

19.10.18

## **Decision** of the Bundesrat

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**Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument**

**COM (2018) 375 final; Council doc. 9511/18**

In its 971st session on 19th October 2018 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 Comments

1. The Bundesrat is pleased to note that, after tabling proposals for the Multiannual Financial Framework (MFF), the Commission has presented proposals for legal provisions promptly for the new post-2020 funding period, in particular the draft Common Provisions Regulation for various shared management funds. In the interest of effective preparation and a timely start to the new funding period, the Bundesrat expects negotiations to be brought to a swift and successful conclusion.
2. The Bundesrat calls on the Federal Government to work towards reaching agreement, despite the divergent starting positions, on the overall MFF package before elections to the European Parliament in 2019. This is the only way to ensure cohesion policy provisions are adopted in a timely manner and ensure legal security for the forthcoming funding period.

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3. The Bundesrat regards the Commission proposal for this Regulation as a basis for discussion in the forthcoming negotiations between the EU institutions.
4. The Bundesrat confirms the statements on cohesion policy made in its Opinions on the Commission Communication “Mid-term Review/Revision of the 2014 to 2020 Multiannual Financial Framework - An EU budget focused on results” (BR-Official Document 521/16 (Decision) of 16th December 2016), on the Commission Reflection Paper on the Future of EU Finances (BR-Official Document 543/17 (Decision) of 15th December 2017), on the Commission Communication “A Modern Budget for a Union that Protects, Empowers and Defends – The 2021 to 2027 Multiannual Financial Framework” (BR-Official Document 166/18 (Decision) of 6th July 2018) and on the joint Opinion of the Federal Government and the Federal States on EU Cohesion Policy of 20th June 2017.
5. The Bundesrat points out that, pursuant to Article 174 TFEU, European cohesion policy makes an essential contribution to strengthening economic, social and territorial cohesion in the Union. It is recognised as the EU’s most important investment policy with an especially high degree of European added value. Its particular advantage lies in shared management of the programmes, which enables the regions to address their specific challenges in a targeted manner. The Bundesrat therefore welcomes the intended continuing implementation of cohesion policy in all regions of Europe in the future.

### Simplification

6. The Bundesrat welcomes the streamlining, for the 2021 to 2027 funding period, of the Common Provisions Regulation and its individual articles compared with the current 2014 to 2020 funding period.
7. The Bundesrat notes that the new regulatory content is comparable to the currently applicable provisions. Concrete stipulations will no longer be detailed as extensively as in the past. The Bundesrat expects that the more streamlined provisions will be easier to handle in practice thanks to their improved clarity. Questions of interpretation and the associated recommendations, guidance and guidelines, as well as delegated acts, must not give rise to an increased workload in practice. In this context, the Bundesrat notes that it is envisaged that a greater number of provisions and questions will be regulated in the Annexes to the Common Provisions Regulation in future. The Bundesrat requests that the

number of additional documents over and above the Regulation and its Annexes be limited to the absolute minimum required.

8. In the Bundesrat's view, the draft Common Provisions Regulation for the Structural Funds only partly contributes to ensuring simplification and greater flexibility in use of the funds.
9. The Bundesrat welcomes in principle the procedural simplifications proposed by the Commission.

Recommendations from the High-Level Group on Simplification for the Structural Funds have been incorporated in many places, as have proposals from the Federation/Federal states "Regulation" Working Group.

Nevertheless, the Bundesrat notes that the Commission's proposals increase the administrative burden by introducing new procedures elsewhere.

In particular, the effort required on the part of local applicants must be reduced in order to increase acceptance of EU programmes again.

10. The Bundesrat draws attention to the fact that the draft still needs further improvements in the forthcoming negotiations in order to ensure optimum use of funding in the regions with effective administrative effort.

The Bundesrat proposes improvements to optimise the system.

11. The Bundesrat calls on the Federal Government to take steps to ensure that only amendments that lead to further simplifications and greater clarity are adopted in the course of the legislative process.
12. The Bundesrat urges continuing streamlining of the standards apparatus in the case of delegated acts too in order to avoid the confusing plethora of regulations found in the current funding period. The Bundesrat points out that such streamlining must be maintained as a principle for any guidelines that may be adopted, even if not legally binding.
13. The Bundesrat emphasises that the right to adopt essential provisions must be reserved to the European Parliament and the Council.

The Bundesrat welcomes the inclusion in the draft Regulation of a large number of specific provisions that were only made available subsequently by means of delegated acts in the current funding period.

In addition, the Bundesrat also welcomes the proposed reduction in the number of powers delegated to the Commission to adopt delegated and implementing acts, as well as the decision to incorporate more provisions than hitherto directly into the annexes of the draft Regulation. The number and scope of delegated powers must remain as limited as possible, also to ensure—in contrast to the current funding period—that the legal provisions applicable are stipulated as comprehensively as possible at the start of the funding period.

14. The Bundesrat therefore calls on the Commission to be restrained in its use of the instrument of delegated acts. The practice in the current funding period of making substantial subsequent changes by means of delegated acts to the content of the Regulations and accompanying information in the annexes has led to a great deal of additional work for the managing authorities and to great uncertainty among beneficiaries. In addition, delegated legal acts must not apply retroactively, as this significantly limits planning certainty for the responsible authorities and for beneficiaries.

#### Funding Levels and Orientation of EU Funding

15. The Bundesrat welcomes the modernisation and recognition of cohesion policy as an important pillar of investment policy in all regions and acknowledges that funding is restricted to efficient programmes with EU added value, on the one hand in order to achieve the necessary savings and, on the other hand, to finance the EU's new tasks in the areas of security, migration and global competitiveness.
16. The European Regional Development Fund (ERDF) and the European Social Fund (ESF) are already making significant contributions to the EU's priorities in the current funding period, in particular when it comes to innovation and research, education and employment, CO<sub>2</sub> reduction and social integration and inclusion. These funds have the great advantage of operating on the spot in the regions and municipalities. They make Europe and European priorities and objectives directly visible to the general public. In addition, over and above the cohesion policy context, this also applies to the European Agricultural Fund for Rural Development (EAFRD). In view of the considerable European added value of cohesion policy, the Bundesrat therefore continues to call for maintenance of the share of funding allocated to cohesion policy in the EU budget and for

continued participation in cohesion policy of all EU regions.

17. In this context the Bundesrat emphasises the special role played by transition and more developed regions as a driving force for innovation and growth for the EU as a whole. It is precisely these regions that make a decisive contribution to increasing EU-wide competitiveness and strengthening European value-creation chains. At the same time, transition and more developed regions in particular need support to face ongoing structural challenges.

#### Funding for Germany

18. The Bundesrat is aware of the budgetary tensions that arise due to lower revenues occasioned by the United Kingdom's withdrawal from the EU and additional expenditure arising from new tasks addressed by the EU, which have been reflected in funding cuts for cohesion policy. Nevertheless, the Bundesrat regrets that the draft Regulation provides for a planned reduction of more than 20 per cent in real terms for Germany and points out that such major cuts in the budget would signify substantial restructuring of the current funding landscape. In the past, structurally weak regions with lower available capacity in particular have benefited decisively from European Structural Funds' funding. The Bundesrat finds it regrettable that significant funding reductions are also planned specifically for European Territorial Cooperation. In the negotiations on the MFF the Federal Government is therefore requested to advocate continued effective funding for Germany and its federal states.
19. The draft Regulation contains only the budget proposed by the Commission for Germany with reference to the ERDF and ESF+ in conjunction. However, it is currently not clear how funds will be divided between ERDF and ESF+ nationally and which areas will be categorized as transition regions or as competitiveness regions nationally. The Commission should ensure clarity here as soon as possible, as this is necessary as a basis for initiating further negotiation and planning steps.

20. The Bundesrat welcomes the increase in the upper threshold for transition regions, which is understood as a reaction to the special challenges identified in the 7th Cohesion Report for regions with a GDP per capita close to the EU average. However, the Bundesrat also calls for a corresponding increase in the funds earmarked for the transition regions to take account of the increased number of such regions. In addition, the Bundesrat calls for the safety net that is intended to limit de facto losses of Union support for the Member States to be applied to the resources allocated to the individual regions too. The existing safety net at Member State level is considered inadequate because of the great diversity of the regions in the Member States.
21. The Federal Government is requested to ensure that the design adopted for future EU finances and the EU Structural Funds does not lead to reallocations of funding that have a detrimental impact on the federal states' budgets. In addition to the level of funding, this also primarily concerns the effects of changes to national co-financing rates.

The Bundesrat also calls on the Federal Government to offset the financial impact on the federal states' budgets of the planned funding levels and co-financing rates. In this respect, the Bundesrat expects in particular measures to enable greater financial linkage between EU and Federation funding will be made possible, especially in the areas of GRW (Joint Federal/Federal States Task for the Improvement of Regional Economic Structures) and urban development support, and that appropriate additional funding will be made available to provide national co-financing.

### Allocation of Funds

22. The Bundesrat takes a critical view of the uniform annual allocation of the budget for the Structural Funds in the 2021 to 2027 MFF. Annual increases would be preferable to respond appropriately to overlaps with the outgoing funding period and the programmes' start-up phase.
23. The Bundesrat acknowledges the Commission's aspiration to respond appropriately to current challenges, such as unemployment, climate change and integration of refugees. This must not, however, complicate the system for allocating funds.

24. The Bundesrat welcomes in principle the fact that the so-called Berlin formula for funding allocation and relative GDP per capita are to be retained as the most important criteria for providing funding in the context of cohesion policy. In the current funding period, relative GDP per capita has proved to be an objective and reliable indicator.
25. The Bundesrat notes that the calculation basis proposed in Article 102 of the draft Regulation differs from that proposed in the ERDF Regulation. GNI is proposed instead of GDP as the yardstick for thematic concentration. The Bundesrat regards parallel use of GDP and GNI as problematic and proposes that only one of these variables be utilised in the allocation keys.
26. The Bundesrat welcomes the proposal to take account of additional criteria, such as climate change (reduction of greenhouse gas emissions), unemployment and reception and integration of refugees, in future allocation of funds. The calculation methods in particular should be reviewed.
27. With regard to the other indicators, the Bundesrat stresses that these should only have an influence on allocation of funding if their effect is not already indirectly reflected in GDP per capita as an indicator of economic strength. Against this background, the Bundesrat considers, with regard to the indicators proposed by the Commission for the “Berlin formula”; that reception and integration of refugees as well as decarbonisation are particularly interesting approaches that relate to long-term challenges facing the EU as a whole. The other indicators proposed by the Commission, in particular the youth unemployment indicator, cannot be distinguished to a comparable degree from the main GDP-per-capita indicator.
28. The Bundesrat suggests that specific demographic problems, namely ageing of the population and in particular of the working-age population, should be taken into account as additional indicators in the “Berlin formula”. Population ageing and the ensuing fall in the share of the population that is of working age constitutes a serious demographic disadvantage that has a massive negative impact on the regions’ innovative capacity and thus on their competitiveness and economic performance in the medium and long term. In this connection, the Bundesrat also recalls that addressing demographic disadvantages in cohesion policy is a legal concept that is enshrined in primary law.

### Legal Framework and Programming

29. The Bundesrat welcomes the combination of the Common Provisions Regulation for the various Structural Funds (ERDF, ESF, Cohesion Fund, EMFF, AMIF, Internal Security Fund and Border Management and Visa Instrument) with a specific ERDF Regulation. The Bundesrat also welcomes the focus on regional relevance and priorities.
30. The Bundesrat welcomes the proposed cohesion policy objectives, which will make regions more sustainable and enable all regions to build on and make the most of their potential. However, decisions on intervention priorities should be left to the regions and the Member States, which are best placed to consolidate their strengths and compensate for their weaknesses.
31. The Bundesrat is opposed to the idea that thematic priorities should be defined at national rather than regional level in future. Economic, ecological and social challenges as well as the legal framework conditions differ so markedly in some cases across large federal or regionally organised Member States that uniform national priorities do not appear to make sense.
32. The Bundesrat welcomes the objective of reducing the disparities in the regions' developmental status. Special priority should be given to rural areas, areas affected by industrial change and areas with severe and permanent natural and demographic disadvantages.
33. The Bundesrat welcomes the strategic thrust of the five policy objectives (PO) contained in the draft Common Provisions Regulation. However, the Bundesrat emphasises that PO 1 must be clarified to take account of the aspect of sustainable development or sustainable growth.

The Bundesrat supports the Funds' focus on the central principle of sustainable development, the objective of preserving and protecting the environment and improving its quality, with a particular emphasis on the polluter-pays principle.

34. The Bundesrat welcomes the formulation of the five POs as strategic guidelines in the draft Regulation. While providing the necessary guidance for investments, these objectives also offer the regions an opportunity to address structural policy needs identified at the regional level with ERDF funding. In the Bun-



desrat's view, however, it will be important to ensure during negotiations on the partnership agreements and the operational programmes (OPs) that the Commission input on design of these does not restrict the necessary scope for identifying concrete needs. In particular, the "investment guidelines" announced by the Commission must not undermine the political objectives, including scope to establish priorities at the regional level, that have been legitimised by the Parliament and the Council through the Regulation.

35. The Bundesrat underscores the particular structural importance of creating and maintaining jobs in companies, especially small and medium-sized enterprises (SMEs). The way in which this is achieved should be decided solely by the companies. For this reason, the Bundesrat is very concerned that PO 1 could also be restricted to promoting innovation in the case of SME investment support. Instead of promoting jobs, bureaucratic questions of defining and examining each project's specific degree of innovation would come to the fore. Particularly in structurally weaker areas, there would be a risk that support provided to companies from the Structural Funds, in particular ERDF, would de facto cease. These areas are frequently characterised by successful, often traditional medium-sized enterprises, which are able to hold their own on the market with very different business models and to create jobs. The EU must continue to support them in future., it should therefore be made clear in the Regulation and with reference to the areas of intervention that SME funding aimed at boosting job security and job creation can continue to be provided for SMEs.
- 36 The Bundesrat is opposed to the decision not to exempt the types of intervention (intervention categories) and the indicative breakdown of the planned resources by type of intervention or area of support from the requirement of approval by the Commission as is the case for the 2014-2020 programming period. That means that a formal programme amendment will be necessary if the choice of intervention categories changes as the programme progresses. To date, only Monitoring Committee involvement was required. This change to the procedure envisaged is not a simplification.

#### Strategic Approach and Performance Monitoring

37. The Bundesrat welcomes the clear and transparent methodology envisaged for preparation of the performance framework. However, the Bundesrat points out that the way in which the methodology is applied to each specific Operational Programme must remain a matter for the region in question, which must retain scope to take its own decision, and that this must not result in disproportionate-

ly demanding documentation requirements.

38. The Bundesrat notes that the planned structure for the performance framework is more extensive and complicated than in the current funding period.

The Bundesrat is opposed to the stricter provisions concerning the performance framework. This greater strictness can be seen in that the milestones are to be attained earlier and that the performance framework comprises all output and result indicators rather than simply a selection of these indicators.

39. In this context, the Bundesrat takes a critical view of the intention to base the milestones for the mid-term evaluation in 2024 only on output indicators achieved, whereas the target values at the end of the programme period are to be based on output and result indicators achieved. This is not in line with Article 15 of the draft ESF+ Regulation (BR-Official Document 237/18).

40. The Bundesrat fears that the more stringent performance monitoring will create an incentive to select funding measures that are as low-risk as possible. In the Bundesrat's view, this would run counter to the intention to focus particularly on innovation funding or new organisational forms.

41. The Bundesrat points out that the extension of the catalogue of common indicators must not lead to de facto abolition of programme-specific indicators. It should be possible to use these indicators whenever they are more suitable for a measure. The Bundesrat is opposed to any requirement to use less suitable common indicators.

42. In the Bundesrat's view, the "enabling conditions" must be limited to subject-matter with a direct link to Structural Funds funding. However, in this context too the concrete stipulations must not go beyond what is necessary for administration of the Structural Funds, where this link is required. Here too only compliance with the applicable law can be imposed for funding from the Structural Funds; the way in which compliance is ensured is a matter for the Member State and cannot be determined centrally.

43. The Bundesrat takes the view that the proposal on enabling conditions does not comply with this limit in the areas of state aid and public procurement law. In the Bundesrat's view, ensuring, for example, that pursuant to state aid law no enterprises in difficulty are funded does not require "permanently updated information" which, given the definition of enterprises in difficulty, could in any

event not cover all cases anyway, but instead requires careful examination of each individual case. The proposed provisions for public procurement law, such as maintenance of a “single IT system”, cannot be implemented in a state with a federal system or could only be implemented with completely disproportionate effort. The system requirements, which the Bundesrat considers to be unnecessary and, in some cases, unrealistic, must therefore be deleted.

44. The Bundesrat stresses that the shaping of the general conditions pursuant to state aid legislation must not thwart cohesion policy objectives. In view of the Commission’s announcement, the Bundesrat calls for substantial simplifications and streamlining of the rules on state aid. In addition, EU regional funding legislation should not, as a matter of principle, stand in the way of measures by the Member States to help reduce internal disparities in economic development, as convergence in economic development, in keeping with cohesion policy principles, of eastern and western German federal states remains far from complete.
45. The Bundesrat calls for additional state aid exemptions, in particular for projects implemented under shared management, whereby programme measures would be automatically exempt from European state aid legislation once a programme has been approved. Otherwise, there is reason to fear that the key elements of cohesion policy would be curtailed by EU provisions on state aid. Approaches to date to revising EU state aid legislation are not sufficient to dispel these concerns.
46. The Bundesrat takes an essentially positive view of the plans for regional innovation strategies for use of ERDF funds to again become an “enabling condition” throughout Europe. This will enable ERDF funds to have a greater impact. However, the Bundesrat recalls that regional innovation strategy must be shaped solely by the regions and not by the Commission, with due respect for the subsidiarity principle.
47. The Bundesrat takes a critical view of new monitoring obligations with regard to “enabling conditions”. Compared to the ex-ante conditionalities in the current funding period, this considerably increases bureaucracy, which runs counter to the objective of simplification.

#### Flexibility

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48. The Bundesrat welcomes the proposed synergies between projects from different programmes, thus creating links to CAP, LIFE and “Erasmus+”, “Invest-EU” and “Horizon Europe”. The details of the procedure must be clarified.

49. The Bundesrat welcomes the newly created possibility of transferring 5 % of appropriations between funds. In the light of efforts to achieve greater flexibility, a higher percentage would be even more effective. However, the Bundesrat takes a critical view of scope to merely transfer funds unilaterally out of the Structural Funds, for example to ERASMUS.

The Bundesrat calls for the rules for the proposed option of combining resources from the Cohesion Fund, the ERDF and ESF+ to be specified and clarified.

50. The Bundesrat welcomes the increased flexibility of “minor reprogramming”, in as much as resources can be redeployed to a limited extent between priority axes during the programming period without formal programme amendment procedures. Regions can thus react more quickly to developments, which also benefits programme progress and improves the OP’s overall performance. For these reasons, the Bundesrat believes that the scope of this simplified option for reallocation of funds should be increased.

51. In connection with the intended simplification, the Bundesrat queries the stipulations on financial programme planning for the period 2021 to 2025, which provide, inter alia, that financial planning for the remaining two years of the funding period must be submitted for approval for all programmes—irrespective of whether or not changes result from the mid-term review. This would give rise to inestimable additional effort and would temporarily bring programme implementation to a standstill.

52. The Bundesrat is opposed to the mid-term review with compulsory programme modifications in 2025 and thus to the introduction of “five plus two funding”. This constellation would exclude funding for multi-year projects after a certain period of time. The Bundesrat calls for this provision in its current wording to be deleted. As a general rule, it should be possible to commit funds for the entire 2021 to 2027 funding period and there should be no reprogramming obligation.

The managing authorities continuously review implementation status and possible new investment priorities and thus react to adjustment needs in a timely manner with programme changes. The Bundesrat considers rigid timetables to be unproductive, as they are not tailored to individual programmes and tend to hinder rather than foster programme adaptation.

53. The Bundesrat is particularly concerned that an amendment application for OPs must be submitted for the mid-term evaluation by 31st March 2025. This effectively shortens stabilising planning security for the entire funding period to five years. As a consequence, the seven-year funding period is divided into a five-year and a two-year funding period. Based on experience of all previous funding periods, the residual two-year period is too short for strategically oriented implementation. In addition, there is a risk that new programmes cannot be implemented effectively in the short residual two-year period. Mandatory programme modifications in 2025 would therefore result in a split into two sub-periods and would make it more difficult to promote long-term investment projects that play an important structural policy role. In view of the necessary preliminary planning phase, it will be impossible to implement such projects in the remaining period after 2025. The Bundesrat thus insists that programme planning should continue to cover seven years and should only have to be re-submitted to the Commission for approval in the event of programme changes.
54. The Bundesrat prefers the existing more flexible options for amending OPs—without a fixed timeframe being established—and suggests that the conditions for such options should be grounded in socio-economic imperatives and performance aspects.
55. The Bundesrat is opposed to the Commission's proposal that 2026 and 2027 funding should only be allocated to the priorities on the basis of the mid-term review. This provision significantly reduces planning security for all parties involved. The Bundesrat considers that it would not be possible to approve long-term funding projects, at least in 2024 and 2025, if this provision were implemented, which would considerably impair overall programme implementation. In addition, this provision generates a focus on low-innovation, short-term funding projects. The Bundesrat therefore calls for financial resources for all years to be allocated to the priorities from the outset in the course of programme planning.

56. In this context, the Bundesrat criticises in particular the fact that three out of four of the factors that are decisive for the mid-term review are not within the sphere of influence of the managing authorities (e.g. the Country-specific Recommendations and the Commission's investment guidelines). Furthermore, the Bundesrat is concerned that OPs may lose Structural Funds funding at the mid-term review despite achieving all the objectives of the performance framework, solely because of the exogenous "technical adjustment" factor, which cannot be controlled by the managing authorities.

### Territorial Instruments

57. The Bundesrat welcomes the integrated territorial development approach.
58. The Bundesrat also welcomes the Commission's approach of increasing flexibility in programming of territorial measures, including sustainable urban development measures. The formulation of a dedicated PO 5 (a Europe closer to citizens by fostering the sustainable and integrated development of urban, rural and coastal areas and local initiatives) with an open thematic orientation is one building block in achieving this.
59. The Bundesrat hopes that inclusion of the objective of a Europe closer to citizens, which is intended in particular to promote socio-economic local development in urban and rural areas, will provide a more flexible framework for integrated approaches to urban and city/hinterland development (BR Official Document 543/17 (Decision)). In order for these approaches to be effectively implemented and adapted to region-specific needs, they must be accessible for the objectives of all funds and must not be hampered by narrow thematic targets or additional indicators.
60. The Bundesrat considers the planned funding level for European Territorial Cooperation (ETC) to be inadequate—also against the backdrop of the repeatedly emphasised notion of European added value. In particular, the reasons for the drastic reduction of funds for cross-border cooperation ("Component 1") and the discontinuation of the Interreg Europe programme are unclear. Changes to the ETC architecture must not be detrimental to cross-border cooperation.
61. The Bundesrat welcomes the proposal that utilisation of the ITI (integrated territorial investments) and CLLD ("community-led local development") instruments is to remain voluntary.

However, the Bundesrat considers that a risk arises from these proposals of introducing an obligation “through the back door” to use ITI. The requirements relating to “other territorial tools” are practically identical to those for the ITI, except for the question of whether financing is provided by one or more funds. This weakens the new category of “other territorial tools” and undermines its role, which could lie in openness towards regionally and locally established sustainable urban development structures. The EU’s programme specifications must be flexible enough to meet the requirements of the respective geographical areas. In particular, the Bundesrat takes a critical view of the proposal that there should also be a mandatory role for local actors in project selection, unless the project list is already part of a territorial strategy.

62. Furthermore, in the Bundesrat’s view, the proposed requirements relating to use of funds for sustainable urban development are also too rigid and complex. The preconditions need to be made more flexible so that the full potential of integrated measures can also be utilised and to ensure that an indirect de facto obligation to use ITI and CLLD does not emerge.
63. In the Bundesrat’s view, it must be possible to implement territorial measures in all PO 1 to 5 irrespective of the form of territorial strategy selected. There must therefore be scope to deploy an “other territorial tool” for all policy objectives. This becomes all the more broadly relevant if measures are to be bundled into a single strategy across all axes. Similarly, it must be possible to evaluate such measures as a contribution to sustainable urban development for all policy objectives.
64. The Bundesrat stresses that a broad spatial definition of urban development is vital. It must also take account of the specific needs of small and medium-sized cities and the complex functional interdependencies between cities and the less densely populated hinterland surrounding them.
65. The Bundesrat welcomes the strengthening of the European Urban Initiative through allocation of a certain amount of the resources to it and calls for clarification of the concept of “a certain amount of the resources”.

#### Technical Assistance

66. The Bundesrat welcomes the proposal that funds for technical assistance be reimbursed at a flat rate for each programme in the interests of simplification.

In the Bundesrat's view, the proposed flat-rate payment still raises implementation issues concerning the accounts, but the Bundesrat in principle welcomes this proposal. It is important that sufficient liquid funds to meet demand for technical assistance are also available at the beginning of the funding period.

The Commission's proposal envisages that technical assistance should in future be entered into the accounts exclusively as a flat-rate sum. The Bundesrat does not consider this approach to be productive. Technical assistance expenditure is particularly high in the early years of a funding period. The first payment applications are at a fairly low level during this period.

Consequently, only small pro rata amounts are reimbursed for technical assistance. The Bundesrat proposes that in addition to the flat-rate variant a further variant be introduced, enabling actual values for technical assistance to be entered in the accounting.

67. However, flat-rate financing should not be tied to payment applications but to the annual tranches in order to avoid liquidity problems. The Bundesrat considers that there is no justification for reducing the ERDF reimbursement rate from 4 to 2.5 per cent, especially for programmes with a relatively small financial volume, as despite the planned simplifications the administrative burden is not reduced sufficiently to offset the reductions envisaged for technical assistance. The previous figure of 4 percent should be maintained.

#### Monitoring, Evaluation, Communication and Visibility

68. The Bundesrat welcomes the deletion of the annual implementation reports. Abolishing the implementation reports and the associated shortening of the deadline for data transmission (31.1. of the following year) is exactly the right way to ensure much more timely data transmission. However, this facilitation is considerably diminished by the planned reporting obligations to the Monitoring Committee and the Commission for the annual review meeting.
69. In the light of a number of simplifications for reporting to the Commission, the high frequency of data transmission with six reporting dates per year is surprising. That would be around 40 reports per period. The Bundesrat is opposed to the planned six-fold transmission of electronic data per year due to the increased effort involved. In addition, further reporting obligations are envisaged in the context of preparations for the annual meetings.



This would set in motion a continuous machinery of indicator verification, which would result in a considerable increase in bureaucracy for the administration and also for the beneficiaries.

This reporting frequency does not offer any added value but is instead formalised bureaucratisation, since there is no reason to believe there would be any particular steering effect as a result of the large number of reports. The Bundesrat considers that two reporting dates per year would be appropriate, including preparation of managing authorities' annual meeting with the Commission.

70. The Bundesrat calls for reports to collect not only quantitative data as proposed, but also for coordinated methods to demonstrate the necessary qualitative results to be identified and communicated. In particular, methods for measuring indicators, such as CO<sub>2</sub> emissions reduction in the case of upgrading measures or increased sustainability, must be coordinated by the Commission so that measurements can be standardised, to ensure that results are comparable and comprehensible.<sup>1</sup>
71. In view of the very small number of cases concerned, the Bundesrat is opposed to the proposed obligation to adjust indicator values to take account of multiple inclusion of individual companies. The increased information that could thus be provided would be disproportionate to the high cost of an appropriate review system.
72. The Bundesrat points out that the planned publication requirement for all documents made available to the Monitoring Committee would also include minutes of Monitoring Committee meetings. Publishing such minutes on the Internet would make open discussion at meetings more difficult. The obligation to publish documents following meetings should therefore be limited to publication of the decisions taken.
73. The Bundesrat considers the annual duty of the Monitoring Committee to exam-

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<sup>1</sup> There are objectives in the current period that cannot be verified by uniform indicators, for example CO<sub>2</sub> reduction in the case of upgrading measures. Unfortunately, neither the Commission nor the managing authority has announced a coordinated methodology for measuring this objective uniformly. Nevertheless, this criterion is considered to be the most important for monitoring achievement of objectives in Axis 3. A uniform and coordinated method is essential to obtain comparable and comprehensible results.

ine the “contribution of the programme to tackling the challenges identified in the relevant Country-specific Recommendations” to be disproportionate. This would require more extensive, regular studies, for example by an external evaluator, which would, however, only provide limited information concerning the programme’s actual success.

74. The Bundesrat acknowledges the enormous importance of comprehensive publicity measures for the Structural Funds, and the important role played by beneficiaries in this context. However, the requirements for beneficiaries should be limited to an acceptable level.

Article 44, Sub-section 6 of the draft Regulation provides for a royalty-free, non-exclusive and irrevocable licence to be granted to the Commission for all communication and visibility material produced by the managing authorities and also by beneficiaries. The obligation to grant irrevocable and extremely comprehensive licences for communication material extends far beyond any such acceptable level.

The Bundesrat is not in favour of the comprehensive form of utilisation licence, since utilisation licences for works protected by copyright are usually granted on the basis of an agreement with the creator of the work and for a fee. Authorising full use of works, in particular works produced by beneficiaries, would impinge on the freedom of the creator of the work to dispose of the work as he or she sees fit.

The comprehensive form of the utilisation licence could also discourage potential beneficiaries from applying for Structural Funds funding.

75. The Bundesrat takes a critical view of the financial correction envisaged for infringement of the information and communication provisions to the tune of 5 percent of the project funding from the funds, without any discretionary rights of decision being granted. This would entail disproportionately high administrative and auditing costs for intermediate bodies. The use of repayable financial instruments would place additional burdens on the beneficiaries. Moreover, the obligation to place an A3 advertisement in public cannot be implemented if the beneficiaries are private individuals or self-employed persons or work on a freelance basis without a traditional office or shop etc. In addition, it is not clear for which period the obligation to publicly identify the beneficiary should apply.

## Financial Instruments

76. The Bundesrat is opposed to any general obligation to use financial instruments in the forthcoming funding period. The Bundesrat therefore welcomes the omission of any mandatory requirement or quota for the use of financial instruments. It therefore also commends the Commission's decision not to propose a mandatory minimum scope for financial instruments. A voluntary basis is absolutely crucial to ensure programming is in line with regional needs. Whether funding with financial instruments is appropriate always depends on the individual case. Decisions on the type of financing should be left to the national or regional level to enable decisions on the use of financial instruments based on several specific factors (e.g. type of projects, general economic situation, interest rates).
77. The Bundesrat welcomes the scope for more flexible combinations of financial instruments and grants. It points out, however, that when a financial product is granted with various elements, for example a loan with a repayment subsidy, separate records must not be required for each element of the financial product, as this entails a disproportionate degree of complexity.
78. In the Bundesrat's view, it is sufficient to formulate a corresponding general principle in the Regulation in order to avoid double financing and overfinancing when various forms of financing are combined. Complex provisions on individual constellations should be avoided.
79. The Bundesrat regrets the lack so far of any mention of contracts among the forms in which support from EU funds can be provided pursuant to Article 47 of the draft Regulation (financial assistance, financial instruments or prize money or a combination thereof). In contrast, the basis for reimbursement is explicitly stated to be achievement of results. While disbursement of grants can only be linked to project results in the sense of standard unit costs, a genuine link to results would require a contractual basis.
80. The Bundesrat points out that the durability of the financial instruments is already regulated by the requirement for recycling of reflow funds for eight years after the end of the funding period. In order to avoid unclear duplicated provisions, the financial instruments should therefore continue to be excluded from the general provisions on durability.
81. The Bundesrat considers the restriction of remuneration to performance-related components as remote from market realities and inappropriate, even if there

should be a clear focus on performance-related remuneration. A certain level of basic remuneration should also be possible in future in order to cover the costs of the financial instrument's establishment phase. Administrative costs arising from reflows should in principle also be eligible for reimbursement. With regard to threshold values for basic and performance-related remuneration, financial intermediaries selected by direct award must not be disadvantaged, as otherwise regional development banks and their subsidiaries would be forced out of EU structural funding. These institutions in particular have, however, proved to be very successful and reliable financing partners. The threshold values should be based on provisions in the current funding period.

82. The Bundesrat is of the opinion that the draft Regulation on audits of the financial instruments by the European Investment Bank (EIB), which foresees solely submission of control and audit reports, should also be applicable to all other financial instruments. In the Bundesrat's view, audit work by external auditors already employed on the basis of banking and capital market legal requirements could thus be put to good use in order to avoid time-consuming duplication of work by the managing authorities and the audit authorities in the interests of all parties involved. These authorities could simply check the reports by the external experts for completeness and plausibility. This would significantly increase the attractiveness of participation, for example in an ERDF financial instrument, for financial intermediaries such as fund companies.
83. The Bundesrat points out that the current market situation means that negative interest rates may accrue when funds are invested. The Bundesrat considers that the low interest rates that have persisted for years, even including negative interest rates, must be taken into account in the regulations concerning the financial instruments used within the framework of EU funding. The Bundesrat requests that the rules and regulations be amended accordingly in the event that the low-interest phase continues, and calls for such interest costs to be recognised as eligible expenditure.
84. The Bundesrat is opposed to extending disclosure requirements to final beneficiaries of financial instruments. Fund management responsibility for this area would be an alien activity in the context of a financial intermediary's regular tasks and would entail correspondingly higher management fees. Due to the small number of applications, this appears disproportionate, at least for equity funds.

85. The Bundesrat points out that, in the case of financial instruments under *pari passu* conditions, i.e. in parallel with a market-compliant commitment by private investors, the prohibition on supporting companies in difficulty is neither market-compatible nor appropriate. This prohibition could prevent follow-up financing for a holding company, even if private investors were to advocate such follow-up financing. The Bundesrat therefore calls for an exception to the ban on providing support to companies in difficulty for follow-up investments in financial instruments under *pari passu* conditions. The Bundesrat calls for support for general expenditure by SMEs (investments and operating resources) for growth and employment to be possible too within the framework of the financial instruments.

#### Funding Eligibility

86. The Bundesrat welcomes determination in principle of the eligibility of expenditure on the basis of national rules. This will prevent similar expenditure from being treated differently for national and European funding.

87. The Bundesrat doubts that the proposed rules on the eligibility of VAT serve the purpose of simplification and is opposed to these proposed rules. The Bundesrat is of the opinion that the provisions for the current funding period should be retained, according to which VAT is only eligible if the grant recipient is actually liable to pay VAT. Instead of the proposed provisions in Article 58, Subsection 1, letter c of the draft Regulation on ineligible costs, the Bundesrat therefore recommends returning to the previous rules on eligibility of VAT for reimbursement.

The Bundesrat is opposed to making VAT non-eligible for reimbursement for projects with total costs over 5 million Euro. This would significantly reduce total eligible costs, especially in the case of investments with high costs. This would impose an unreasonable financial burden on the final recipient and could have a negative effect on individual funding areas, such as urban development funding.

88. The Bundesrat assumes that support for tourism infrastructure can be allocated to the Intervention Field 015 “SME business development and internationalisation” in Annex I to the draft Regulation and calls on the Federal Government to address this point accordingly in the negotiations.

89. The Bundesrat welcomes the proposal to extend the use of flat-rate payments to reduce administrative costs. It estimates that use of flat rates will increase. Various upper limits are introduced for flat-rate payments in the funding period 2021 to 2027 that do not require separate substantiation from an EU point of view. The limit for compulsory use of flat-rate payments has been set at 200,000 Euro of total costs, compared with the previous sum of 100,000 Euro for public funding.

The Bundesrat is opposed to the obligation to use simplified cost options (SCO) to the extent proposed for projects not receiving state aid with total costs of up to 200,000 Euro.

Rather, it calls for optional use of these flat rates to ensure flexibility in implementation and offer scope to specify the form of financing or invoicing for each project. In view of the anticipated difficulties with acceptance problems when it comes to implementation of this option, the Bundesrat advocates exempting individual areas from the mandatory flat-rate system.

Experience shows that even smaller measures (e.g. on a de minimis basis) can involve very heterogeneous cases; this makes it considerably more difficult to establish SCOs on a methodologically sound basis that are well-suited to largely homogeneous cost items, such as personnel costs. Investment subsidies (which do not relate to personnel costs) should therefore also be exempted from the ERDF obligation in future. In this context, there is a need to ensure equal treatment with the Cohesion Fund, which the draft Regulation already exempts from this obligation.

90. The Bundesrat welcomes the Commission's concession concerning documentation of personnel costs as a service, thus facilitating the establishment of flat rates for direct personnel expenditure.

With a view to ensuring data are up-to-date, the Bundesrat is opposed to linking eligibility of direct personnel expenditure solely to EUROSTAT data, as proposed in Article 14, Sub-section 4 of the draft ESF+ Regulation. Many Member States have collective agreements that govern remuneration. These national systems likewise provide an adequate basis and scope should be provided to take these into account too.

91. The Bundesrat welcomes the abolition of what is known as the designation procedure. This is an important simplification, since designation led to an enormous administrative burden throughout Europe and to delays in the start of the programme in the current funding period.
92. The Bundesrat supports the introduction of the principle of differentiated treatment, which, under certain conditions, provides for facilitated provisions for OP management and control systems. However, it suggests extending the scope of possible simplifications for programmes with a well-functioning management and control system. The Bundesrat still sees potential to extend this, particularly in the area of audits.
93. The Bundesrat is opposed to the proposed obligation to keep electronic funding files and documents available in the electronic system through which electronic communication takes place. For decentralised ERDF enforcement systems, for example, this could at best be implemented only with system discontinuities and duplication of enforcement structures and immense programming costs. The files are kept in the electronic file systems of the various intermediate bodies, not in the respective fund's database. The Bundesrat doubts that there is any justification in this context for encroaching on the Member States' administrative processes. Access to documents for audits is also ensured at present.
94. The Bundesrat is also opposed to the proposal to introduce compulsory use of electronic funding administration for beneficiaries; it points out that this does not represent a simplification for all beneficiaries. It must be possible for the managing authority to decide whether to adopt this approach for specific measures, for example in the light of existing e-government systems for beneficiaries in comparable national funding programmes.

95. In order to reduce the administrative burden, the Bundesrat considers it imperative that system audits by the audit authority should as a general rule only be mandatory in the event of significant changes to the management and control system, by way of derogation from Articles 71 and 72 of the draft Regulation. In the Bundesrat's view, the audit authorities must be able to exercise their own discretion as auditors in determining whether system audits must be conducted. A minimum sample size of 30 should be sufficient for reliable management and control systems that have already been audited in the past.
96. The Bundesrat welcomes the option for Member States to apply the simplified provisions of Article 77 of the draft Regulation at any time during the programming period if the Commission's published annual activity report for the two years preceding the Member State's decision to apply these Article 77 provisions confirms that the programme's management and control system is operating effectively and that the total error rate for each year is below 2 %.

However, the Bundesrat is in favour of allowing use of the simplified provisions for a total error rate below 5%.

97. The Bundesrat regrets that after having taken the positive step of deleting the designation procedure by national audit authorities, the Commission under Article 64 of the draft Regulation, significantly increases its powers and responsibilities and creates a right for itself to carry out audits on the reliability of management and control systems.
98. The Bundesrat expressly welcomes the Commission's intention to audit each payment only once ("single audit") as a matter of principle, to focus more on the review of regional audit authorities and to introduce differentiated audit rules depending on a programme's error rate. However, the Bundesrat is in favour of reducing the number of exceptions to the "single audit" rule. Moreover, there should not be scope to suspend the planned simplification on a project-related basis.



99. The Bundesrat further considers that the “single audit” approach should be adopted on a broader basis and that the audit authorities should be granted explicit discretionary powers to define the audit strategy for some points. This approach should be extended to include, for example, on-the-spot checks in the context of management audits, which could significantly reduce the burden on the audited party (beneficiary).
100. Furthermore, the Regulation should establish a de minimis threshold allowing an audit authority, within the framework of the audit strategy, to decide that as a general rule there is no need from a risk perspective to audit documentary evidence below that threshold.
101. The Bundesrat welcomes the proposed abolition of the annual summary in the context of financial reporting. The Bundesrat considers that the level of detail to be reviewed by the Commission’s auditors should be limited to checking reasonableness.
102. The Bundesrat stresses that annual presentation of accounts involves a great deal of effort but generates little additional knowledge. In the interest of tangible simplification, the requirement for annual presentation of accounts should be abolished. Analogous to earlier funding periods, a final statement of accounts seems sufficient.

#### Consideration of Country-Specific Recommendations

103. With regard to the Commission’s intention to maintain macroeconomic conditionalities as a condition for eligibility, the Bundesrat reiterates its rejection of macroeconomic conditionalities (see BR Official Document 521/16 (Decision) and BR Official Document 543/17 (Decision)).
104. The Bundesrat notes that the Country-specific Recommendations should play a particular role in linking funding to macroeconomic conditionalities. In future the CSR should form the basis for planning and monitoring and be decisive in programming and funding allocation at the beginning and after the first half of the forthcoming funding period. The Bundesrat is concerned that the link to the Country-specific Recommendations could lead to an overall reorientation of the programme. There are grounds for concern about uncertainties with regard to programme planning for the entire funding period.

105. The Bundesrat cannot see any regional component in the link between cohesion policy and the European Semester. The Commission may suspend payments if the Member State—not the regions—does not take effective action to tackle the challenges of the European Semester. As a result, implementation of Country-specific Recommendations concerns various levels of government. The Bundesrat considers the approach inconsistent and is opposed to it. The Country-specific Recommendations focus more on short-term implementation and scarcely address structural problems tackled by medium- to long-term implementation of the Structural Funds.

106. Furthermore, the Bundesrat is also concerned that increased complexity concerning implementation of Country-specific Recommendations within the framework of cohesion policy would restrict national freedom to shape policy.

### Ex-ante Conditionalities

107. The Bundesrat notes that the ex-ante conditionalities are more comprehensive than in the current funding period. In contrast to the 2014 to 2020 funding period, in which ex-ante conditionalities had to be fulfilled as a prerequisite for provision of funds at the beginning of the funding period, these conditionalities must now be monitored over the entire funding period. Moreover, the new ex-ante conditionalities only coincide on certain points with those in application in the current funding period. The Bundesrat is concerned that the establishment of this monitoring mechanism will lead to an additional administrative burden that will have to be borne by the Member States throughout the entire funding period.

## Implementation

108. The Bundesrat explicitly advocates greater cooperation with other programmes in order to significantly increase the measures' efficiency in future. However, this must not be at the expense of support for SMEs and recently founded companies.
109. The Bundesrat points out that better coordination of funding instruments must be possible without any additional administrative burden. The various funding programmes should offer additional possibilities and better manageability for the beneficiaries and should not make the funding landscape more complex.
110. The Bundesrat welcomes a strong focus on results in all EU policy areas, including cohesion policy. However, the Bundesrat points out that a result-oriented rather than a cost-oriented approach can lead to conflicts between objectives and implementation, particularly in the case of innovative projects, as setting and evaluating ex-ante and ex-post result values is less concrete.
111. The Bundesrat also draws attention to the considerable bureaucratic consequences of what was formerly known as the performance reserve.

The Bundesrat therefore welcomes the abolition of the performance reserve. The Bundesrat is opposed to the "measures linking effectiveness of funds to sound economic governance" that have been introduced to replace the performance reserve in Article 15 of the draft Regulation and which may lead to partial or complete suspension of payments by the Commission.

With regard to the "indicators" which are decisive for determining the performance framework under Chapter II (Article 11 ff. of the draft Regulation), the Bundesrat calls for clarification concerning the following points:

- The envisaged authorisation to adopt further delegated acts to extend the range of data requested, which will give rise to an unquantified administrative burden, should be deleted in its entirety.
- The Regulation expressly allows participants and beneficiaries to no longer record participant data initially on paper for subsequent input into an IT system. There must be explicit authorisation to input the data solely into an IT system without a signature by the participant/beneficiary and without a qualified electronic signature. Explicitly waiving the requirement for "original documents on paper" eliminates the additional effort for the beneficiar-

ies, as well as for the management and audit authorities, of checking the IT data against the original hard copies of the data.

- In the light of data protection laws, it will be difficult to implement the Commission's proposed solution of authorising managing authorities to access data on participants that is already held by public authorities, with a view to reducing administrative burdens; this should therefore be optional.
- The mandatory (random) audit of all indicators by the audit authority should be explicitly deleted.
- An audit of the indicators by the audit authorities should only be conducted if deficiencies were found in the 2014 to 2020 funding phase or if project audits indicate the potential existence of new deficiencies (decision at the audit authorities' professional discretion).

112. The Bundesrat welcomes the Commission's proposals to reduce the administrative burden through synergy effects and to harmonise implementing provisions for the funds. The Bundesrat expressly supports the objective of differentiated implementation through simplified management and control systems for programmes with a positive track record and the option of using existing management and control systems, and in particular supports deletion of the requirement to re-designate existing management authorities

113. However, the Bundesrat takes a critical view of the envisaged provision that a beneficiary shall receive funding at the latest 90 days after submission of the payment application. This entails a risk that funding may be disbursed even if all funding requirements have not yet been conclusively checked, meaning that the funds subsequently need to be reclaimed.

114. The Bundesrat notes that pursuant to Article 11, Sub-section 1 of the draft Regulation receipt of funding is linked to fulfilment of basic conditions. It is unclear whether these are recommendations or "firm criteria". The Bundesrat requests that this point be clarified.

115. The Bundesrat considers that the deadlines for payment claims should not be fixed rigidly and with reference to a cut-off date. It would be preferable to have a more flexible system, for example, specifying a maximum of four payment claims per year, either on a quarterly basis or for any other 3-month period to be stipulated.

116. The Commission proposal provides for a significant reduction in European co-financing rates. The cuts will not be conducted proportionally to the region categories. In the Bundesrat's view, it should be borne in mind that the increased national shares must not overstrain the Member States' capacity. In addition, this provision may lead to problems concerning acceptance if European legislation is to be applied extensively despite lower shares of European funding.

The Bundesrat therefore calls for significantly higher intervention rates to apply and for proportionality to be taken into account when setting such rates.

117. The Bundesrat is opposed to reducing the EU funding rate from the current 50 percent to 40 percent for co-financing for more developed regions. The funding rate for more developed regions should remain at 50 percent. Many reform projects and transformation strategies could no longer be implemented with a reduced funding rate.

More flexible regulations should be possible for the transition regions. As a result, the co-financing rate should be significantly higher than the 55 percent proposed by the Commission.

The Bundesrat is extremely critical of the proposed increase in national co-financing. It points out that the proposed reduction in EU co-financing represents a considerable cut in funding, particularly for the German transition regions and for the regions no longer covered by transition support, and will be difficult for the existing funding systems to absorb. The Bundesrat therefore calls on the Commission to develop fall-back solutions for those regions affected by disproportionate reductions. At the same time, the Bundesrat reiterates that the proposed rigorous requirements for national co-financing in regions with comparatively low funding levels could make funding via the ESI funds generally unattractive.

The Bundesrat is opposed to increasing national co-financing to over 50 percent and points out that as a minimum the current share of EU funding must be guaranteed. That is the only way to implement the programmes efficiently and effectively as part of EU cohesion policy with shared responsibility. The proposed reduction of the EU's funding contribution would worsen the cost-benefit ratio and the administrative burden would jeopardise scope for future implementation of an attractive cohesion policy as an important contribution to stabilising regional economies.

118. For many beneficiaries, in particular non-governmental organisations and associations, the stipulation that EU co-financing rates at programme level may not exceed 70 percent for ETC constitutes a virtually insurmountable obstacle. In view of this, the Bundesrat requests the Federal Government to advocate retention of the provisions applicable in the current funding period.

119. The Bundesrat recommends establishing a safety net to limit any increase in national co-financing rates to an appropriate level for the next programming period.

120. The Bundesrat points out that Article 106, Sub-section 3 c of the draft Regulation regulates the co-financing rate for “more developed regions” and not for “less developed regions” (error in the German translation).

121. The Bundesrat calls on the Commission to increase the programmes’ liquidity in the initial years of these programmes. This should be done by increasing the pre-financing rates. The Bundesrat takes a critical view of the envisaged reduction in the pre-financing amounts as this would create a real risk of liquidity bottlenecks for the Member States and regions at the start of the funding period.

The 0.5 per cent per year advance payments for pre-financing proposed in Article 84, Sub-section 2 of the draft Regulation are too low for efficient programme implementation. The advance payments should be considerably higher at least in the initial years and should be based on the rates for the current 2014 to 2020 funding period.

122. The Bundesrat is opposed to reintroduction of the “n+2” rule, as it puts pronounced administrative pressure on programme implementation, particularly during the transition period, and may lead to decommitment of funding for the regions rather than to rapid implementation.

The Bundesrat advocates maintaining the “n+3” rule, which has proved its worth in the current programming period: If the timeframe envisaged in the current “n+3” rule were to be shortened, transferring decommitted funds from the Structural Funds could only be justified if a smooth transition to the next programming period were guaranteed this time and if in addition programme preparation and implementation were considerably simplified. The proposed simplifications should first prove their worth in practice and be evaluated. The Bundesrat considers that it is ill-advised to introduce procedural changes until new procedures have been effectively established.

123. In this context, the Bundesrat recalls that the federal states face a threefold burden: In addition to the proposed funding cuts and reduced EU co-financing rates, there would be foreseeable decommitment of funding. The Bundesrat is concerned that these factors will have a negative impact on structural policy projects in the regions.

124. The Bundesrat also points out that new rules are being proposed with regard to financial participation of third parties that are tantamount to reintroducing the costly and error-prone principle of real costs. As a result, there is a risk that such co-financing could no longer be sufficiently accounted for vis-à-vis the Commission, jeopardising implementation of the funding approaches concerned. The Bundesrat vigorously advocates maintaining the simplifications already achieved.

#### Communication about the Programmes

125. The Bundesrat views the mandatory requirement pursuant to Article 17, Subsection 3, letter i of the draft Regulation to conduct public relations work via social media for every programme as constituting disproportionate additional effort, which would lead to additional staff requirements. In particular, prompt responses would have to be provided to inappropriate contributions from third parties. In addition, a large number of posts would be needed to attract public attention effectively. The Bundesrat therefore advocates that using social media for public relations work should be optional.

#### ESF+

126. The Bundesrat on the whole agrees with the specific objectives of the Commission's draft ESF+ Regulation. However, the Bundesrat proposes clarifying the provisions in order to sharpen the focus and strategic thrust of the ESF strategy.

The Bundesrat calls for a clearer presentation concerning the general and specific objectives that apply to particular types of budgetary implementation. This should make clear that the capacity and resilience of healthcare systems and long-term care should fall under the ESF's health component.

127. Partnerships with the social and economic partners are an important prerequisite for successful ESF implementation. However, the Bundesrat considers that the mandatory capacity-building support for social partners and civil society organisations provided for in Article 8, Sub-section 2 of the draft ESF+ Regulation is too far-reaching. The Bundesrat therefore calls for capacity-building support for these partners to be optional in the future.

In Germany, well-developed and highly evolved structures exist among social partners and civil society organisations, as well as among economic partners, in all regions. All groups are involved effectively in ESF implementation. Against the background of the expected decline in funding, however, it is important to concentrate the increasingly limited funds on the ESF's target groups such as young people, migrants, the long-term unemployed, as well as on job and employee sustainability.

128. The Bundesrat welcomes the reduction in the scope of participant data to be collected. Nevertheless, the Bundesrat views the large volume of sensitive data to be collected pursuant to Annex 1, Sub-section 1b of the draft ESF+ Regulation as very problematic. Experience with ESF implementation shows that participants do not understand at all why such data should be collected. The Bundesrat is opposed to this extended scope, also particularly in the context of the reporting requirements.

129. The Bundesrat has misgivings as whether Article 15, Sub-section 5 of the draft ESF+ Regulation is sufficiently clear and precise to provide an adequate legal basis for the envisaged processing of personal data by Member States, managing authorities and other bodies.

130. With regard to Annex 1, Sub-section 1b of the draft ESF+ Regulation, the Bundesrat points out that the corresponding data for the other common output indicators is not collected centrally in Germany. Furthermore, it is unclear which detailed requirements must be met by the envisaged reasoned estimates by beneficiaries, whether such estimates are reliable and whether the project-executing bodies will be able to implement this provision.

### ESI Funds



131. The Bundesrat views funding from the ESI funds as an important instrument for achieving an ambitious EU contribution to attaining the sustainable development goals (SDGs). Sustainability criteria must therefore be taken into account when drawing up and implementing the programmes in the Member States. A modified sustainability clause should therefore be included both in the new Common Provisions Regulation and in the Regulations governing the individual funds in accordance with current Article 8, Common Provisions Regulation. Ecological as well as social and economic sustainability criteria should be taken into account in order to encompass the entire range of topics covered by the SDGs. Article 67 of the draft Regulation does not seem sufficient, as it does not, for example, address programme preparation.

132. The Bundesrat supports the Commission's approach to ensuring that the ESI funds have the maximum impact. In particular, it welcomes the Commission's critical examination of the relevant data collection obligations and is pleased to note that the draft Regulation also includes proposals for simplification in this respect. The Bundesrat notes, however, that the proposals for "efficiency-oriented project selection" underestimate the complexity of ESI fund implementation. The Bundesrat advocates that the shared goal of effective use of ESI funds should not be pursued through inappropriate formalistic selection approaches that do not support this goal. Conversely, the Bundesrat considers continuous, evaluation-supported and professional monitoring of programme implementation to be most appropriate to achieve continuous improvements in programme implementation.

### Environmental Protection

133. The Bundesrat supports the Commission's proposal to set even more ambitious targets to integrate climate concerns into all EU programmes in order to guarantee an adequate European contribution to implementation of the Paris Climate Agreement and the United Nations' Sustainable Development Goals. The proposal that at least 25 percent of EU spending and at least 30 percent of ERDF funding should contribute to achieving climate goals must however be made operational in subsequent phases of the negotiation process in order to achieve the targeted climate mainstreaming of 320 billion Euro in the 2021 to 2027 MFF. It should be possible to include measures for climate change adaptation within the climate quota.

134. The Bundesrat welcomes the proposal that national energy and climate plans submitted under the Energy Union Governance Regulation should be taken into account in ERDF programme planning. The Bundesrat also welcomes consideration of such plans when allocating funds for investments in low-CO<sub>2</sub> technologies.

135. In addition, the Bundesrat welcomes the planned rapid mobilisation of funds in the event of natural disasters and the resulting improved flexibility in emergency situations.

136. However, the Bundesrat considers it necessary to clarify and, if necessary, revise the criteria for fulfilling the basic conditions for support from the ERDF, ESF+ and the Cohesion Fund. It is not clear whether the criteria listed for each specific objective should be met cumulatively or individually, depending on what is supported. For example, in the case of flood protection measures, appropriate national or regional framework plans drawn up as part of implementation of European legislation should suffice. Against the backdrop of the overarching objective of avoiding over-regulation, the Bundesrat is opposed to an obligation to produce new comprehensive disaster risk management plans.

137. The planned abolition of the threshold values for land acquisition in environmental protection measures is a key factor in ensuring the attractiveness and success of environmental projects, as demonstrated by experience in the current and previous funding periods, and is expressly welcomed. This flexibility should under no circumstances be restricted retrospectively by means of delegated acts in the context of programme development or approval procedures by the European Commission.

#### Further Points

138. The Bundesrat calls on the Federal Government to take the above comments into account in the further deliberations on the draft Regulation at EU level.

139. Reference is also made to the Bundesrat's Opinion of 6th July 2018 on the Commission proposal for the 2021 to 2027 Multiannual Financial Framework (BR-Official Document 166/18 (Decision)).

#### Direct Transmission of the Opinion

140. The Bundesrat shall transmit this Opinion directly to the Commission.