

7 November 14

## **Resolution** of the Bundesrat

**Bundesrat resolution on the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation (EU Transparency Register)**

At its 927th session on 7 November 2014, the Bundesrat adopted the resolution contained in the Annex.

## Annex

### **Bundesrat resolution on the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation (EU Transparency Register)**

#### I.

1. The Bundesrat notes that the transparency register established by the Commission and the European Parliament in 2011 has been superseded by the ‘Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation’ (new version), which entered into force on the twentieth day following that of its publication in the Official Journal of the European Union (Article 38 of the Agreement).
2. The Bundesrat recognises the Transparency Register as a joint instrument of the Commission and the European Parliament that will enable the activities of lobbyists outside the European legislative process to be recorded and monitored at European level.

3. However, the Bundesrat takes a critical view – for various reasons – of the recent extension of the scope of the register to ‘regional public authorities and their representative offices’ (in Germany these are the *Länder*), which were expressly excluded from the scope until now.
4. It stresses that extending the scope must not, in the long term, place regional public authorities and their representative offices on the same footing as lobby groups from business and civil society. The Bundesrat notes that regional public authorities and their representative offices are not expected to register, but may do so if they wish. Nevertheless, the Bundesrat emphasises that this provision must not lead to regional public authorities and their representative offices actually being required to register now that the agreement has been implemented.

## II.

5. Accordingly, the Bundesrat considers that extending the scope of the register to regions and their representative offices is contrary to the guarantee of respect for the structures of Member States, which the EU and its institutions have adopted in Article 4(2) TEU.
6. It emphasises Article 4(2) TEU, which provides that the Union must respect the national identities of Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. In the Federal Republic of Germany, these constitutional structures are tantamount to its constitutional identity, the inviolable essence of which derives from the third sentence of Article 23(1) of , in conjunction with Article 79(3) of the German Basic Law (*Grundgesetz*).
7. The Bundesrat stresses that Article 79(3), second alternative, of the Basic Law guarantees the *Länder* the right, on principle, to participate in the legislative process. This also includes their right to participate in EU affairs under Article 23(4) of the Basic Law, provided that this is compensation for the involvement of the *Länder* in the federal legislative process as part of a transfer of powers at the expense of the legislative powers of the Federation.
8. The Bundesrat stresses that the *Länder* in Germany are responsible under Article 70(1) of the Basic Law for legislating on matters that are not within the exclusive legislative power of the Federation and where the Federation has not

made use of its power to legislate within the scope of so-called concurrent legislative power.

9. It highlights that Article 23(6) and (7) of the Basic Law, in conjunction with the Law on cooperation between the Federal Government and the *Länder* in matters concerning the European Union (*Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union*, EUZBLG), provides that when legislative powers exclusive to the *Länder* concerning matters of school education, culture or broadcasting are primarily affected, the exercise of the rights belonging to the Federal Republic of Germany as a Member State of the European Union must be delegated by the Federation to a representative of the *Länder* designated by the Bundesrat. This is the quid pro quo for the transfer of the legislative powers of the *Länder* to the European level.
10. Therefore, the Bundesrat would emphasise that the *Länder* are themselves part of the European legislative process.
11. It stresses that the *Länder* also fulfil other State functions. Article 83 of the Basic Law provides that, in principle, the *Länder* execute federal laws in their own right. These also include laws that stem from requirements under European law.
12. The Bundesrat emphasises that the *Länder* are actors in the EU's institutional framework: they participate in the Committee of the Regions (CoR), whose rights in the European legislative process have been strengthened by the Lisbon Treaty. For example, under Article 8(2) of the Protocol on the application of the principles of subsidiarity and proportionality, the CoR may, for the first time, bring actions based on subsidiarity before the CJEU against legislative proposals on which the CoR must be consulted. Creating an obstacle for regions – and thus the German *Länder* – in the EU legislative process in the form of the Transparency Register would run counter to the Lisbon Treaty's aim of bringing the European legislative process closer to the citizen by strengthening the CoR.

13. Therefore, the Bundesrat considers that the inclusion of the *Länder* in the scope of the Transparency Register exceeds the limits of Article 4(2) TEU and infringes the principles set out in Section I, point 2, according to which the general principles of Union law, which include Article 4(2) TEU, must be respected in the operation of the register.

### III.

14. In this context, the Bundesrat very much regrets that the exemption from the scope no longer applies and expects that – when the interinstitutional agreement on the Transparency Register is implemented, the *Länder* will be treated in a manner consistent with their institutional role.

15. Moreover, the Bundesrat calls for regions and their representative offices which fulfil State functions and whose existence is part of the national identity of the respective Member State within the meaning of Article 4(2) TEU to once again be excluded from the scope of the register when the planned review of the interinstitutional agreement on the Transparency Register takes place in 2017.

16. It asks Commission and the European Parliament not to take any initiatives with a view to making registration compulsory for regional public authorities and their representative offices.

### IV.

17. Furthermore, the Bundesrat requests the Commission and the European Parliament to verify whether the points made above also apply by analogy to public authorities at sub-national level, such as local and municipal authorities or cities, or their representative offices, associations or networks, which are expected to register. If this is the case, these authorities must also be excluded from the scope of the register.

18. In this context, the Bundesrat regrets in particular that the aforementioned authorities at sub-national level are expected to register and may be subject to sanctions if they fail to do so.

19. It refers in this regard to the particular importance of the municipal level in Germany's federal structure. Cities, municipalities and districts carry out a significant proportion of the sovereign tasks in the Federal Republic of Germany.

20. The Bundesrat emphasises that municipalities and associations of municipalities in Germany have the right of self-government (Article 28(2) of the Basic Law). As such, however, they are not private associations, but – even if they are separated from their hierarchical administrative structure – parts of *Länder* with special constitutional rights and thus part of the public authorities within the meaning of Article 1(3) and Article 20(3) of the Basic Law. Their legislative activity also comes under the domain of public administration (cf. Federal Constitutional Court Decision 83, 37 [54]). Therefore, the function of the Transparency Register applies, at most, to the activity of municipal enterprises which have their own legal personality.
21. In the opinion of the Bundesrat, the legal status of municipalities and municipal associations in the institutional system precludes their being treated like lobby groups from business and civil society. Many of the legal provisions referred to in Section II, points 5 to 13, can be applied at least by analogy to municipalities.

V.

22. The Bundesrat asks the Federal Government to give strong support at European level for the objectives of this resolution.

## VI.

23. The Bundesrat is forwarding this resolution directly to the Commission.
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