

17 June 2016

## Decision

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: Launching a consultation on a European Pillar of Social Rights**  
**COM(2016) 127 final**

At its 946th session on 17 June 2016, the Bundesrat adopted the following opinion in accordance with Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

1. The Bundesrat supports the Commission's ambition to raise the profile of the social dimension of the EU, in line with the principle of a social market economy. This principle is explicitly referred to in the EU Treaty. It also welcomes the objective of upwards convergence under the European Pillar of Social Rights.
2. The Bundesrat points out that the horizontal social clause in Article 9 TFEU already provides the necessary basis for greater social convergence. It calls on the Commission, in implementation of this clause, to undertake horizontal social impact assessments on the basis of the social policy objectives of the treaties.
3. It is not clear how, on the basis of the Communication presented, the principles set out in the European Pillar of Social Rights are to be implemented in a way that will promote social reforms in Member States. The Bundesrat proposes that the first step should be to link the European Pillar of Social Rights to the anti-poverty and employment targets of the Europe 2020 strategy, thereby reinforcing the social dimension of the European Semester. To the extent that the economic governance and macro-economic monitoring of the Europe 2020 strategy and the country-specific recommendations relate to social policy issues, these matters should be given greater consideration in the context of economic and financial policy coordination, ensuring at the same time that the autonomy of the social partners is not undermined or restricted. The Bundesrat also calls on the Commission to continue supporting the Member States in their efforts to reduce structural gaps in competitiveness in the interests of increasing growth and employment.
4. The EU already has a social dimension, which includes within its scope social dialogue, combating social exclusion and discrimination, promoting social justice and adequate social protection, workers' security, working conditions and the promotion of equal treatment of men and women. In view of the ever more interconnected economic and monetary union, the Bundesrat considers that legislative activity should focus not only on economic and financial policy, but also and equally, on the social situation in the Member States, without prejudice to the current division of powers, and in particular the principle of subsidiarity.

5. The Bundesrat would draw attention to the range of different social models and the varying forms that social policy action can take in the EU's Member States. In this context, comprehensive harmonisation of social standards at EU level is not practical. It is more useful for the formulation of EU policies in general to take greater account of social policy objectives and define targets and (minimum) standards to be applied by the EU and the Member States within their respective fields of competence. Furthermore, efforts should be made to ensure the continuing implementation of existing standards. Equally, in developing the social dimension, the existing division of competences and Member States' powers and domestic needs, capacities and traditions must be respected.
6. The Bundesrat would point out that structural reforms already adopted in the Member States with higher levels of (youth) unemployment are already bringing about a real improvement in the social situation in Europe.
7. In view of the high level of youth unemployment, the Bundesrat advocates increasing mobility and accessibility in a common European training and employment market. Continued implementation of the European Alliance for Apprentices and the Youth Guarantee, but also training models tailored to real market demand and practical realities in the countries concerned, should all help address the challenge of youth unemployment. In this connection, positive experience with the German dual [study and work placement] vocational training system should also be drawn upon, particularly since Germany has the lowest level of youth unemployment in the EU.
8. The Bundesrat would stress that both the primary responsibility of Member States and the need for strict compliance with the principle of subsidiarity, particularly in social and health matters, which are important areas of national sovereignty, call for restraint in adopting new legislation at EU level; only legislation that complies with these precepts should be adopted.
9. The Bundesrat calls on the Commission to take account of the risks and opportunities presented by new technologies and digitalisation in the world of work, so as to provide a high level of employment and social protection for all workers despite these changes. At the same time, it would point out that greater social convergence can be achieved only when fair working conditions and pay are in place for workers in all the Member States.
10. The Bundesrat is fully in favour of greater economic and social convergence, particularly as regards the stability of the Eurozone, improving the global competitiveness of the European Economic Area and combating poverty. The social partners must have a central role in this process. It calls on the Commission to support an exchange of experience between Member States on best practices, such as Germany's successful dual vocational training system. Existing instruments of coordination, such as the European Semester, should primarily be used for this purpose.

11. The Bundesrat would point out that implementing the social dimension throughout all 28 of the EU's Member States also depends on an effective mechanism for calling on available funding - in particular from the European Social Fund (see the Bundesrat opinion of 29 November 2013, BR document 721/13 (Decision), in which this point was already made). It calls on the Commission to provide better and more sustained support to Member States with particular social and economic problems, by developing the structures needed to facilitate calls for funds, and streamlining and simplifying the administrative procedures involved. It would also point out that even in Member States with stronger economies, there are still regions facing social and economic difficulties, and in regions with stronger economies there are still social and economic problems, e.g. at municipal level. All of these areas require special support from the Structural Funds.
12. Article 153 TFEU lays down that the Union may adopt minimum requirements by means of directives, and must support and complement the activities of the Member States in the fields of working conditions and the protection of workers where their employment contract is terminated. In view of the competences of the EU laid down in the treaties, the Bundesrat rejects in particular the imposition of legally binding requirements for compulsory compensation upon dismissal and informing workers of the conditions of any probation period.
13. In the Commission's preliminary outline, the European Pillar of Social Rights also covers areas such as education, in which EU competence is confined to a supporting and complementary role, with Member States having primary responsibility. Nevertheless, the pillar is to become a reference framework to screen the performance of participating Member States and to drive reforms at national level. In view of the limits on EU competence, very closely defined in Articles 165 and 166 TFEU, the Bundesrat firmly rejects any such performance screening as formalised monitoring and assessment of educational and training. In these spheres, the EU may only encourage cooperation between Member States and support their action while fully respecting the responsibility of the Member States for the content of teaching and the voluntary nature of European cooperation on education and training.
14. The Bundesrat is very concerned by the way that other spheres, in particular employment and social affairs, are increasingly taking over issues that belong to the sphere of education and training. In institutional terms, this has already been borne out in the restructuring of Commission Directorates-General and the allocation of vocational training and adult learning, as well as 'skills' to the Directorate-General for Employment, Social Affairs and Inclusion. The Bundesrat would again stress that cooperation on education and training at European level is purely voluntary and that the sphere of education and training is fundamentally different from the more 'Unionised' sphere of employment. Education and training cannot, *de facto*, be treated as equivalent to other policy areas. Furthermore, the Bundesrat calls on the Commission to ensure that education and training matters continue to be handled by

the bodies with the appropriate competence, including in its future initiatives, such as the 'New Skills Agenda'

15. The Bundesrat notes that the outline of the social pillar and the working paper accompanying the Communication address many educational issues such as skills and life-long learning, access to good quality general and vocational training, further education and up-skilling, recognition of skills and qualifications and expenditure on education and training. The Bundesrat wishes to express its concern that matters which belong primarily to the category of education and training are increasingly being taken over by other policy areas. This conflicts with the European treaties and does not do justice to the intrinsic value of education.
16. As regards a possible legal basis for the 'EU Youth Guarantee' discussed in point 4 of Chapter I of the Outline of a European Pillar of Social Rights, the Bundesrat would draw your attention to the following: The Bundesrat is basically in favour of a guaranteed place in training or employment for all people under 25, albeit not in the form of a guarantee from the State. It should rather be the upshot of the totality of offers from all players in vocational training (business, employment services and the State). After all, success in finding an apprenticeship or job depends on the person seeking it and cannot be guaranteed by the public authorities or by business. The Bundesrat therefore rejects a legal guarantee in the sense of a legal obligation binding on the services responsible for integration in the employment market (job centres). It stresses that sound economic policy in the Member States is a precondition for the creation of jobs and apprenticeships. The four-month deadline under Point 4(a) also fails to take account of the fact that companies are already subject to established rules/codes of practice on apprenticeships and training. Furthermore, starting training during the year, which could be the effect of the four-month deadline, may cause problems, as the trainee will have missed training content from the period before he or she arrives.
17. The Bundesrat requests that national competences be taken into account when specific recommendations are being drawn up. For instance, it is for Member States to decide on pay during parental leave (Chapter I, point 5).
18. According to the Commission's outline, minimum wages are to be set through a transparent and predictable mechanism in a way that safeguards access to employment and the motivation to seek work. Under the division of competencies in the treaties, establishing minimum wages is still the responsibility of Member States. Moreover, wage setting is a matter for the social partners, and is, as a rule, linked to productivity (see Bundesrat opinion of 29 January 2016, BR Document 503/15 (Decision)).
19. The Bundesrat notes that there is no explicit mention of, in particular, occupational health management and occupational prophylactic measures, or maintaining the employability of older workers. The Bundesrat calls for objectives and measures to

prevent ill health by addressing environmental and lifestyle factors to be specifically included in point 9 of Chapter II of the outline of the European social rights pillar.

20. The Bundesrat has already pointed out, in connection with Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, that in matters of social security rights, account should be taken of the interests of both businesses, as regards employee retention, and employees, as regards the flexibility and portability of acquired rights (see Bundesrat opinion of 10 February 2006, BR document 784/05 (Decision)). Rights to further education and training should remain a matter for specific agreements between the social partners.
21. The Bundesrat also particularly insists that account should be taken of the specific characteristics of the civil service, including pension rights, and that the legislative powers of Member States in this respect should be unrestricted and permanent. Consequently, the principle set out in Chapter I, point 3(b) of the Outline of a European Pillar of Social Rights should be so worded as to make clear that the preservation and portability of the social security rights acquired in the course of a working life are to be guaranteed in order to ease transition between jobs and careers. In civil service matters, due account should also be taken of the importance of the public authorities having optimal operational and performance capacity.
22. With reference to Chapter III, point 13, the Bundesrat would point out that raising the employment rate of women is of particular importance as regards the gender pension gap. This should be made clear.
23. The Bundesrat agrees with the Commission that the pension system should be organised in such a way as to safeguard the sustainability and future adequacy of pensions (Chapter III, point 13(b) of the Outline of a European Pillar of Social Rights). However, it is opposed to introducing an automatic link between the statutory retirement age and increasing life expectancy. National policy makers should continue to be the ones to decide to what extent and how retirement age may be further raised beyond 67.
24. In the face of similar social challenges such as the modernisation of social security systems, the Bundesrat recommends that the European pillar of social rights should, as much as possible, apply not only in the area of economic and monetary union, but, from the outset, throughout the EU.
25. The Bundesrat is submitting this opinion directly to the Commission.