

08.10.21

Decision of the Bundesrat

Communication from the Commission to the European Parliament and the Council: Shaping the Conference on the Future of Europe COM(2020) 27 final

In its 1009th session held on 8 October 2021, the Bundesrat adopted the following Opinion pursuant to sections 3 and 5 of the Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG):

1. The Bundesrat welcomes the discussions taking place throughout Europe in the context of the Conference on the Future of Europe. The Conference gives citizens the opportunity to voice their recommendations for the future of Europe in a dialogue-based format. In addition, the Bundesrat highlights the opportunity created by the Conference to strengthen the effective participation of the regional level and national parliaments in the European political decision-making process. It welcomes the fact that the Bundesrat is represented by two of its members in the plenary session of the Conference.
2. The Bundesrat reiterates its demand made in its Opinion of 13 March 2020 (BR Official Document 37/20 (Decision)) that the Conference on the Future of Europe should also address the institutional conditions under which the current challenges can be met.

Against this background, it welcomes the debate triggered by the Conference on strengthening the democratic foundations and processes of the EU, which includes a discussion on the future development of the institutional framework.

*) First decision of the Bundesrat of 13 March 2020, Official Document 37/20 (Decision)

3. Referring to its aforementioned Opinion of 13 March 2020, the Bundesrat reiterates its right to participate in EU affairs, which is constitutionally enshrined in article 23 of the Basic Law (*Grundgesetz*). Questions concerning the future development of the EU also directly affect the federal states (*Länder*), which discharge their responsibility for integration through the Bundesrat. This is not limited to a mere control function, but also includes an articulation and decision-making function. As a result, federal structures – where they exist – must be a central focal point and must be taken into account to an adequate degree in the context of future planning by the actors involved within the European multi-level system. Against this background, the Federal Government is requested to notify and involve the Bundesrat in accordance with the provisions of the Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG), in particular when laying down the position of the Federal Government.
4. The Bundesrat commends the Commission's cooperation with the national parliaments and/or their respective chambers in the form of a political dialogue that allows the national parliaments and/or their respective chambers to issue opinions on all legislative and non-legislative initiatives of the Commission. The Bundesrat draws attention to its regular high levels of participation in political dialogue and welcomes considerations by the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) to further develop the political dialogue.
5. The Bundesrat considers the “green card” discussed in the context of COSAC to be a suitable instrument for involving national parliaments more actively in the European legislative process and thus strengthening its democratic legitimacy. The “green card” would enable national parliaments to submit proposals for European legislative initiatives or to call for the revision, amendment or repeal of existing legislation without encroaching on the Commission's right of initiative. The Bundesrat considers it necessary, for purposes of proposals of legislative initiatives brought by national parliaments – which are in the EU interest – to provide for appropriate quorums for the submission of “green cards”.

6. In addition to the further development of political dialogue, the existing options for exercising control on the part of national parliaments should also be considered in the debate on the future of Europe. The Bundesrat draws attention to the importance of a consistent respect of the principle of subsidiarity to support an effective interaction between the EU and the Member States in the multi-level system and reiterates its call for an extension of the deadline for the submission of reasoned opinions (cf. BR Official Documents 37/20 (Decision) and 554/18 (Decision)) in order to facilitate the national parliaments' exercise of their role as "guardians" of the principle of subsidiarity.

7. Furthermore, the Bundesrat is in favour of the Commission considering the positions of the national parliaments in more depth. It calls on the Commission to put into practice and make active use of its intention to reply to reasoned opinions issued by national parliaments even in cases in which they have not reached the quorum for a "yellow card" but where similar concerns have been expressed by a significant number of national parliaments (cf. BR Official Document 554/18 (Decision)). In the ongoing debate on the further development of the institutional framework, the extension of the Commission's obligation to state reasons and further approaches for a more efficient structuring of the subsidiarity procedure and its enshrinement in primary law should also be examined.

8. The Bundesrat also refers to the cooperation of national parliaments with the European Parliament in the control of Europol, which is enshrined in the second subparagraph of article 88(2) of the Treaty on the Functioning of the European Union (TFEU). It welcomes the fact that the recent reform of the European Union Agency for Criminal Judicial Cooperation (Eurojust) has made a joint evaluation of the Agency possible through the cooperation of the European Parliament and national parliaments. The Bundesrat highlights the particular importance of the participation of national parliaments in the control of Europol and the evaluation of Eurojust as already laid down in the third subparagraph of article 85(1) TFEU given that their activities in the field of law enforcement affect a core area of Member State sovereignty.

9. This applies, by analogy, to the activities of the European Border and Coast Guard Agency (Frontex) whose competences were significantly expanded and extended to include its own executive powers on the ground by Regulation (EU) 2019/1896, which entered into force in 2019. Against this background, the Bundesrat is in favour of controlling Frontex's activities through a joint parliamentary structure of national parliaments and the European Parliament.
10. The Bundesrat points to the enormous efforts being made on the part of the EU and in the Member States to deal with the COVID-19 pandemic. Among the measures taken at EU level, the recovery and resilience facility is a crucial instrument. The special importance of the regional level in the implementation of reforms and investments should be taken into account by the urgent recommendation of the EU legislator to involve regional and local authorities in the preparation of draft recovery and resilience plans.
11. It again notes with regret that the *Länder* were not effectively involved in the drafting of the German recovery and resilience plan and that the regional perspective of the far-reaching economic transformation processes was therefore only reflected to a limited extent (cf. Opinion of 5 March 2021 (BR Official Document 106/21 (Decision))). It also points out that, throughout the EU, regional and local authorities are only inadequately involved in the preparation and implementation of national recovery and resilience plans. Furthermore, the Bundesrat supports considerations in the course of COSAC to actively involve national parliaments at an early stage in future decision-making processes on investment and reform priorities.
12. The Bundesrat acknowledges the Commission's efforts to take the impact in the application of EU law into account more systematically as part of a better lawmaking process. The Network of Regional Hubs (RegHub) set up by the European Committee of the Regions plays an important role in this respect; it consults local and regional authorities involved on their experiences in the practical application of EU law and feeds the results of these consultations back to the Fit for Future Platform on better lawmaking. The Bundesrat expects the results of the RegHub consultations to be taken into account in any amendments of existing legal acts and in new legislative initiatives.

It also calls for the Commission to better assess and present any relevant impact of legislative initiatives on the local and regional level (cf. BR Official Document 554/18 (Decision)).

13. The Bundesrat calls for all stakeholders – especially citizens – to actively participate in the EU Future Conference and to use the available multilingual digital platform for this purpose.
14. It also asks the members of the plenary assembly of the Conference on the Future of Europe appointed by it to be guided by this Decision in their conduct of negotiations in the plenary assembly.
15. The Bundesrat will transmit this Opinion directly to the Commission and the European Parliament.