

**18.12.15****Resolution****of the Bundesrat**

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**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Upgrading the Single Market: more opportunities for people and business**

**COM(2015) 550 final**

At its 940th session on 18 December 2015, the Bundesrat adopted the following opinion pursuant to Sections 3 and 5 EUZBLG (Act on Cooperation between the Federation and the Länder in European Union Affairs):

Regarding point 2.2. 'Helping SMEs and start-ups to grow'

1. The Bundesrat welcomes the Commission's intention to stimulate the European internal market and to drive momentum for modernisation and innovation in order to support the growth opportunities for small and medium-sized enterprises (SMEs) in particular. It welcomes, in particular, the Commission's desire to improve legal certainty for SMEs and to devise simpler and less burdensome rules for companies, while continuing to act against letterbox companies.
2. The Commission states that many companies have been complaining about uncertainties surrounding cross-border company law. With reference to its proposal for a Directive on single member companies (COM(2014) 212 final; Bundesrat Printed Paper 165/14), which the Commission believes 'should be adopted ... without delay', the Commission indicates that it expects the implementation of this proposal to reduce the costs of company registration and simplify procedures. The Commission also states that it intends to build on this initiative when considering further ways of achieving simpler and less burdensome rules for companies.

The Bundesrat does not, however, regard the proposal for a Directive on single member companies to be a suitable basis for this. Although simplifying the registration of companies which operate on a cross-border basis is desirable and worth supporting, it must not mean that the standards of national trade registers are lowered. With regard to legal certainty and the protection of confidence, trading companies attach great importance to the accuracy of the company data in the register.

The Bundesrat therefore considers it essential for there to be a minimum degree of supervision and control regarding the company to be registered and its shareholders in order to safeguard the justice system from business start-ups which contravene the rules or are unscrupulous and to ensure that the remaining companies which participate in the market and members of the public continue to have confidence in the accuracy and reliability of national trade registers.

The Bundesrat would also refer, in this regard, to its opinion of 11 July 2014 (Bundesrat Printed Paper 165/14 (Resolution) (2)) and thanks the Commission for the opinion of 25 September 2014 which it issued in this regard (regarding Bundesrat Printed Paper 165/14 (Resolution)). The Bundesrat stands by the objections it raised to the proposal in the opinion of 11 July 2014. In particular, its concerns regarding the lack of minimum standards for identifying the founders and management bodies of the company (see points 4 to 7 and 10 of the Resolution of 11 July 2014) and regarding the separation of the registered office and administrative office (see points 17 to 21 of the Resolution of 11 July 2014) are not dispelled by the Commission's opinion of 25 September 2014. In the Bundesrat's view, the form of company proposed by the Commission (including in the version of the proposal set out in the Council's General Approach (Council document 9050/15 DRS 41 CODEC 751)) is likely to be misused to establish 'letterbox companies' in order to circumvent national law, in particular as regards board-level participation and enforcement, and in order to avoid or evade tax.

3. The Bundesrat is therefore concerned that the Commission intends to build on its single member company proposal when considering further ways of achieving simpler and less burdensome rules for companies, including making digital solutions available throughout a company's lifecycle, in particular in relation to their registration and to the filing of company documents and information.

Regarding point 2.3. 'Making the market without borders for services a practical reality'

4. The Bundesrat welcomes the Commission's initiative to reduce barriers to trade in services, commerce and the liberal professions. The prudent reduction of trade barriers in these areas can serve to boost growth in the EU and create new jobs.
5. The Bundesrat finds it concerning, however, that not only genuine barriers to trade are to be removed but also meaningful rules which assist quality assurance, market transparency, consumer protection and the self-management of the economy. This applies in particular to the growth area of professional services in Germany.
6. The Bundesrat would stress that, in the context of economic self-management, the chambers of the liberal professions in Germany serve in particular to promote quality assurance and vocational and further training. These tasks would otherwise have to be undertaken by the state and financed via taxation.
7. The Bundesrat notes that the system of fees for professionals and clients in some of the liberal professions in Germany create a meaningful framework which prevents a 'race to the bottom' as well as demands for excessive prices. Given that there is often an imbalance between members of the profession and customers in the provision of information, this is an important instrument for consumer protection and quality assurance.
8. The Bundesrat also notes that the ban on loan capital ensures that professional services remain independent of purely capital-based and profit-based interests. In view of the imbalance between professionals and customers in the provision of information, this ultimately serves to promote consumer protection and quality assurance. Customers can be confident that the service provider is not working primarily in the interests of third parties.

9. The Bundesrat would ask the Commission to make a clear distinction, when removing barriers to the cross-border provision of services, between barriers which may be unjustified. on the one hand, and meaningful rules which are in consumers' interests, on the other.

Direct transmission of the opinion

10. The Bundesrat is sending this opinion directly to the Commission.