

12.04.19**Decision**
Of the Bundesrat

Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 2027**COM(2018) 322 final**

In its 976th session on 12th April 2019 the Bundesrat adopted the following Opinion pursuant to §§ 3 and 5, Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG):

General Points

1. In its 969th session on 6th July 2018, the Bundesrat expressed its position on the Communication from the Commission in BR-Official Document 166/18, as well as on the associated draft Regulations and proposed decisions in BR-Official Documents 167/18, 168/18, 169/18 and 245/18 (BR-Official Document 166/18 (Decision)). In subsequent Bundesrat sessions, further Decisions on its position were adopted, pertaining to the sector-specific Regulations and therefore relevant to the next EU Multiannual Financial Framework (MFF). In its 974th session on 15th February 2019, and with reference to BR-Official Documents 167/18 and 227/18, the Bundesrat addressed the European Semester in greater depth, along with the proposed increased emphasis on country-specific recommendations in Structural Funds' programming (BR-Official Document 167/18 (Decision)). In the light of the course taken by negotiations and with reference to what is termed the negotiation box (Council Doc. 14759/18), the Bundesrat is now expressing its position on certain topics currently under dis-

*) First Bundesrat Decision of 6th July 2018, BR-Official Document 166/18 (Decision)
Second Bundesrat Decision of 15th February 2019, BR-Official Document 167/18 (Decision)

cussion and wishes to emphasise the issues mentioned below. This is without prejudice to the views expressed in its previous Opinions.

Horizontal Issues

2. The Bundesrat is very concerned about the timetable currently emerging for adoption of the MFF. A smooth transition to the next funding period would again be jeopardised if the MFF were not adopted until some point in 2020. The potential negative impact this could have on speedy, effective implementation of funding programmes, in particular those under shared management, is sufficiently clear from experience with the current funding period. The Bundesrat therefore encourages the Federal Government to review all options to accelerate negotiations. At the same time, the Bundesrat calls for the option of transitional arrangements to be examined in order to ensure that existing funding measures can be continued with appropriate EU participation until the plans and programmes have been approved. Appropriate arrangements should be made in particular for those areas in which a delayed programme launch already appears likely.
3. The Bundesrat views the Council's compromise proposal for implementation of the results from the Mid-term Review in cohesion policy programmes as a first step in the right direction. However, the Bundesrat cautions that the remaining "flexibility sum" of 50 percent of the funding level of the last two years still signifies a significantly higher degree of planning uncertainty than the current performance reserve. Financial resources should therefore be allocated in full to the priority axes at the beginning of the funding period. With a view to reducing the administrative effort and time needed, changes to the programmes should only be required if the Mid-term Review indicates a demonstrable need for changes. Any changes must also be approved by the Commission under an accelerated and simplified procedure. This is particularly important given that there are reasons to fear the programme will have a late start.
4. The Bundesrat again strongly advocates maintaining the n+3 rule for all programmes implemented under shared management. A reduction to n+2 could only be considered if programme implementation were significantly simplified in future to a much greater degree than has been proposed to date and if a speedy and smooth start to the new funding period were assured.

5. With a view to ensuring a smooth transition to the new funding period, the programmes' liquidity in the initial years should also be reduced once again to the level applied in the current funding period. This should be achieved by withdrawing the significant future reduction in pre-financing rates at programme level proposed by the Commission. In this context, the Bundesrat also welcomes the European Parliament's proposal that the envisaged flat-rate disbursement of technical assistance funds should be based not only on payment requests but should also draw on pre-financing payments in 2021 and 2022 in order to ensure the programmes are operational and able to function.

6. The Bundesrat reaffirms its support for efforts to strengthen respect for the rule of law as one of the EU's key fundamental principles. Compliance with the principles of the rule of law is also a prerequisite for sound implementation of funds in shared management. Against the backdrop of existing legal objections to the current draft Regulation on protection of the Union budget in case of generalised deficiencies as regards the rule of law (BR-Official Document 245/18), the Bundesrat suggests working towards a clear demarcation from Article 7 TEU in the instrument's content and legal form. In order to establish a stronger link between deficiencies and the introduction of penalties, the Bundesrat suggests that in defining the conditions that constitute such deficiencies greater emphasis should be placed on combating corruption effectively and on the independence of the judicial authorities in the Member State in question and their willingness to cooperate with the relevant EU authorities, for example with the European Anti-Fraud Office (OLAF). These parameters can serve as yardsticks in appraising judicial independence and respect for the rule of law.

Single Market, Innovation and Digital Policies

Horizon Europe

7. The Bundesrat recognises the efforts made to address the innovation and participation gap within Europe. However, the Bundesrat emphatically reiterates that cohesion in the field of research and innovation cannot be a criterion of the Horizon Europe programme, for excellence must instead be at the forefront in this context.

8. The Bundesrat draws attention to the clear focus needed in calls for proposals and funding to ensure complementarity between programmes as stipulated in Heading I and thus to ensure that European funding for research and innovation is efficient and effective. The Bundesrat considers that further clarifications are required with regard to the synergies formulated at various points to ensure that such synergies can be shaped efficiently.

InvestEU

9. The Bundesrat points out that the hurdles to direct access via the Commission must not be set too high for regional development banks under InvestEU. The Bundesrat welcomes the withdrawal of the proposed three-Member-State criterion. At the same time, it calls for reference to be made to the regions as well as to Member States.
10. The Bundesrat also calls for indirect access to EU guarantees to be maintained as a supplement to direct access, as is currently possible via the European Investment Fund (EIF) or the European Investment Bank. The important option of indirect EIF access must not be undermined by the shift of the funding programmes InnovFin and COSME, currently offered indirectly via the EIF, into what is called the “development bank window” (direct access).

Cohesion and Values

11. Against the backdrop of continuing and in some cases even growing economic disparities between the Member States and regions and the ensuing pronounced political fault-lines, the Bundesrat supports the European Parliament’s call for a significant increase in the cohesion policy budget compared with the Commission proposal. The Bundesrat reiterates its call to avoid reducing the proportion of the EU budget allocated to cohesion policy compared with the current MFF (BR-Official Document 166/18 (Decision)).

European Social Fund Plus (ESF+)

12. The Bundesrat emphasises the fundamental role played by ESF+ in cohesion policy and implementation of the social rights pillar. The Bundesrat also underlines that ESF+ is of substantial importance for strengthening social cohesion and Europe's competitiveness. Its added value is obvious: ESF+ complements standard national funding support if the latter cannot meet needs due to lack of a legal basis or for other reasons, if funding does not reach target groups or if comprehensive coverage cannot be provided by such standard national funding. In this context, the Federal Government and the federal states can react comparatively flexibly and offer people and businesses appropriate support that would not be available without ESF+.

European Regional Development Fund (ERDF) and ESF+

13. The Bundesrat takes the view that raising the upper threshold for the transition regions category is a suitable measure to respond to the particular challenges faced by regions with per-capita gross domestic product close to the EU average. In addition, the Bundesrat also supports the Commission's proposal to include migration and climate change as indicators within the framework of the so-called Berlin formula. The Bundesrat requests the Federal Government to continue to advocate vigorously in negotiations for retention of these Commission proposals.
14. However, the Bundesrat is resolutely opposed to the disproportionately large reduction in cohesion policy funding for Germany compared with that foreseen for other European countries. This is likely to lead to disproportionate funding losses in particular for German transition regions. This would run counter to the aspiration to strengthen economic and social convergence between regions. The Bundesrat therefore urges the Federal Government during the negotiations at EU level to advocate solutions that would diminish funding reductions for the federal states, also compared with the status quo.
15. In the light of the disproportionately large funding cuts for Germany and in particular for German transition regions, the Bundesrat reiterates its demand that specific demographic problems facing the regions concerned —i.e. declining

labour force potential and the ensuing diminished innovative capacity and productivity—be taken into account when allocating funds,

16. The Bundesrat is opposed to any pre-determined allocation of cohesion funds between ERDF and ESF+. The Bundesrat is of the opinion that it is not expedient to pre-empt the decision on allocation and thus on endowment of the individual funds, as this would significantly limit programming leeway in the regions. In addition, pre-determination would thwart the objective of greater funding flexibility. The Bundesrat therefore calls on the Federal Government to advocate extensive scope for the Member States to transfer the funds allocated under the cohesion policy envelope between ERDF and ESF+.
17. The Bundesrat maintains its opposition to the Commission's planned reduction in EU co-financing rates and is pleased to note that a critical view of this reduction has also been taken by the European Parliament, which advocates a significant increase in the proposed rates to 50 percent in more developed regions and 65 percent in transition regions. An abrupt decline in EU co-financing would place considerable strain on budgets, especially in regions where Structural Fund support accounts for a significant proportion of public investment. Due to the greater need for federal state funds, increased pre-commitments in the federal states' budgets lead to restrictions on budget legislators' room for manoeuvre and, at worst, to a decrease in the investment rate.
18. In addition, for all regions covered in the current programming period by the special scheme provided for in Article 120(3)(c) of Regulation (EU) 1303/2013 of 17th December 2013 laying down common provisions on the European Funds, the Bundesrat calls for the reduction in EU co-financing rates not to exceed 10 percentage points. The EU co-financing rate for these regions should accordingly be at least 70 %.

In Germany, this concerns all transition regions as well as the more developed Leipzig region. Unless provisions along these lines are adopted, these regions would have to cope with a particularly drastic decrease in EU co-financing rates.

INTERREG

19. The Bundesrat welcomes the European Parliament's proposal to maintain funding for the Interreg programmes in the 2021 to 2027 MFF at the same level as in the current funding period and requests the Federal Government to support this position in the Council negotiations.
20. The Bundesrat reaffirms its call for current Interreg architecture to be retained and for programme areas with land and sea borders to be defined, particularly in the context of cross-border cooperation. This demand is also in line with the position adopted by the European Parliament.
21. In addition, the Bundesrat also criticises the method for allocating funds to the "European Territorial Cooperation" objective and is opposed to across-the-board stipulation of a 25-kilometre limit as a criterion for calculating the share of funding allocated.
22. The Bundesrat views the European Parliament's proposal to increase EU co-financing rates for Interreg programmes by 10 percentage points compared to the Commission's proposal (to a maximum of 80 percent) as a step in the right direction. Co-financing rates should be handled flexibly, with scope to set these rates as a function of requirements in the various programme areas.
23. Furthermore, the Bundesrat also calls for component 5 ("interregional innovation investments") to be taken out of the Interreg architecture, while keeping the funds entirely within Interreg, and for other financing options to be found that better reflect this instrument's investment-oriented nature. Interreg funds, which are already scant, should under no circumstances be further reduced.
24. The Bundesrat takes a positive view of the proposed strategic thrust for the Interreg programmes (component 2), entailing linking content and ex-ante coordination with macro-regional strategies. The Bundesrat likewise affirms that there is also a justification for Interreg programmes that do not have any connection to maritime or macro-regional strategies. In this context, the Bundesrat calls for the total sum to be programmed for macro-regional strategy objectives in the

case of transnational programmes that encompass the entire territory covered by a macro-regional strategy.

25. The Bundesrat also supports the European Parliament's call to also allow public or private bodies with or without legal personality to be beneficiaries of the Small Project Fund.

Economic and Monetary Union

26. The Bundesrat takes note of the European Council's plans to develop a budgetary instrument to foster convergence and competitiveness in the Eurozone ("Eurozone budget") on the basis of the relevant Commission proposal and on a voluntary basis for Member States in the Exchange Rate Mechanism II. It stresses that integration of this budgetary instrument into the MFF must not take place at the expense of other policy areas within the MFF.

Natural Resources and the Environment

Common Agricultural Policy (CAP)

27. In view of the current state of play in negotiations, the Bundesrat urges the Federal Government to press for greater priority to be given to the environment and climate in the reformed agricultural policy than has been the case to date, and to urge that assistance be provided for the transition to a sustainable agricultural sector and for development of dynamic rural areas.
28. The Bundesrat reiterates its criticism of the disproportionate reduction in the second pillar of the CAP. This runs counter to past and future efforts to create equitable living conditions, strengthen environmental protection and nature conservation and achieve climate and resource-related goals. The Bundesrat underlines the importance of ensuring financing by the new CAP for the national objective of expanding organic farming to 20 per cent of the area farmed.
29. The Bundesrat reaffirms that the Member States need adequate leeway in implementing the objective of more balanced distribution of direct payments to farmers in order to take sufficient account of agricultural structural diversity and employment relations in rural areas (BR-Official Document 246/18 (Decision)). Determining the funding ceiling and deciding on degressive payments or redistribution of direct payments in the light of the upper limits established must

remain within the remit of the Member States or regions. Rules on degressive payments and capping, including provisions to take account of the labour force, must be optional for the Member States. The instrument used to date, whereby additional funding is provided for the first hectares, supports small and medium-sized enterprises. Such provisions should not give rise to disproportionate redistribution between the federal states.

30. The Bundesrat calls on the Federal Government to press strongly in the negotiations for retention of the options envisaged in the Commission proposal for reallocating funds between the pillars and, in the case of Germany, to prepare the necessary prerequisites for suitable reallocation to the second pillar while striking the requisite balance between CAP objectives directed to agriculture, strengthening of vibrant rural areas as well as ambitious environmental and climate goals.
31. The Bundesrat is pleased to note that the negotiations appear to be leaning towards reintroducing the category of transition regions within the framework of the European Agricultural Fund for Rural Development (EAFRD) when setting EU co-financing rates. (BR-Official Document 166/18 (Decision)).
32. However, the Bundesrat reaffirms its general opposition to dwindling EU co-financing rates for the second pillar of the CAP, as providing the national share would place an excessive strain on many regions, thus making funding via EAFRD unattractive for many regions.
33. The Bundesrat stresses once again that the new national strategy planning/implementation structures in the CAP must not result in a loss of regional scope for action. It is also vital to ensure that cross-fund approaches with funding from EAFRD, ERDF and ESF+ remain possible and that no additional regulatory or bureaucratic obstacles are placed in the way of regional cooperation between these funds, even with the proposed spin-off of EAFRD from the Common Provisions Regulation it currently shares with the Structural Funds.

34. In view of the likely delay in a decision concerning the relevant CAP provisions that is becoming apparent, which will also lead to a late start to the funding period, the Bundesrat calls, in addition to maintenance of the n+3 rule for the CAP, for a transitional regulation to ensure that existing funding measures can continue to be approved with appropriate EU participation until the CAP strategy plans are approved.

European Maritime and Fisheries Fund (EMFF)

35. The fisheries sector in particular will be affected by the economic impact of the United Kingdom's withdrawal from the EU. The Bundesrat therefore reaffirms that the EMFF's contribution to the central objective of improving the competitiveness of fisheries and the fishing industry, including aquaculture, must not be set too low. The Bundesrat therefore reiterates its call to also enable funding of new buildings in maritime areas and fleet segments where there is already a balanced relationship between fleet size and fishing opportunities.

Security and Defence

36. In addition to combating terrorism, radicalisation, and serious and organised crime, the Bundesrat calls for greater emphasis to be placed on combating cybercrime from the "security and defence" perspective, in particular in the light of the inherently cross-border nature of the majority of such crimes.