

21.09.18

## **Decision**

**Of the Bundesrat**

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### **Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments**

**COM (2018) 374 final; Council doc. 9536/18**

In its 970th session on 21st September 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):

#### Significance of European Territorial Cooperation

1. The Bundesrat notes that “European Territorial Cooperation” (ETC/Interreg) makes a significant contribution to European integration and cohesion, to promoting good neighbourly relations in Europe and to the EU’s visibility through cooperation on the ground across national borders. In this respect, Interreg contributes significantly to creating a Europe closer to its citizens. The Bundesrat is therefore pleased that the Commission has recognised Interreg’s significant European added value by adopting a separate draft Regulation. Against this background and in view of European policy challenges in securing long-term cohesion in the Union, the Bundesrat calls for Interreg to be strengthened.

2. The Bundesrat welcomes the decision in principle to continue cross-border and transnational cooperation in all regions of Europe, as well as continuing to maintain interregional cooperation support networks.
3. The Bundesrat acknowledges the Commission's efforts to increase codification of ETC rules. At the same time, in addition to a number of authorisations for delegated acts, the draft Regulation still contains numerous references to the new draft Common Provisions Regulation (BR-Official Document 227/18) and the new draft Regulation on the European Regional Development Fund (ERDF, BR-Official Document 228/18). The Bundesrat requests the Federal Government to advocate more comprehensive harmonisation of legislation.
4. The Bundesrat commends the consistent uniform use in the draft Regulation of the designation Interreg instead of the abbreviation ETC, thereby positioning Interreg more clearly as a brand.
5. In this context, the Bundesrat criticises the planned cuts in the area of tried-and-tested and effective cross-border, transnational and interregional cooperation programmes. It calls for the Interreg programmes to be allocated a budget in the 2021 to 2027 Multiannual Financial Framework that at least corresponds to that for the current funding period (see the Bundesrat's Opinion of 6th July 2018, BR-Official Document 166/18 (Decision)).
6. The Bundesrat also sees a need to clarify the method for calculating the allocation of funds. For example, the restructuring of programme areas with maritime borders makes it more difficult to grasp how funding for cross-border and transnational cooperation has developed.
7. The Bundesrat considers the planned level of funding to be inadequate—also against the background of the repeated emphasis on ETC's European added value. In particular, it is not clear why there has been a drastic reduction of funds for cross-border cooperation ("Component 1"). Changes to ETC architecture must not be made at the expense of cross-border and transnational cooperation.
8. The Bundesrat welcomes the Commission's draft Regulations for the European Structural and Investment Funds for the new programming period, which form a sound basis for further negotiations at EU level. It recalls that Interreg must also be provided with reliable and definitive legal bases for programming and

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implementation as well as for e-Cohesion at the start of the new 2021 to 2027 programming period.

9. In principle, the Bundesrat commends the Commission's efforts to take greater account of the multi-state character of the Interreg programmes in the provisions governing managing and control systems and in Interreg implementation. The Bundesrat welcomes the clear priority that the Commission gives to EU law over national law but finds it regrettable that the Commission has not advocated provisions based solely on EU law. As a result, uncertainties in programme implementation remain for the implementing authorities.
10. The Bundesrat appreciates the Commission's efforts to streamline processes and procedures through greater flexibility and simplification and thus to achieve an urgently needed reduction in the administrative burden (for example by simplifying audit and monitoring rules, flat-rate costing). Nevertheless, the Bundesrat considers that more far-reaching approaches are needed to achieve comprehensive simplification in order to reduce the obstacles and administrative burdens for programme managing authorities and beneficiaries.
11. The Bundesrat therefore regards the Interreg draft Regulation as a good basis for the Commission's discussions with the Member States but believes that there is still a need for improvements on key points.

#### Interreg Components

12. The Bundesrat welcomes the intention to continue cross-border, transnational and interregional cooperation programmes as a general rule under Interreg. The emphasis on economic cooperation and innovation must not, however, mean that other important priority areas, which are of considerable significance for the future, particularly in view of growing tensions within the EU, recede into the background. This applies in particular to cooperation projects between citizens, institutions and administrations. The Bundesrat emphasises that there are specific reasons for each programme and calls for tried-and-tested programmes to be maintained as a general rule. The Bundesrat considers that any changes made to the programmes or programme areas must be well-founded and that the German federal states must be involved at an early stage.

13. The Bundesrat points out that the concrete programme areas will only be specified in a Commission delegated act. The Bundesrat requests the Federal Government and the Commission to involve it at an early stage in discussions on the programme areas and calls for the concrete programme areas to be defined in a timely manner.
14. The Bundesrat is opposed to the deletion of “Interreg Europe”. The Bundesrat advocates continuing funding in future too via a separate instrument for interregional cooperation projects that are not solely aimed at promoting innovation investments. Successful project-based cooperation within the framework of the “Interreg Europe” programme has made a particular contribution to convergence across Europe.
15. In the Bundesrat’s view, the whole process of transnational cooperation must remain open to solutions that extend beyond macro-regional approaches. In this context, the Bundesrat vigorously opposes the abolition of tried-and-tested programme areas, such as the “Central Europe” programme area. Abolishing these programme areas would impede or considerably restrict scope for transnational cooperation for some regions due to a lack of functional references to other programme areas.
16. The Bundesrat in principle commends the Commission’s approach of creating an interregional investment instrument to promote pilot testing and commercialisation of interregional innovation and investment projects. Broad application of this instrument presupposes, however, that existing partnerships are also open to new participants and that promotion is not concentrated solely on such existing partnerships.
17. The Bundesrat takes a critical view of the decision to remove one of the five proposed ETC “components” from shared management. Moreover, the “interregional innovation investments” (“Component 5”)—which the Bundesrat deems appropriate in terms of their content—do not dovetail with the logic of the “classic” Interreg programmes and further reduce the budget earmarked for cooperation programmes. As a pure investment instrument, they should be assigned to the ERDF Regulation. The Bundesrat calls for “Component 5” to be completely removed from the ETC architecture and for the funds earmarked for this component to be reallocated to other areas of territorial cooperation.

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18. The Bundesrat calls in this context for the proposed “Component 5” for Interreg to be made more specific and for clarification of its specific role in the overall interplay of the envisaged innovation instruments to promote excellence. The Bundesrat also proposes that the issue be included in Europe-wide programmes such as Horizon Europe.
19. The Bundesrat is also opposed to direct management of funds for “interregional innovation investments” (“Component 5”). The Bundesrat also calls for the principle of shared management of funds to be applied, with competence accorded to Member States.

#### Strategic Thrust, Objectives and Indicators

20. The Bundesrat considers the desired thematic concentration to be essentially correct but notes that a number of important objectives, such as coping with demographic change, and priorities important to Interreg, such as promoting cross-border tourism, are not directly reflected in the Commission’s proposal.
21. The Bundesrat takes note of the five policy objectives proposed for the ERDF and the Interreg-specific objective, “better Interreg governance”, but considers it necessary to clarify precisely how this is to be understood. The Bundesrat also welcomes the measures mentioned under the heading “A safer and more secure Europe” as an important contribution to tackling current challenges and points to the opportunities afforded by cooperation projects in this spirit that have already proven their worth in the current funding period. However, the Bundesrat is opposed to their classification as “Interreg-specific objectives”, as this cannot be reconciled with Interreg’s genuine cohesion policy mandate and creates an erroneous impression that Interreg bears a special responsibility to take action in this area. The Bundesrat also proposes adding the objective of improving long-term socio-economic integration of migrants after the admission phase, a topic relevant to cohesion policy, to Article 14, Sub-section 3, Letter e of the draft Regulation.
22. The Bundesrat welcomes in principle the call for a more strategic orientation of the Interreg programmes, also by linking their content to existing macro-regional strategies. The Interreg programmes are an important pillar in supporting implementation of macro-regional strategies. Nevertheless, solutions are needed to enhance promotion of their cross-national governance. Programme areas with macro-regional strategies should not be curtailed but should be re-

tained as has been the case to date. Where appropriate, the programme areas should be extended to the corresponding macro-regions in order to facilitate improved interlinking.

23. The Bundesrat welcomes Interreg programmes that are not linked to maritime or macro-regional strategies and at the same time emphasises the inherent strategic justification of such programmes.
24. The Bundesrat in principle commends the introduction of Interreg-specific indicators to measure the results and European added-value of cooperation programmes.
25. The Bundesrat notes that the call for a single set of indicators for Interreg has not been taken into account. The ETC programmes must continue to select both Interreg and ERDF output and outcome indicators. It calls for the catalogue of indicators for ETC to be revised.
26. The Bundesrat points out that the proposed indicators are not a suitable means to depict the process-related added value of cross-border, transnational and interregional cooperation and thus to provide positive guidance (e.g. improved capacity to act on the part of key players or improved work and decision-making processes). The Bundesrat therefore advocates appropriate adaptation of the indicators or greater scope for the programmes when it comes to designing the indicator system. At the same time, the Bundesrat points out that decentralised collection of the requisite data by the programmes leads to a considerably increased workload and therefore calls for appropriate databases to be maintained at the European level.
27. The Bundesrat calls for future allocation of Interreg funds to take account of the specific cooperation challenges for border areas with socio-economic disparities as described in the 7th Cohesion Report, as well as reflecting the specific obstacles to cooperation in sparsely populated border areas suffering from population exodus. The proposed allocation of funds for cross-border cooperation exclusively according to the population living in border regions in a Member State does not properly reflect this situation. In particular, the Bundesrat is opposed to discrimination against sparsely populated regions situated directly at borders when it comes to allocation of funds pursuant to criterion 8 of Annex XXII of the new draft Common Provisions Regulation (BR-Official Document 227/18).

### Programme Planning

28. In connection with the intended simplification, the Bundesrat queries the stipulations on financial programme planning for the 2021 to 2025 period, which stipulate, inter alia, that all programmes—irrespective of whether changes result from the mid-term evaluation or not—must submit the financial planning for the remaining two years of the funding period for approval. This would entail an unpredictable administrative burden and might jeopardise attainment of the programme objectives by temporarily halting implementation. The Bundesrat insists that programme planning should continue to encompass seven years, as has been the case to date, and that programme amendments shall only be submitted to the Commission for approval if necessary.
29. The Bundesrat criticises the consequences that this form of mid-term review has for co-financing for implementation of the Interreg programmes too (pursuant to Article 16, Sub-section 5 of the draft Regulation), which, against this background, cannot be confirmed for seven years.
30. The Bundesrat takes a critical view of the envisaged obligation in the new funding period to consult with the Commission on project selection criteria and methodology before the programme is submitted. This means additional work for the programme authorities, thwarts simplification efforts and calls the Monitoring Committees' competence into question.
31. The Bundesrat further criticises the excessively short residual two-year period (after release of funds), particularly for bilateral and multilateral projects, which often require a more intensive preparation and implementation phase.
32. The Bundesrat regrets that it has not already been possible to exempt Interreg from state aid provisions with the new Interreg Regulation, as the “High Level Group on Simplification” also recommended in its final report. In this context, the Bundesrat welcomes the Commission's approach of including Interreg measures in the General Block Exemption Regulation in order to attain a general justification for exemption from state aid provisions for Interreg. Nevertheless, the Bundesrat reiterates its demand as expressed in its Opinion of 15th December 2017 (BR-Official Document 543/17 (Decision)) to exempt Interreg from state aid provisions in the light of its particular objectives in coordination with the responsible Directorates-General.

33. The Bundesrat emphasises the importance of small projects close to citizens and expressly welcomes the option contained in the draft Regulation of setting up a Small Project Fund (SPF) within the framework of Interreg programmes. The Bundesrat emphasises that small projects make it possible to experience border-free Europe directly on the spot at the local level. It therefore calls for this fund to be stand-alone vis-à-vis the other content-oriented priorities. It also calls for steps to ensure the capacity of the Small Projects Fund (a maximum of 20,000,000 Euro or 15% of the total allocation) is not reduced by subsequent reductions/financial corrections (n+2 or recoveries) in the course of programme implementation.
34. The Bundesrat expects SPF administration to be flexible and is opposed to restrictive requirements, such as the condition that project-executing bodies must be cross-border legal entities or EGTCs. In this context, the Bundesrat points out that this requirement for Small Project Fund managers cannot be met by many current beneficiaries, which would mean that tried-and-tested structures could no longer be used. The Bundesrat also considers it appropriate that small projects be used not only in direct cross-border cooperation (“Component 1”) and notes that there is a need to deploy them in a transnational context too (“Component 2”).
35. The Bundesrat notes that in future small projects that are granted public funding of no more than 100,000 Euro are to receive support on the basis of unit costs or by means of lump sums or flat-rate financing. In the Bundesrat’s view, this obligation should be replaced by a recommendation. Making implementation of EU programmes as simple and unbureaucratic as possible is also important to the Bundesrat. Given the well-known heterogeneity and diversity of the small-scale Interreg projects implemented to date, there are however grounds to take a somewhat critical view of obligatory calculation of lump sums due to a lack of reference cases or reference data.

#### Monitoring and Evaluation

36. The Bundesrat considers the planned transmission of current programme data to the Commission every two months to be too tight a time schedule. Moreover, in the Bundesrat’s view, this must not lead to further complication of the data collection systems. Restructuring or entirely reprogramming these systems is time-consuming and expensive. Data reporting should therefore make use of existing data fields.

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37. The Bundesrat is therefore opposed to the proposal that data on the programme's financial and material progress (financial data and indicators) be submitted to the Commission every two months. The current provision stipulates that figures for output and result indicators shall be transmitted to the Commission once a year. Increased demands for current figures to be made available more frequently leads to a higher administrative burden, especially for the beneficiaries.
38. The Bundesrat welcomes the greater flexibility concerning programme changes in future.

### Eligibility

39. The Bundesrat expressly welcomes the Commission's proposals for further simplification. However, it takes a critical view of the proposal of non-eligibility of value-added tax in the case of projects with a total cost of 5 million Euro or more. This means significantly higher own costs for large-volume projects, especially too for the Small Project Fund projects, which are treated as one project. This could lead in particular to a pronounced increase in the numbers of universities, SMEs, non-governmental organisations (NGOs) and similar institutions leaving Interreg.
40. The draft Regulation contains a number of provisions restricting the federal states' financial leeway and flexibility in programme implementation.
41. The Bundesrat regrets the limitation of co-financing rates for Interreg programmes and considers 70 % insufficient. The requirement that EU co-financing rates may not exceed 70 per cent at programme level constitutes an almost insurmountable obstacle for many beneficiaries, particularly NGOs and associations. Co-financing rates should be handled flexibly, with scope to set such rates according to the needs of the respective programme areas. This applies in particular to programmes with instruments for pre-accession aid and European Neighbourhood Policy instruments.
42. In view of these new provisions, which entail financial burdens and risks for the Member States, the Bundesrat calls on the Federal Government to advocate retaining the provisions applicable in the current funding period.

Furthermore, the Bundesrat also criticises the Commission for transferring financial responsibility entirely to the Member States in the new funding period in the case of non-recoverable amounts paid as a result of an irregularity.

43. The Bundesrat points out that EDP requirements in the framework of e-Cohesion have already caused high costs, technical difficulties and the associated delays in the current 2014-2020 funding period. Changes that move towards standardisation, increased digitisation and more efficient use of data are necessary and important but should only be required in current systems if they are proportionate and strictly necessary.

#### Management and Control

44. The Bundesrat underlines the important role played by the Member States in implementing the Interreg programmes and welcomes the Commission's efforts to facilitate administrative simplification. Some of the newly proposed provisions, however, give rise to fears that the Commission will play a greater role than was previously the case in design and content-related guidance of individual Interreg programmes in the forthcoming programming period. For example, prior consultation on project selection criteria (Article 22 of the draft Regulation) will create additional burdens for the programme authorities and call into question the Member States' decision-making powers.
45. The Bundesrat points out that the project appraisal system (sampling procedure pursuant to Article 48 of the draft Regulation) is not very clear and that it is therefore necessary to clarify the following aspects: the type of data expected by the Commission to determine the sample of operational audits, the criteria for determining the samples (representativeness and risk criteria, etc.) and the method to be used for extrapolating from irregularities detected.
46. The Bundesrat welcomes the new provision that the opinion of the managing authority shall prevail "in the event of a difference of opinion between the managing authority and the audit authority with regard to the eligibility as such of an Interreg operation". However, disagreements between managing and audit authorities often arise in relation to eligibility rules in the programmes, documentation obligations of beneficiaries and assessment of error findings. These divergences frequently cannot be resolved due to the lack of a superordinate authority. The Bundesrat therefore proposes, and requests the Commission to consider implementing, an independent clearing house within the Commission to

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settle particularly serious and/or financially significant disputes between managing authorities and audit authorities.

47. The Bundesrat criticises the fact that in future managing authorities may only delegate tasks relating to management audits (what is known as first-level control, including document audits of beneficiaries and on-the-spot audits of projects; see Article 68, Sub-section 1 of the draft Common Provisions Regulation (BR-Official Document 227/18)) to an intermediate body that performs these tasks for the entire programme area. In the bilateral and multilateral programmes, despite overriding EU requirements, national law is often decisive (e.g. awarding of contracts, travel expenses, electronic voucher management, etc.). Compliance with these legal provisions can de facto often not be checked (for example because of language barriers). The problem is exacerbated in transnational Interreg programmes in which many more Member States are involved in an Interreg programme than in cross-border cooperation schemes. The Bundesrat therefore calls for the provisions of the draft Common Provisions Regulation in conjunction with the draft Interreg Regulation to ensure that the Member States in a programme area can designate control bodies other than the managing authority for management audits.
48. Due to their international character, Interreg programmes face major management challenges, and at the same time have a comparatively low allocation of funds.

Given the pronounced complexity of the Interreg programmes, the Bundesrat considers that the threshold value of 2% for the global extrapolated error rate of the total expenditure declared for the Interreg programmes included in the population from which the common sample was selected for audit by the audit authorities is too low. It requests the Federal Government to support an increase in the materiality threshold.

The Bundesrat calls for the error relevance threshold to be raised to 5 percent. In addition, it is important to ensure that other cooperation programmes are not held liable for errors made by a project partner in any particular programme.

49. The Bundesrat points out that extrapolating the error rate for the bilateral and multilateral Interreg programmes is not proportionate. For example, a financial error by an individual beneficiary from a Member State can be extrapolated to the entire programme (area) and could possibly lead to a payment freeze. The

basic assumption that an error found in one project must also occur in all other projects does not apply to Interreg programmes because, in principle, several Member States are involved and project partnerships therefore always consist of very different partners. Extrapolation does not correctly reflect Interreg programme structures.

50. The Bundesrat expressly welcomes the simplification of second level audits.

### Financial Management

51. The Bundesrat acknowledges that the Commission is making efforts to simplify the cumbersome arrangements for management and control systems in order to ensure that the burden on programme managing bodies and beneficiaries is proportionate. This includes, in particular, simplified designation procedures for the programme managing and certification authorities, simplified cost options for accounting, the “single audit” approach and the sampling procedure for project audits. The Bundesrat finds it regrettable that the experience gained in the Omnibus Regulation for the current funding period, for example with regard to the provisions on payroll accounting, has not been included in the new Interreg Regulation.

52. The Commission is shifting further financial burdens to Member State level due to the reduction of advance payments and the need for pre-financing of technical assistance by the programme partners that arises due to the link to payment requests. The Bundesrat takes a critical view of this. It therefore calls for financial planning security and sufficient technical assistance to be guaranteed over the entire programme duration and irrespective of the actual degree of programme implementation.

53. The Bundesrat welcomes the Commission’s proposal to increase technical assistance to 7 per cent for “Components 2, 3 and 4”. In view of the disproportionately higher funding of the programmes for “Components 2, 3 and 4” compared with the programmes for “Component 1”, which will continue to receive 6 per cent of ERDF programme funding as technical assistance, the Bundesrat believes that technical assistance should also be set at 7 per cent for “Component 1”.

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54. The Bundesrat further acknowledges the Commission's intention to reduce the administrative burden for the managing authorities by applying lump-sum financing. However, it is categorically opposed to the envisaged implementation method (6 percent and 7 percent respectively on payment requests). This would mean that the managing authority would no longer be able to plan technical assistance up until the end of the programme. On the one hand, this problem could become apparent at the beginning of the funding period: at this point, high costs are incurred, for example for adapting electronic systems, although scarcely any projects can draw down funds at this point. The reduced advance payments of 1 percent are also unlikely to be sufficient. On the other hand, there may also be financial gaps at the end of the funding period if programme uptake is below 100 percent. The Bundesrat therefore recommends that 6 and 7 per cent respectively of technical assistance be paid directly to the programmes on the basis of the annual advance payment and, from the second year onwards, on the basis of the annual advance payment plus payment applications submitted, with a view to ensuring that the programmes are operational and functional.
55. The Bundesrat is opposed to reverting to the two-year decommitment period (n+2) for Interreg.

The planned introduction of an "n+2 rule" instead of the "n+3 rule" applied in the current funding period makes it more difficult for ERDF funds to be exhausted by ETC projects, which due to their complex nature are already difficult to implement and often take longer than projects in the regular ERDF, for example.

The three-year deadline (n+3) set in the current funding phase has proved its worth and should be maintained.

56. The Bundesrat is resolutely opposed to the restriction to two funding draw-downs per year (at programme level). Programmes will run into financial difficulties, particularly in view of the planned reintroduction of the "n+2 rule" and reduced advances.

Consideration and Direct Transmission of the Opinion

57. The Bundesrat calls on the Federal Government to represent the above comments and demands in the course of participation by the Federal Republic of Germany in shaping and determining Interreg's general thrust and in further discussions at EU level on the draft Regulation.
  
58. The Bundesrat shall transmit this Opinion directly to the Commission and the European Parliament.