

07.11.14

Decision 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 implementation (EU transparency register)

In its 927th session on 7th November 2014 the Bundesrat adopted the appended Resolution.

Anlage

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 implementation (EU transparency register)

I.

1. The Bundesrat notes that the transparency register established in 2011 by the Commission und European Parliament is replaced by the "Agreement between the European Parliament and European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and implementation" (recast), which entered into force 20 days after the date of its publication in the Official Journal of the European Union (Item 38 of the Agreement).
2. The Bundesrat recognises the transparency register as a joint instrument of the Commission and the European Parliament, which is intended to contribute to European-level recording and monitoring of the activities of representatives from various interest groups positioned outside the European legislative process.

3. However, the Bundesrat views the extension of scope with a critical eye for a number of reasons; the extension of scope now undertaken for the first time encompasses "regional authorities and their representations" - in the Federal Republic of Germany this would be the German federal states, the *Länder* -, which to date have been expressly excluded from the scope of the register.
4. The Bundesrat emphasises that extension of the scope of application must not lead in the long term to regional authorities and their representatives being equated with business or civil-society lobby groups. The Bundesrat notes that regional authorities and their representatives are not expected to register but may do so if they wish. The Bundesrat nevertheless underlines that this provision must not lead to regional authorities and their representatives being de facto obliged to register when the Agreement is put into practice.

II.

5. The Bundesrat therefore identifies extension of the scope of application to regions and their representation offices as standing in contradiction to the guarantees provided by the EU and its organs pursuant to Article 4, Sub-section 2, TEU on securing the Member States' national structures.
6. The Bundesrat emphatically draws attention to Article 4, Sub-section 2, TEU. Pursuant to its provisions, the European Union shall respect the national identity of the Member States, which is expressed in their fundamental political and constitutional structures including local and regional self-administration. In the Federal Republic of Germany these "constitutional structures" are synonymous with constitutional identity; the essential and inviolable content of such identity is derived from Article 23, Sub-section 1, Sentence 3 in combination with Article 79, Sub-section 3, Basic Law.
7. The Bundesrat emphasises that Article 79, Sub-section 3, 2nd alternative, Basic Law provides for a fundamental guarantee of the German federal states' participation in the legislative process. This also encompasses the right of the German federal states to participate in matters pertaining to the European Union pursuant to Article 23, Sub-section 4, Basic Law, in as much as these entail a shift in competences which constrains the Federation's legislative powers, and

hence such participation counterbalances the ensuing constriction of the federal states' participation in the legislative process within the Federation.

8. The Bundesrat therefore emphatically draws attention to the fact that pursuant to Article 70, Sub-section 1, Basic Law, the federal states in Germany are responsible for legislation in those areas that do not fall within the exclusive legislative competence of the Federation and for which the Federation has not availed itself of its competences within the framework of what is known as concurrent legislation.
9. The Bundesrat underscores that pursuant to Article 23, Sub-sections 6 and 7; Basic Law in combination with the Act on Cooperation of the Federation and Federal States in Matters Pertaining to the European Union (EUZBLG), exercise of the rights of the Federal Republic of Germany as a Member State of the EU may be transferred by the Federation to a representative of the federal states designated by the Bundesrat – when the German federal states' exclusive legislative competences in the policy areas of school education, culture or broadcasting are primarily affected. This constitutes a form of compensation for the transfer of legislative competences of the German federal states to the European level.
10. The Bundesrat therefore emphatically draws attention to the fact that the German federal states are themselves part of the European legislative process.
11. The Bundesrat emphasises that in addition the German federal states fulfil further state tasks. Pursuant to Article 83, Basic Law, the federal states implement federal legislation in their own right. This also includes legislation based on provisions in European legislation.
12. The Bundesrat highlights the fact that the German federal states are active players in the European institutional structure: they participate in the Committee of the Regions (COR), whose rights within the European legislative process were reinforced by the Treaty of Lisbon. For example Article 8, Sub-section 2 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality for the first time accords the COR the right to initiate proceedings on non-compliance with the subsidiarity principle before the ECJ against any draft legislation on which the COR must be heard. Impeding

participation of the regions – and thus of the German federal states – in the EU legislative process via the circuitous route of the transparency register would run contrary to the intention of the Treaty of Lisbon, namely to bring the European legislative process closer to citizens by strengthening the COR.

13. The Bundesrat therefore takes the view that including the German federal states in the scope of application of the transparency register constitutes a violation of the boundaries stipulated in Article 4, Sub-section 2, TEU and contradicts the principles laid out in Section I, Number 2, whereby the operation of the register must respect the general principles of European Union law, which include Article 4, Sub-section 2, TEU.

III.

14. Against this backdrop, the Bundesrat finds it extremely regrettable that the existing exemption from the scope of application has been altered and expects that the German federal states will be treated in keeping with their institutional role in implementation of the Inter-institutional Agreement on the Transparency Register.
15. In addition, the Bundesrat calls for those regions and their representation offices that fulfil state functions and whose continued existence is part of the national identity of the Member State in question in the meaning of Article 4, Sub-section 2, TEU, to be removed again from the register's scope of application in the course of the reworking of the Inter-institutional Agreement on the Transparency Register, which is scheduled for 2017.
16. The Bundesrat requests the Commission and the European Parliament not to adopt any initiatives that would tend to encourage mandatory registration of regional authorities and their representation offices.

IV.

17. The Bundesrat further requests the Commission and the European Parliament to examine whether the above comments can also be applied, analogously, to provisions stipulating that authorities at the sub-national level, for example local and municipal authorities or towns or their representation offices,

associations or networks, which are also expected to register, and whether it is thus possible that these authorities also be removed from the scope of application for the register.

18. In this context the Bundesrat expressly regrets that the aforementioned authorities at the sub-national level are expected to register, with non-compliance giving rise to penalties.
19. The Bundesrat draws attention in this context to the particular importance of the local authority level within the Federal Republic of Germany's federal structure. Towns, local authorities and rural districts fulfil a considerable portion of the sovereign duties of the state within the Federal Republic of Germany.
20. The Bundesrat emphasises that local authorities and associations of local authorities in Germany are the pillars underpinning self-administration (Article 28, Sub-section 2, Basic Law). In this capacity they are however not groupings of private individuals, but instead are sub-divisions of the federal states endowed with particular constitutional rights, even if they are split-off from the federal states' administrative hierarchies; local authorities and associations of local authorities in Germany are therefore part of state authority in the meaning of Article 1, Sub-section 3 and Article 20, Sub-section 3, Basic Law. Their legislative activity also falls within the sphere of the public administration (c.f. Federal Constitutional Court ruling/BVerfGE 83, 37 [54]). The purpose of the transparency register would therefore be germane, if at all, only to the activities of municipal undertakings with their own legal personality.
21. In the Bundesrat's view, the legal status of local authorities and associations of local authorities in the institutional structure precludes assimilating them to business and civil-society lobby groups. Many of the legal requirements cited in Section II, Numbers 5 to 13 can be transposed, at least analogously, to local authorities.

V.

22. The Bundesrat requests the Federal Government to act as a vigorous advocate of the objectives of this Resolution at the European level.

VI.

23. The Bundesrat will forward this Resolution directly to the Commission.

24. The Bundesrat will forward this Resolution directly to the European Parliament.