

**14.10.11**

**Decision**  
Of the Bundesrat

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**Proposal for a Council Regulation laying down the multiannual  
financial framework for the years 2014 - 2020**

**COM(2011) 398 final**

Official Document: 399/11

and

**Proposal for a Council Decision on the system of own resources  
of the European Union**

**COM(2011) 510 final**

Official Document: 400/11

and

**Proposal for a Council Regulation laying down implementing  
measures for the system of own resources of the European Union**

**COM(2011) 511 final.**

Official Document: 401/11

and

**Communication from the Commission to the European  
Parliament, the Council, the Committee of the Regions: A Budget  
for “Europe 2020”**

**COM(2011) 500 final.; Council doc. 12475/11**

Official Document: 436/11

In its 888th session on 14th October 2011 the Bundesrat adopted the following Decision pursuant to §§ 3 and 5, Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG):

### **I. General comments on the proposals**

1. The Bundesrat welcomes the timely submission of the Commission Communication “A Budget for Europe 2020” (COM(2011) 500) and the Commission proposal, based on this Communication, for a Council Regulation laying down the Multiannual Financial Framework for the years 2014 - 2020.
2. The Bundesrat considers that the Commission proposal constitutes a viable foundation for further negotiations at the EU level.

### **II. Overall appraisal**

3. Confirming its Decision on the Commission Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and national parliaments: The EU Budget Review (BR-Official Document 667/10 (Decision) of 17th December 2010) the Bundesrat acknowledges the great importance of the EU budget as an expression of the progress made in European integration and European solidarity and an instrument for moving ahead on this front. The EU must maintain sufficient financial capacity to allow it to take action and must be provided with an appropriate level of own resources. The Bundesrat takes the view that the proposal tabled by the Commission on 30th June 2011 for the Multiannual Financial Framework for the years 2014 – 2020 on the whole pays due attention to this issue. It therefore constitutes a realistic basis for forthcoming negotiations.
4. The Bundesrat welcomes the fact that in its proposal the Commission has taken into account the burdens imposed on national budgets by the economic and financial crisis, along with the need to consolidate national budgets. The levels of expenditure proposed by the Commission within the financial framework seem to be objectively justified and set at an appropriate level to ensure that in the final analysis contributions paid to the EU by the Member States will correspond to their economic performance. However, the Bundesrat does have

misgivings concerning the allocation of expenditure outside the financial framework. This stands in contradiction to the systematic approach underpinning the budget and would not contribute to transparency of the EU financial system.

5. The Bundesrat draws attention to the fact that to date the amounts outstanding (RAL = reste à liquider) from the current Financial Framework have not been included in considerations on the proposed provision of funds. The Bundesrat calls on the Commission to table proposals to limit these payment backlogs.
6. The Bundesrat is pleased to note that in its proposal the Commission expresses its support for European added value and acknowledges the need to fund measures from the EU budget that are required to ensure proper functioning of the EU or that can be implemented more economically or more effectively on the basis of joint funding. However the Bundesrat points out that, in keeping with the subsidiarity principle, European funding is not required for all European tasks and challenges. The EU must also respect budgetary rigour. EU funding must be provided only within the framework of competences transferred to the EU.

### Results

7. The Bundesrat supports the Commission's endeavours to concentrate expenditure on the EU's political priorities and in particular to focus on implementing the Europe 2020 strategy. Greater focus on the EU's political priorities is advisable and makes it easier to attain quantifiable benefits with the funds available. The tasks for which responsibility has been transferred to the EU are however not exclusively within the framework of the Europe 2020 Strategy. In the light of the relatively low percentage of the EU budget in terms of EU gross domestic product (GDP), a policy of EU expenditure cannot constitute the main instrument for macroeconomic management and implementation of the Europe 2020 Strategy. In this context national measures adopted as a consequence of coordination of the economic policy of Member States and regions, together with completion of the legal framework at the EU level are of greater importance.

### Simplification

8. The Bundesrat concurs with the Commission's view that current funding legislation imposes considerable administrative burdens on recipients of EU funds, as well as on Member States, the federal states (*Länder*) and regions. The complexity of such provisions means that in some cases these provisions are difficult to implement and monitor. The Bundesrat welcomes the Commission's commitment to simplification of both general rules (Financial Regulation) and sector-specific provisions, but draws attention to the fact that there is a lack to date of concrete proposals on significantly reducing bureaucracy. Furthermore the Bundesrat also welcomes the Commission's stated intention of simplifying both the general rules and the sector-specific provisions, yet considers efforts undertaken to date to be insufficient. The Bundesrat requests the Federal Government to actively monitor and participate in this process and to ensure that tangible simplifications are introduced both for the various sectors and for the administration.
  
9. However, in effecting the standardisation of European implementing provisions that has been announced, attention must be paid to ensuring that the differing requirements of the respective policy areas are taken into account. Where possible, simplified refund procedures should be applied more widely than is currently the case and the corresponding rules simplified. Possibilities for simpler procedures must be identified and utilised to the full. This means that the proportionality principle must be taken into account to a much greater degree in the future. The effort expended on financial management, administration and controls must be commensurate with the scope of the programmes and projects in question.
  
10. In particular the Bundesrat is opposed to the introduction of new requirements and even more complex structures extending beyond the currently valid regulatory framework. For example the Bundesrat does not accept a reorganisation of the system for EU Structural Funds funding involving establishing an accreditation body, but calls explicitly for the tried-and-tested administrative and control systems deployed in this context (managing authority, certifying authority, audit authority) for the funding period 2007 to 2013 to be maintained.

### Conditionality

11. In the light of the Commission's declared intention to have increased recourse to the principle of conditionality, the Bundesrat would like to express considerable misgivings concerning the proposals from the Commission on new conditionalities in cohesion policy. In this context the Bundesrat draws attention to the Resolution of the heads of government of the German federal states (*Länder*) dated 9th June 2011, which has been transmitted to the Federal Government and the Commission. The Bundesrat draws attention to the fact that in designing future cohesion policy the allocation of competences at European, national and regional level should be maintained in keeping with the current system. Cohesion policy must not be confused with political processes that lie outside the scope of the regions nor should it be influenced by such processes. The Bundesrat is therefore opposed to any system that seeks to attain influence in policy areas outside the scope of Community competence or to implement general political goals by creating conditionalities.
  
12. Combining the new conditionalities with a system of penalties for not fully meeting goals, which would take the form of non-allocation of funding or reductions in funding, would give rise to incalculable financial risks for the budgets of the federal states (*Länder*) in the case of funding already approved. In addition this would have a detrimental effect on the ability to plan and manage funding programmes and should also be rejected for that reason. The enhanced focus on performance and results arising from the introduction of annual controls to ensure that goals have been attained, associated with the conditionalities system, would considerably complicate administrative procedures and would give rise to an increased burden for both the administrative authorities involved and for funding beneficiaries.
  
13. Nevertheless the Bundesrat advocates that the funding made available in the context of cohesion policy should continue to be deployed as efficiently as possible. In this context the quality and performance of funding programmes are of the essence. The approach adopted in the current funding period, which involves focusing funding on clear strategic goals, identifying potential for development on the spot and constantly scrutinising the quality of the instruments deployed should continue to be pursued consistently.

### Additionality

14. The Bundesrat considers that it would be appropriate to focus as much as possible on considerations arising from practical experience in interpreting and implementing the existing additionality requirements. This applies in particular for measures implemented by Member States and regions to respond to the challenges of demographic change, such as declining population levels.

### Involving the private sector

15. The Bundesrat advocates examining sources of additional private-sector funding for appropriate projects. In this context new financing instruments or, in appropriate cases, project-related loans could be considered. The only bodies empowered to grant such loans or furnish sureties and guarantees should be the European Investment Bank (EIB), national state banks, private banks or consortia including the EIB, but not other EU institutions. The ceilings for expenditure and the prohibition on incurring debt must not be watered down.

## **III. Revenue**

### Financial transaction tax, VAT own resources, VAT revenue

16. The Bundesrat welcomes the proposal to introduce a financial transaction tax coordinated across Europe. Taxing the financial sector would make an important contribution to a more equitable approach and would limit the number of financial transactions, particularly in the case of speculative activities.
17. The Bundesrat welcomes the proposal to abandon the existing system of VAT as a source of own resources. Own resources required over and above traditional own resources should in the future be obtained exclusively through GNI own resources. These provide the most accurate reflection of the economic performance of the Member States.

18. Levying taxes is a central aspect of national sovereignty. It must therefore remain within the purview of the Member States. The Bundesrat is opposed to the idea of a tax-based source of own resources, and hence does not support the creation of a new VAT source of revenue.

#### System of reduced contributions and corrections

19. The Bundesrat welcomes the proposal from the Commission to replace the existing rebate systems by a general corrective mechanism. This type of corrective mechanism must in any event ensure that net contributions do not increase and should result in a more equitable balance being struck in respect of funds paid in by net contributors. However, the corrective sum proposed for Germany by the Commission would not suffice to attain this goal.

### **IV. Structure of the budget**

#### Time frame

20. The Bundesrat is in favour of maintaining the time frame of seven years for future Financial Frameworks. This time span has proved successful for the Structural Funds programmes and the EU's other funding programmes and would correspond to the time frame for the current Europe 2020 Strategy. Potential proposals from the Commission in connection with the proposed Mid-term Review must not conflict with ensuring that in the long-term a solid base for planning is provided and reliability is ensured, factors vital for successful implementation of EU funding programmes.

#### Budgetary headings, flexibility

21. The Bundesrat welcomes the decision to maintain the current budgetary structure to a large extent. Within the financial framework the advantages of establishing an EU budget with a focus on long-term stability must be weighed up against the advantages of greater flexibility. Additional expenditure should primarily be financed by reallocation of appropriations within the budget. Unused funds should continue to be refunded to the Member States. This would not be compatible with the option of carrying over unused funding capacity

from the previous year or with granting unlimited scope to transfer funds to subsequent years.

## **V. Structural policy**

22. The Bundesrat reaffirms its stance that cohesion policy is an important instrument for providing support based on solidarity to weaker regions and to promote economic, social and territorial cohesion within the European Union. However, cohesion policy is not restricted merely to compensating for regional disparities, but is at the same time a strategy to foster innovation and education, competitiveness, sustainable growth and employment. The Bundesrat therefore supports the Commission's plans to focus cohesion policy on the goals of the Europe 2020 Strategy and thus to take steps to foster intelligent, sustainable and integrative growth. This is a challenge facing both the less developed and the stronger regions in Europe. The Bundesrat therefore shares the Commission's view that cohesion policy should continue to be implemented after 2013 in all of Europe's regions.
23. However, the Bundesrat draws attention to the fact that the range of funding options for cohesion policy must not be excessively constricted through focusing on the Europe 2020 Strategy. Cutting across individual policy areas and issues, cohesion policy must retain the capacity to offer integrated solutions to problems at the regional level in keeping with the strengths and needs of the various regions.
24. In this context gender mainstreaming must continue to be integrated into policy as a transversal objective.

## **Overall volume**

25. The Bundesrat welcomes the fact that the proportion of the budget to be earmarked for cohesion policy transmits a clear message that it will be possible to finance cohesion policy in all regions of the Union in the future too. However the Bundesrat draws attention to the fact that the new "Connecting Europe" facility proposed by the Commission does not fall within the ambit of cohesion policy expenditure in the strict sense of the term. As a consequence, expenditure for cohesion policy will be reduced by five per cent in real terms compared with



the current funding period; through this de facto reduction and the drop in the proportion of cohesion policy expenditure viewed in terms of the overall EU financial framework means that cohesion policy is thus making a significant contribute to consolidation of the EU budget.

#### Joint strategic framework of all funds

26. The Bundesrat welcomes the planned joint strategic framework to enhance coordination of the central EU funding mechanisms pertaining to structural policy. This framework is to include the Cohesion Fund, the European Regional Development Fund (ERDF), the European Social Fund (ESF), the European Fisheries Fund (EFF) and the European Agricultural Fund for Rural Development (EAFRD). It should be developed along similar lines to the current instrument of integrated strategic guidelines. However there must still be scope for establishing specific goals and for flexibility within the individual funds at the respective levels of implementation. The joint strategic framework should serve to facilitate fine-tuning and coordinated utilisation of the funding instruments on the spot and reduce the effort needed for administration of these funds, whilst at the same time offering room for manoeuvre in adopting specific actions at the regional level. A significant objective should be reinforcing the consistency and complementarity of cohesion policy and European rural development policy.

#### Partnership Agreements

27. Partnership Agreements could offer potential as strategic programme planning documents; at the level of the Member States and respecting the national allocation of competences in each state, these would present investment priorities, allocation of funding to specific priorities and programmes, and the goals pursued. These agreements should be designed to respect the subsidiarity principle, the particularities of states organised along federal lines and in particular allocation of competences for particular aspects of policy in the Member States; the scope of application should therefore respect the competences of the German federal states. For that reason these agreements should be limited to cohesion policy measures. Even viewed exclusively with reference to cohesion policy, this would be a highly complex policy instrument.

28. The plans announced to link the Partnership Agreements with the National Reform programmes should, in the Commission's opinion, be deployed in particular as an instrument to implement general economic and employment policy reforms from the country-specific recommendations and/or the National Reform programmes, for general improvements to the regulatory framework in the Member States and for comprehensive transposition of European legislation into national law. The Bundesrat is of the opinion that cohesion policy is not the appropriate policy instrument with which to attain this goal.
29. The Bundesrat draws attention to the fact that the Partnership Agreements form the strategic framework for the Operational Programmes and must therefore constitute the result of a decision-making process concerning strategic funding objectives, which must involve the Commission, the Member States and the regions on an equal footing. This procedure has proved its worth in Germany.
30. The particularities of the programmes under the aegis of European Territorial Cooperation (ETC) must be taken into account in devising Partnership Agreements. In particular, room for manoeuvre in the important coordination process when devising Operational Programmes for cross-border cooperation must not be constrained by the Partnership Agreements.

#### Operational Programmes

31. The Operational Programmes should continue to constitute the most important instrument in putting cohesion policy into practice. The regional Operational Programmes are the appropriate level at which to focus structural policy in thematic, spatial and financial terms. The Operational Programmes should be divided into a strategic and an operational part. The operational part should be revised with simplified preconditions. That would make it possible to respond more expeditiously to changes in the general context or to the results of evaluations. The reintroduction of multi-fund programmes should only be a possible option available at the request of the Member State or the regions in question.

Ex-ante and ex-post conditions

32. The Bundesrat agrees with the Commission that cohesion policy should focus to a greater extent on the results and impact it produces. However the Bundesrat draws attention to the fact that structural policy has an impact in the medium and long term. Consequently the effect of structural policy cannot simply be represented by means of individual indicators. Rather than imposing financial sanctions due to possible failure to meet particular goals that are measured (but not in instances of improper utilisation of funds), the regions should address the results of performance checks, analyse the causes of any difficulty and make alterations to programmes as appropriate by reallocation of appropriations or adjustments to the goals. If authorisations and disbursement of funds were linked to meeting targets for selected quantitative indicators, this would create an incentive effect for programme design that would not take due account of the complexity of regional challenges. There is a risk that rapid solutions to problems would be sought that would not comprise long-term development perspectives, ultimately running counter to the goals of strategically focussed regional policy on the spot.
33. The Bundesrat is in principle in favour of incorporating cohesion policy into the new system of macroeconomic management. This should however be achieved through political coordination and fine-tuning processes, rather than by means of financial incentives and conditionalities.
34. The Bundesrat agrees with the Commission that the underlying conditions to ensure efficient and effective support through funding must be in place in all Member States before funding begins. This can be achieved, as has been the case to date, by including provisions to this effect in the fund regulations.

Performance reserve

35. The Bundesrat considers that the instrument of the performance reserve has proven to be unsuitable in the past and that it should not be deployed in the future either. At most a positive incentive for stringent and high-quality implementation of the programmes could be established by according Member States and regions the option of selecting a performance-tied reserve at the level

of the Operational Programmes. Disbursement of this performance reserve could occur on the basis of a mid-term review of the programmes. This approach would strike a balance between an incentive for effective utilisation of funds and planning security in respect of the volume of programme funds actually available. In contrast the Bundesrat is opposed to the introduction of a performance-tied reserve at the European level.

#### Concentration on priorities

36. The Bundesrat supports in principle the concentration of funds on clear priorities. Determining such priorities should however fall within the ambit of a partnership-based process involving the stakeholders in each Member State, the regions and the Commission.
  
37. The Bundesrat is opposed to rigid stipulation of thematic priorities by the European level or even quotas for individual thematic areas. This would destroy the added value offered by cohesion policy, which lies in tailoring regional strategies to precisely respond to regional needs, and would thus reduce funding efficiency. This type of restriction could impede the development and implementation of integrated development strategies in keeping with the specific potentials and needs of the regions. Furthermore, attention must be paid to ensuring that the strategic, substantive requirements for the regions are not formulated too restrictively. Scope must still remain to orient priorities to meet specific regional requirements. This involves taking into account various different types of area, including, inter alia, the urban dimension too. Provision should be made to enable pro rata financing of projects involving several funds or programmes from several Operational Programmes, which would allow for better cooperation between functional areas.

#### Innovative funding instruments

38. The Bundesrat supports in principle the Commission's idea of further reinforcing the use of new funding instruments after 2013 and expanding these to incorporate further topics, with a view to deploying leverage effects, ensuring continued funding beyond the end of the Structural Funds funding periods and increasing sustainability of funding. Future Structural Funds Regulations should comprise incentives to encourage deployment of revolving instruments. These

Regulations should remove existing restrictions on the scope of the funding instruments and should allow the scope of application to be extended beyond topics currently covered to encompass all the Structural Funds' areas of activity.

39. The Bundesrat therefore requests the Federal Government to ensure that in the context of the introduction of new innovative funding instruments the principle of a debt-free EU budget is respected and that no additional burdens arise for the budget. In designing the new instruments it is essential to avoid complicated and costly implementing provisions.
40. The Bundesrat takes the view that the regions acting on the spot should in each instance select the instruments or instrument best suited to the target groups in question. Conversely the Bundesrat is opposed to centrally determined stipulations of themes or centralised instruments governing the utilisation of funding instruments.
41. The Bundesrat draws attention to the fact that legal security for all participants is a vital pre-requisite for successful use of funding instruments and is also essential in ensuring greater private-sector commitment. It is absolutely crucial to have a clear, unambiguous and binding set of rules, which should be significantly simplified compared with grant funding; this should apply both to the entire funding period and for the duration of the revolving fund. A reliable basis for interpretation and practical application of these rules should be agreed between the parties involved. The proposed changes suggested by the Commission for the current funding period would partially conflict with the goals to be attained. A separate reporting obligation and the introduction of a n+2 rule for the monies allocated to the fund would restrict the effectiveness of the proposed funding instruments; the Bundesrat is also opposed to adopting this approach for subsequent funding periods.

#### Convergence Objective

42. The Bundesrat supports the Commission's proposal that the focus should remain on the neediest Member States and regions in the EU when setting priorities for European cohesion policy in order to improve the competitiveness of these countries and regions. In determining the cohesion countries and the regions whose development is lagging behind, the GDP-based threshold values

utilised so far have proved their worth as a demarcating criteria in determining eligibility to receive funding. The Bundesrat also supports limiting appropriations to 2.5 per cent of national GNI.

Phasing-out areas, safety net, intermediate category

43. The Bundesrat welcomes the Commission proposal that regions in which funding under the Convergence Objective is to be phased out should receive transitional support to the tune of two-thirds of the funding currently allocated to them. The substance of this Commission proposal thus responds to an important request raised by the Federal Government and the federal states in eastern Germany, calling for a “safety net”. The Bundesrat advocates that all regions currently funded under the Convergence Objective in which per capita GDP exceeds 75 per cent of the EU-27 average should be covered by this safety net.
44. The Bundesrat does not consider that there is any need to introduce a new intermediate category for regions with per capita GDP between 75 and 90 per cent that have not received support in this funding period under the Convergence Objective. This would run counter to the principle of concentrating funding. All funding should be limited in duration and disbursed on a degressive basis. Regions with particular problems can continue to be supported under the aegis of funding allocated to the Member States for Competitiveness Regions.
45. In addition the ideas put forward by the Commission to date on the arrangements applicable to the transitional support give rise to numerous questions. This is the case in particular for the funding priorities, the areas of intervention, the treatment of state aid, co-financing rates and flexibility in the measures to be adopted. The transitional provisions for regions in which funding under the Convergence Objective is to be phased out should be guided primarily by the funding modalities for the Convergence Objective. In order to ensure lasting mobilisation of existing potential, these “phasing-out areas” will continue to require support from reliable funding instruments providing comprehensive geographical coverage and taking the specific situation of these regions into account. Despite visible progress, considerable efforts are still called for to attain the goal of creating self-supporting economic structures.

Development shortcomings, such as a dearth of R+D capacities, limited integration into international economic cycles, insufficient company equity and continuing high unemployment, will not be overcome by 2013. Reducing funding to the level available for Competitiveness Regions would also jeopardise the positive evolution towards self-supporting economic structures in phasing-out-regions.

46. The Bundesrat doubts that the Commission's intended restriction of the ERDF's funding goals to energy efficiency and renewable energies, fostering SME competitiveness and innovation would provide an adequate response to regional policy requirements in these "phasing-out regions". For example there will continue to be a need for infrastructure investments or support for companies over and above assistance to the SME sector. Implementing complex programmes to support sustainable integrated regional economic development calls for greater flexibility on the spot and is also essential during the transitional period in order to further reinforce the competitiveness of these regions.
47. In the light of tight national budgets, the existing maximum co-financing levels of the EU for the aforementioned phasing-out regions should not be reduced. In these areas the currently applicable basic level of EU co-financing should not fall below 75 per cent in the future.
48. The Bundesrat draws attention to the fact that many "phasing-out areas" are particularly severely affected by the challenges arising from demographic change. This is manifested in a marked drop in population levels, high numbers of people moving out of these areas, in particularly young and highly qualified people, as well as a disproportionate increase in the number of older people. The nature of this demographic development thus constitutes a serious and enduring disadvantage, which should be given particular attention in the context of cohesion policy pursuant to Article 174 TFEU. This should be taken into account in considering options to utilise all the EU funds (ERDF, ESF, EAFRD, EFF). With a view to mitigating this type of disadvantage, Member States should be accorded corresponding possibilities to design measures to respond to these difficulties within the framework of all EU funds (ERDF, ESF, EAFRD, EFF).

49. The Bundesrat acknowledges the great importance of the ESF in getting to grips with the problems that exist in the “phasing out regions”. The Bundesrat therefore believes it would be appropriate to maintain the option of using the ESF for investments in social and human capital in the future. However the Bundesrat is opposed to a centralised quota system for determining the proportion of ESF funds to be deployed for cohesion policy expenditure. The proportion of the fund to be used for this end must be determined based on a strategy devised in the funding areas in the context of programming processes and must to a large extent take account too of the overall level of funds available compared with the current funding period.

### Competitiveness Regions

50. The Bundesrat welcomes the fact that the Commission envisages continuing funding for all regions in Europe including the Competitiveness Regions for the post-2013 period. The Commission thereby recognises that the Competitiveness Regions make an important contribution to achieving the Europe 2020 goals. The integrative approach of cohesion policy, which takes the needs of the various regions into account, is very important for a sustainable innovation and growth policy and constitutes a necessary corollary to purely sectoral European policies. In addition there is also a need to overcome structural weaknesses and disparities in the Competitiveness Regions in order to secure the harmonious development of the EU as a whole. This also encompasses the increasingly important issue of securing qualified labour, which is also of particular relevance in the light of demographic change. Cohesion policy must therefore be continued throughout the EU.

51. For the Competitiveness Regions too the Bundesrat considers that the ERDF funding goals should not be restricted to energy efficiency, renewable energies, promoting SME competitiveness and innovation, as in these areas infrastructure investments and support for companies over and above the SME context will also continue to be necessary. In the Competitiveness Regions too there is a need for greater flexibility on the spot to make an effective contribution to sustainable integrated regional economic development.

52. The Bundesrat advocates maintaining the existing level of EU co-financing of 50 per cent for Competitiveness Regions. Against the backdrop of the difficult



budgetary situation in the Member States this is also an essential pre-requisite for successful support in these regions.

#### Territorial cooperation

53. The Bundesrat welcomes the fact that the Commission envisages continuing to promote and reinforce territorial cooperation. Cooperation in projects and structures across national borders makes an effective contribution to European integration. Fostering cross-border cooperation at all of the EU's internal borders continues to be vital despite all of the successes achieved so far, due to continuing shortcomings and new challenges that are emerging in peripheral areas of each nation. The Bundesrat therefore considers that the three main focuses – cross-border, transnational and interregional cooperation – should be preserved. In addition, this cooperation should continue to be an option within the framework of the Operational Programmes outside the “European territorial cooperation” Objective, as envisaged in the current funding period in Article 37 Sub-sections 6 and 7 of the Regulation comprising general provisions in this respect (Regulation (EU) Nr. 1083/2006)), although the procedures should be simplified.
54. The Bundesrat suggests extending the list of areas included within the perspective of cross-border cooperation, in order to make functional cross-border links a pre-requisite when determining which areas would be eligible as programme areas. The tried-and-tested cooperation areas for transnational cooperation should be maintained and be made more flexible for projects encompassing a number of different areas.

#### ESF, investments in human capital

55. The Bundesrat supports the Commission's approach of making promotion of employment, qualifications, education, and fostering life-long learning the guiding principles for the ESF. In addition a further particularly significant issue is securing qualified labour including ensuring that educational systems continue to be capable of functioning properly, coupled with improvements both to educational systems generally and to school-based social work. The Bundesrat considers that the ESF can also help to combat poverty through these investments, and also in particular by adopting measures to help integrate

disadvantaged groups and minorities within society.

56. The ESF's central focus on improving the quality of human capital complements the increasingly structural policy thrust of the ERDF. As a result the interaction of both funds offers scope to develop integrated solutions to specific problem scenarios. The possibility in the current funding period of also providing funding - within a clearly defined framework – for measures that fall within the policy remit of the ERDF or the ESF from either of the two funds should therefore be maintained and extended.

#### Absorption of funds

57. The Bundesrat emphasises that the basic conditions to ensure efficient and effective funding support should be demonstrated before funding begins. In essence the provisions already comprised in the existing Regulation would suffice to provide such evidence. With a view to avoiding an additional, avoidable burden in administrative terms, these procedures should be optimised, but the essence of this approach should be maintained.
58. The automatic suspension of earmarking of funds in the current funding period, based on what is known as the n+2 rule, which is not applicable to the first programming year, has proved to work well as a general principle and should be maintained, in order to continue contributing to improvements in the financial management of the Operational Programmes. However the Bundesrat considers that in the n+2-provisions there must be a greater emphasis on ensuring that interventions are high-quality and on adopting a programme schedule that more closely reflects practical realities, in particular in the initial phase of the new funding period. A more pronounced focus on the actual time schedule for programmes must be developed, in particular in support for territorial cooperation, due to the complex and sometimes lengthy programming phases involved. Here the current n+3 rule should be maintained for at least the first three years of the programme.

#### Infrastructure facility

59. The Bundesrat takes note of the Commission's proposal to establish an infrastructure facility ("Connecting Europe") within the framework of the

Structural Funds. The Bundesrat agrees with the Commission that modern and high-performance infrastructure networks are an important pre-requisite for a properly functioning Single Market and that there is an enormous need for investment in this respect. The Bundesrat is pleased to note that the Commission is addressing the question of how to create an environment that will encourage private investment in infrastructure development, and is considering developing instruments to attract specialised infrastructure investors.

60. The Bundesrat however feels there is still a need for clarification concerning the concrete details of the Commission's proposal. The Member States and regions should be involved in the decision-making process to select appropriate measures. In this respect the Bundesrat views the Commission list of infrastructure projects to be considered as a provisional enumeration.
61. Subsuming the infrastructure facility within cohesion policy must not have a detrimental effect on the funds allocated for the actual instruments of cohesion policy; these instruments, in keeping with their role as stipulated in the Lisbon Treaty, serve to enhance cohesion within the Union.

## **VI. Other policy areas**

### **Common Agricultural Policy (CAP)**

62. The Bundesrat welcomes the fact that the Commission recognises the key role played by agriculture and forestry in ensuring the survival of the rural economy as part of the EU economy and is also pleased to note that the Commission intends to maintain the existing two-pillar structure of the Common Agricultural Policy.

The Bundesrat therefore welcomes the great importance accorded by the Commission to the Common Agricultural Policy (CAP). The Bundesrat welcomes in particular the continued two-pillar structure of the CAP with a first pillar comprising direct payments to farmers for public goods and market-related measures and with a second pillar providing support to particularly environmentally-friendly farming methods, offering options for coming to terms with the new challenges, enhancing the competitiveness of the

agricultural and forestry sectors and promoting diversification of economic activities and quality of life in rural areas. In addition the Bundesrat welcomes the fact that Member States will still have leeway regionally under the second pillar when it comes to the specific design of the measures to be implemented.

63. The Bundesrat acknowledges the Commission's efforts to focus future payments on the principle of public payments for public goods to a greater extent than in the past, whilst also placing a more pronounced and more specific emphasis on activities that produce socially desirable benefits. In this context the Bundesrat urges however that simple administrative implementation be guaranteed.
64. European agricultural expenditure has an identifiable benefit for society and provides a high degree of European added-value when coupled to benefits generated by activities in the realms of climate change mitigation, environmental protection, conservation and animal welfare, and when such expenditure serves to stabilise agricultural undertakings and hence helps to save jobs and contributes to the development of rural regions ("Public money for public goods"). For all these reasons the agricultural budget must carry sufficient weight.
65. In respect of the proposal to limit aid to active farmers, the Federal Government is requested to ensure that provision is made for straightforward implementation and that part-time farmers are not excluded.

On greater environmental focus for direct payments ("greening")

66. The Bundesrat considers the correct approach, which deserves due consideration, is for direct payments to be made dependent on a "greater environmental focus", over and above cross-compliance requirements, provided that this augments acceptance of the CAP in political circles and in society as a whole and provided that long-term WTO conformity is ensured. It is vital to ensure however that the measures are designed to be straightforward and non-bureaucratic. In addition, the room for manoeuvre in devising regionally differentiated agro-environmental measures in the second pillar must not be jeopardised.

On limitation and convergence of direct payments

67. The Bundesrat considers that with the transition to the next financing period and the planned convergence of direct payments between the Member States, the status quo must be taken into account, the system must not be disrupted as a consequence of applying objective macro-economic criteria, and as a result that direct payments in Germany should not be substantially reduced.
68. The Bundesrat considers that harmonisation of direct payments, taking the current distribution of funding as the point of departure, can, at most, be carried out to a limited extent on the basis of objective criteria that take account of conditions in individual Member States; the process should also be spread over a longer time period. The Bundesrat holds that a significant reduction in the impact of direct payments on farmers' incomes would not be acceptable.
69. In the second pillar of agricultural policy, the Bundesrat advocates strengthening the emphasis and focus on the competitiveness of agriculture and forestry, as well as on environmental goals and the development of rural areas, to ensure that support can be provided for innovative production processes and techniques, environmental protection and climate change mitigation, efficient water management and efficient use of resources, as well as diversification of the economy in rural areas and measures to enhance the competitiveness of agriculture and forestry. The Bundesrat welcomes the idea that rural development should receive additional impetus by coordinating policy in this area more closely with the goals and instruments of the EU Structural Funds, as well as by tapping more effectively into synergies.

Further comments on CAP

70. The Bundesrat also takes the view that in the light of major new challenges the funds allocated for development of rural areas (2nd pillar CAP) must be maintained at least at the same level.
71. The Bundesrat welcomes the introduction of a new special Crisis Reserve for agriculture to the tune of 3.5 billion Euro and is also pleased to see that 4.5 billion Euro is to be made available for research and innovation on food safety, bio-economy and sustainable agriculture.

72. The Bundesrat notes with concern that there is reason to expect that the proposals from the Commission on the future of the CAP would lead to an increase in bureaucratic effort both for farmers and foresters, as well as for the administration. Further simplifications are however urgently needed.

#### On CAP reform

73. The Bundesrat will address the comments made in particular in Part II on the policy area “agriculture and rural development” in connection with the expected legislative proposals for CAP to 2020.

#### Civil protection

74. The Bundesrat welcomes the Commission’s endeavours in the realm of civil protection, as described in Part II of the Communication, which aim to counteract natural catastrophes and catastrophes caused by humans, by systematically developing the Member States’ preparedness and response capacities, with the EU assuming a coordinating role.

The Commission has communicated the following proposals in this context:

- Establishing a European Emergency Response Centre with an extended planning and coordination role at the EU level,
- A recast of the funding instruments for civil protection (Council Decision of 5th. March 2007 - OJ EU L 71 p. 9) with a view to deploying this instrument for European emergency response capacities, in order to attain greater cost efficiency by coordinated provision of civil protection capacities.

The Commission rightly emphasises that the preparedness and response capacities of the Member States need to be documented as accurately as possible and that coordination is required to ensure rapid and effective dispatch of emergency response teams and aid consignments to countries affected by catastrophes. In conjunction with the emphasis on voluntary pooling of resources and plans to offer a broader range of training courses by incorporating prevention issues, this constitutes considerable progress compared with previous Commission proposals.

Nonetheless the Bundesrat notes, in particular following on from its Opinion of

17th. December 2010 on the Commission Communication to the European Parliament and the Council: “Moving towards a stronger European disaster response – the role of civil protection and humanitarian assistance” - BR-Official Document 701/10 (Decision) - that the Commission has not abandoned its strategic considerations, which were appraised in critical terms in the aforementioned Decision.

The Commission’s efforts to strengthen European emergency response capacities by setting up a European Emergency Response Centre with extended planning and coordination functions at the EU level must not entail granting the EU rights of authority or use over Member States’ resources.

The argument of increasing cost-effectiveness must not be used to pursue the aim of according the EU unrestricted access to Member States’ capacities, which would provide a basis for the EU to move into exercising operational competences. The Commission is clearly seeking to establish European Civil protection both within and outside the EU, i.e. with scope for global deployment, which would considerably increase the costs for Member States that must make resources available.

The aim in improving disaster response capacities - in particular in the light of the need for rapid and effective assistance on the spot - must be to enhance response performance, augment Member States’ capacity to help themselves and promote Member States’ own responsibility. Pooling existing disaster response capacities under the leadership of the EU would in contrast render forward-planning national efforts superfluous. As a consequence, endeavours undertaken by the Member States would be replaced by Community measures, rather than the EU acting to support, coordinate and supplement national undertakings – as stipulated in Article 6 sentence 2 point f in combination with Article 2 Sub-section 5 and Article 196 Sub-section 1 sentence 2 point a TFEU.

Any attempt to shift the responsibilities of the Member States to the Community in the long term must be rejected, as should any move towards the EU acquiring operational competences.

75. The Bundesrat draws attention to the fact that civil protection is essentially a task that falls within the responsibilities of Member States and their regional and local tiers of administration, whose powers and responsibilities should not be restricted. The Bundesrat confirms its position that EU support must first and

foremost help those involved to help themselves, with a view to ensuring that the Member States are in a position to cope with catastrophes on the spot. In this context there should be a targeted focus on providing assistance to those Member States repeatedly affected by natural catastrophes, with a view to enhancing their ability to respond more rapidly and effectively to catastrophe situations.

The Bundesrat emphasises that the EU does not have a distinct operational remit in this context and that all plans and measures must therefore be implemented with particular attention to the subsidiarity principle. The Bundesrat supports all endeavours undertaken by the Commission to develop a joint Community concept based on the Lisbon Treaty in order to make provision for prevention, response and for dealing with the consequences of catastrophes.

Extending programmes to promote general and vocational education, mobility and youth, along with culture

76. The Bundesrat agrees with the Commission's assessment that general and vocational education is crucially important for development of the European economy and plays an important role in implementing the goals adopted in the Europe 2020 Strategy. Taking the Europe 2020 Strategy as the guiding principle in designing the education programme therefore underscores its importance and leads to an increased awareness of this approach. At the same time the future education programme should however also be guided by the goals and priorities of the strategic framework for European cooperation in the field of general and vocational education ("ET 2020"). The same holds true for policy pertaining to youth in the light of the Council Resolution on a renewed framework for cooperation on youth policy in Europe.
77. As the current programmes enjoy a high degree of acceptance, both among political decision-makers and with applicants, the Bundesrat takes the view that changes to existing structures are advisable only if such changes improve user-friendliness or genuinely increase the effectiveness of measures. The measures and associated procedures should only be grouped together and simplified in cases in which this does not jeopardise a precise policy fit and ease of utilisation for the various target groups.



78. As the programme for lifelong learning with its sub-programmes Comenius, Leonardo, Erasmus and Grundtvig has, in the Bundesrat's view, proved its worth, the Bundesrat advocates envisaging programme architecture oriented in terms of target groups in the future too (c.f. BR-Official Document 597/10 (Decision)). This would enable continued beneficiary-focused and user-friendly implementation of the programmes, coupled with transparency and continuity of structures. This would allow both administrations and users to draw on valuable experience gleaned during the current funding period, which would considerably augment efficiency. In contrast, the programme architecture proposed by the Commission, with a primarily thematic emphasis, would, in the Bundesrat's view, run the risk of jeopardising the stability attained with the current programme structures. The situation is comparable in the realm of cultural policy, which would not necessarily be properly reflected in a "Creative Europe" programme.
79. In the interest of continuity, the Bundesrat also advocates maintaining the established brand names, such as Comenius, Erasmus, Leonardo and Grundtvig after 2013. Not only does it appear to be unnecessary to rename the programmes, but this would also mean that efforts over the last few years to establish programme names and identifiable brands right across Europe with a view to facilitating user orientation would have been in vain.
80. The Bundesrat is cognizant of the important role played by the Erasmus programme, which has successfully promoted mobility in the university world for over 20 years. At the same time the Bundesrat draws attention to the fact that encouraging transnational exchanges is important not only in the context of Masters degrees but is at least as important for initial university courses qualifying students to enter professions, and that this aspect should be emphasised accordingly.

In the light of the Commission's repeated emphasis on universities and in particular Masters students, the Bundesrat warns against underestimating the importance of mobility for school and vocational education too, as well as in the context of lifelong learning. In particular the Bundesrat considers that participating in mobility measures from an early age is especially efficient, as this also increases willingness to make use of these mobility opportunities in the fields of study and work (c.f. BR-Official Document 591/10 (Decision)). The

Bundesrat therefore welcomes the Commission's announcement that the measures currently supported under the aegis of the Leonardo programmes are to be extended in scope, and advocates providing sufficient funding to promote mobility for school pupils too.

81. The Bundesrat considers that there is an urgent need when restructuring the funding programmes to continue to envisage a distinct youth support programme focussed on specific needs in the area of young people in the EU. In this context the new generation of the EU youth programme should build on the positive basis of the current programme "Youth in Action". A future EU youth programme should be the European instrument to implement the EU youth strategy adopted by the Council. It should fulfil the mandate stipulated in the Lisbon Treaty and should promote increased participation of young people in democratic processes in Europe as well as fostering exchanges of young people and skilled workers.
  
82. The Bundesrat agrees with the Commission that one of the chief successes of the current education and youth programmes is the increase in cross-border mobility. The Bundesrat therefore has great reservations about the Commission's announcement that the focus in the new education programme will not be solely on fostering cross-border mobility, but also on granting political support for collecting data on the effectiveness of investments in education and assisting the Member States to implement more effective measures. Given the allocation of competences in respect of educational policy, the Bundesrat takes the view that it would contravene the legal bases in the treaties if the future programmes included goals that aimed to change the education systems in the Member States or to make certain reforms mandatory.

83. The Bundesrat welcomes measures to support the cultural and creative industries. However it advocates focusing on different priorities. Rather than promoting individual branches, efforts should be made in particular to overcome barriers to market and customer access in the “Creative Industry”, which is composed primarily of very small enterprises. Tools particularly suited to achieving this goal include overarching network projects, communication platforms and exchanges, as well as best practice campaigns.

#### Research and development

84. The Bundesrat agrees with the Commission that across the entire EU increased investment in research and development is needed to enable the EU to overcome its innovation deficit vis-à-vis other industrial and emerging economies and to achieve the core goal of the Europe 2020 Strategy, namely investing three per cent of GDP in R+D.

85. The Bundesrat supports the Commission’s proposals to group together European research and innovation programmes into a joint strategy for research and innovation (“Horizon 2020”), in order to make progress with the European research area on the basis of a coherent approach. The Bundesrat welcomes the fact that the Commission is also seeking through this approach to achieve harmonisation and simplification of EU research funding, which is urgently needed. The simplification must facilitate access to funding for universities, research institutions and in particular SMES.

86. Focusing EU research funding in three blocks, as proposed by the Commission, namely excellence of the science base, managing societal challenges, as well as market leadership and competitiveness, would ensure the priority topics for future research funding are covered. In this context it is particularly important to address challenges pertaining to efficient use of resources and climate change policy, along with tackling SME-specific problems.

87. The Bundesrat draws attention to its Opinion on the Green Paper “From challenges to opportunities: Moving towards a common strategic framework for EU research and innovation funding”, which provides a detailed response to the Commission’s research policy plans (BR-Official Document 86/11 (Decision)). The Bundesrat reiterates that efforts to maintain Europe’s competitiveness must be stepped up. The development of a common strategic framework for research, innovation and technological development offers scope to reshape existing funding programmes to render these more efficient. In particular the Bundesrat welcomes the Commission’s clear statement of support for focusing on excellence irrespective of geographical location.
88. The Bundesrat supports the emphasis on basic research in the first of the three blocks addressed by the Commission (excellence of the science base). The block on challenges facing society as the principal building block in the joint strategic framework for EU research and innovation funding is in essence a continuation of the existing specific programme cooperation, as called for explicitly by the Bundesrat and the Federation as a whole.

#### Environment and climate

89. The Bundesrat welcomes the fact that in the new budget and the associated financial framework the Commission has placed a pronounced emphasis on climate protection and is pleased to see that a significantly increased proportion of measures to promote climate protection and deal with the challenges arising from climate change is envisaged.
90. The Bundesrat also welcomes the Commission’s approach of including energy, environmental and climate policy in all policy areas and is pleased to note that the Commission, in contrast to initial ideas, has decided not to set up a separate fund, as this approach offers a better reflection of the transversal nature of energy, environmental and climate policy and underscores the political importance of climate and energy goals. Structural Funds funding should be deployed in all fields in keeping with environmental policy, whilst also reflecting specific regional requirements and should be designed to contribute to addressing the major challenges facing the EU: climate protection and climate change, as well as competition for resources and scarcity of resources. This also

encompasses investment inter alia in coastal and flood protection as indispensable risk prevention measures, as well as including the goals of sustainable land use and settlement development including recycling of brownfield sites, protection of and efficient use of resources, nature conservation, including preserving biodiversity, as well as measures to maintain and improve water and soil quality, avoidance and abatement of air pollution, and noise protection measures.

91. The Bundesrat welcomes the fact that the EU is resolved to fulfil its international financial commitments relating to climate protection and biodiversity and to assume a pioneering role. However, the Bundesrat takes a critical view of efforts to create a mechanism and/or fund outside the budget to pool contributions from Member States and from the EU budget.
92. The Bundesrat welcomes in principle the measures concerning tourism proposed by the Commission. However, the Bundesrat suggests that these should be complemented by projects relating to tourism and sustainability, as well as projects to develop a range of offers responding to demographic change.

#### External relations/Neighbourhood Policy

93. The Bundesrat welcomes the Commission's endeavours to give clearer definition to the EU's profile in its external relations activities, in particular by establishing priorities relating to human rights and democracy, as well as in respect of responding to global challenges. This reflects the growing global responsibility assumed by the EU in the light of the Lisbon Treaty.
94. Furthermore, the Bundesrat also welcomes the increased integration of measures to promote environmental and climate protection within the framework of the European Neighbourhood Instrument and development aid.

95. The Bundesrat encourages the Commission to make greater use in development cooperation of the strategies and instruments developed and successfully deployed in the field of pre-accession aid.

#### Development policy

96. The Bundesrat supports the Commission's goal of improving the impact of EU development cooperation with the priority goal of improving poverty alleviation. Complementing this, measures to support vegetation programmes in order to slow down or reverse desertification processes are particularly sustainable and should also be supported as a climate protection measure
97. The Bundesrat welcomes the envisaged creation of a Pan-African Instrument to support the joint EU-Africa Strategy, which will concentrate on the clear added value of activities involving several regions and/or the entire continent. However, more precise and specific details of this instrument would be required before the Bundesrat could adopt a definitive position on this point. A positive point that should be emphasised is the Commission's position that this instrument should be flexible enough to absorb contributions from EU Member States, African states, financial institutions and the private sector.
98. In addition the Bundesrat welcomes the proposed creation of a stronger European instrument for human rights and democracy. This should function to support the development of dynamic civil societies and their decisive role in the transition to more democracy and in ensuring protection of human rights. This would make it possible in the future to provide a more adequate response to developments such as those in North Africa.
99. Medium-term incorporation of the European development fund into the EU budget could help make development aid provided by the EU and the Member States more effective.

## **VII. Instruments and implementation**

### Executive Agencies

100. The Bundesrat takes a critical stance in respect of the idea that administrative tasks could be dealt with by the Commission with support from an Executive Agency, as envisaged within the context of the infrastructure facility. The Bundesrat draws attention to the fact that the structure envisaged would be in contradiction with the principle that has applied to date, at least in respect of the administration of Cohesion Fund monies, namely shared administration of funds by the EU and Member States. If the planned Executive Agency were to be established alongside the existing “Trans-European Transport Network Executive Agency”, there would be an overlap in the tasks to be addressed by these two bodies. This kind of duplication of administrative structures would not serve the Commission’s goal of ensuring that administration is as efficient and economical as possible, meaning that it is vitally important to avoid such duplication.
101. The activities of executive agencies in other spheres should also be evaluated. The Bundesrat takes the view that “increasing the EU’s visibility” cannot be the sole criterion for externalising further EU programmes.
102. In this context the Bundesrat reaffirms its view that executive agencies should only be used for EU-wide implementation of community programmes in exceptional cases and if this would lead to pronounced simplification in the administration of such programmes. Putting EU law into practice should as a general rule remain within the purview of individual Member States with their respective administrative tiers and corresponding competences, which is also vital to ensure proximity to citizens. In managing programmes the Commission should therefore cooperate primarily with national contact points and implementing organisations.

Accountability duties, controls, susceptibility to fraud

103. The Bundesrat welcomes the fact that the Commission intends to propose a radical simplification in all areas of the future MFF. The Bundesrat considers that there is an urgent need for considerable simplification, in particular for administrative and control procedures. These simplifications must be much broader in scope than currently envisaged in discussions in the Commission. Unless this type of simplification is implemented successfully, the Bundesrat takes the view that increasing the level of tolerable risk would be absolutely unacceptable. With a view to reducing administrative effort, on-the-spot checks should once again have a more risk-oriented approach in the future and should not be carried out exclusively on the basis of statistical considerations.
104. In addition, the proportionality principle must be taken into account to a much greater extent in the future than has been the case to date. The effort expended on programme design, administration, controls and monitoring must be commensurate with the scope of the programmes and projects. In future, implementation of smaller programmes must involve a considerably lower level of administrative effort than implementation of larger and more complex programmes.

Merging of programmes, joint rules

105. The Bundesrat supports in principle the Commission's approach of programme implementation by merging individual programmes within a common framework with common rules where there is substantive justification for such an approach. Introducing such common rules must make implementation of the individual programmes simpler and more transparent. Tried-and-tested structures and procedures from the current funding period should be maintained
106. The Bundesrat agrees with the Commission's assessment that the procedure for implementation of EU programmes and requirements for control of these programmes have over the years led to a system broadly held to be too complicated; this often acts as a deterrent to participation in programmes or delays their implementation. The Bundesrat therefore notes with interest the



concrete proposals announced by the Commission on simplifying utilisation of EU funds.

107. The Bundesrat draws attention to the fact that the Commission should not postpone examination of scope for simplification until after proposals are circulated but should include this consideration when devising sector-specific proposals.

Reducing administrative expenditure and staff numbers, status of officials

108. The Bundesrat is pleased to see that the Commission intends to continue simplifying and rationalising administration of the EU's organs, agencies and bodies in order to transform the EU into a modern, efficient and dynamic organisation in keeping with the Europe 2020 goals, and welcomes the proposed five per cent reduction in staff numbers and the proposal to keep the share of administrative expenditure within the Financial Framework to a minimum. However the Bundesrat notes that the proposal on the Financial Framework, contrary to these stated intentions, envisages a four per cent increase in real terms for administrative expenditure, and calls on the Commission, in the light of the pressure on Member States' budgets, to identify further scope for savings in administrative expenditure.

**VIII. Time frame for adoption, greatest possible respect for the Opinion, direct transmission**

109. The Bundesrat advocates expeditious negotiations to agree upon the MFF to ensure that preparations for the new period can be completed in a timely fashion, allowing the new EU programmes to begin without any delays.
110. The Bundesrat requests the Federal Government to show the greatest possible respect for Points 74 and 75 of this Opinion in establishing its negotiating position as stipulated in § 5 Sub-section 2 sentence 1 Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG), as the proposal pertains to civil protection, and would thus primarily affect the legislative powers of the German federal states (*Länder*).
111. The Bundesrat shall transmit this Opinion directly to the Commission.