECD's "best regulatory practice" recommendation from 2012 which calls for such regulatory oversight bodies to be established close to the centre of government with an independent mandate. To ensure its independence, the Regulatory Scrutiny Board will have six full-time members (plus a chairperson at Director-General level), which will include three members recruited from outside of the EU institutions with expertise in impact assessment and evaluation. The other three members of the Board will be senior Commission officials and be independent of policy making services. All members of the Board will serve for fixed terms of three years and be selected on the basis of objective and transparent recruitment procedures. In addition, all members will have to abide by the Commission's strict code on ethics including conflicts of interest. This also includes the obligation, for two years after leaving the service, to inform and seek the approval of the Commission to perform outside activities or assignments, in order to avoid potential conflicts of interest.

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<sup>1</sup> [http://ec.europa.eu/smart-regulation/guidelines/docs/br\\_toolbox\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf) (pages 41-44)

- **Employment protection rules and social standards:** *the Bundesrat is concerned that a particular focus of impact assessments on SMEs or on administrative burden may risk undermining the level of EU protection of employment or the rights of employees. As mentioned before, the aim of better regulation is not deregulation but to ensure that the relevant policy objectives are achieved efficiently and without unnecessary administrative burden. In this context, impact assessments also assess whether policy options may have consequences, even unintended, for employment and working conditions. The Better Regulation Tools include a specific tool (nr 25) to assess impacts on employment, working conditions and income distribution.*
- **Preference for Regulations over Directives:** *the Bundesrat raises concerns that the Commission increasingly moves away from proposing directives in favour of proposing regulations. It must however be emphasised that the impact assessment process also requires an examination of which policy instrument is the most suitable for the specific issues under consideration in each case. Directives will be preferred where it is sufficient to set the objectives, periods of validity and essential requirements at the EU level, while technicalities and details are best left to the Member States. Regulations are used most commonly where it is important to achieve a more fully uniform implementation of a policy intervention.*
- **Gender-differentiated impact assessment:** *the Bundesrat advocates that gender perspectives are taken into account during the monitoring of current legislation. The Commission recalls that the Better Regulation Guidelines, both for impact assessments and evaluations, already pay attention to gender equality. Evaluations can provide policy-makers with strategic and practical information on any gender impacts of EU legislative in a specific policy field.*
- **Spending programmes:** *All spending programmes will be subject to a mid-term review and an evaluation when complete. The results of these reviews and evaluations inform any revision of existing programmes and the preparation of new programmes under the current and any future multi-annual financial framework.*