

15.10.04

Decision
of the Bundesrat

Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund**COM(2004) 492 final; Council Document 11606/04**

In its 804th session on 15th October 2004, pursuant to §§ 3 and 5 EUZBLG (Act on Cooperation between the Federation and the Federal States in European Union Affairs), the Bundesrat adopted the following Opinion:

1. The Bundesrat on the whole endorses this draft.
2. The Bundesrat welcomes the fact that EU structural policy is in the future to concentrate on three objectives and three Structural Funds. The objectives of “Convergence”, “Regional Competitiveness and Employment”, together with “European Territorial Cooperation” enable the EU to give an appropriate response to the challenges of the enlarged Community in implementing the priorities on enhancing economic and social cohesion comprised in Article 158 TEU.
3. The Bundesrat welcomes and supports the Commission’s wish as documented in the draft EU Structural Regulations to also link the Community’s Lisbon Strategy with the Göteborg decisions in the context of its cohesion policy. The Bundesrat particularly welcomes the high priority given by the Commission to promoting sustainable development and is pleased to see that in shaping and implementing the EU Structural Regulations the Commission is also endeavouring to ensure that the three pillars of the sustainability principle, namely economics, ecology and social equity, are treated in a balanced manner

and given equal weight.

4. The Bundesrat considers in particular that in establishing funding priorities the draft Regulations should give adequate attention to measures with a direct link to the environment and sustainability. These measures are in keeping with the approach that can be identified in the draft of concentrating the future thrust of EU structural policy on a limited number of Community priorities, which take into account specific potential in the regions supported.
5. The Bundesrat welcomes the greater responsibility to be given to Member States and regions for coordinating utilisation of the Structural Funds, also through the new Agricultural Fund for Rural Development (EAFRD). It calls on the Commission to ensure that the cohesion of the various financial instruments is also provided for within the Commission.
6. The federal states welcome the proposed thrust in utilisation of the Structural Funds to attain the objective of “Convergence”, as outlined in the ERDF Regulation, by supporting sustainable regional and local economic development. However, the areas for intervention listed by the Commission do not suffice to attain this objective in the convergence regions. This applies in particular to the use of the “classical” range of instruments for regional economic support, such as targeted promotion to attract businesses and corporate investment of firms larger than SMEs, as well as establishing and extending business-relevant infrastructure in general.
7. The Bundesrat is pleased to note that the substance of funding provisions for the partial objective of regional competitiveness is related to the Lisbon process. It particularly welcomes the greater emphasis to be placed on the funding priority of innovation and knowledge-based business.
8. The Bundesrat notes that education, science, research and culture are essential elements of a proactive employment policy and regional development. Particularly in structurally weak regions these contribute to sustainably improving the framework conditions for employment and regional development. Support from the EU Structural Funds should therefore be organised in all areas – objectives 1, 2 and 3 -, to ensure that education, science, research and culture (including the culture industries) are, also with the new

priorities, still be integrated into all objective areas of Structural Funds support as essential components in growth, employment, competitiveness and in fostering change, as well in promotion of balanced development of the EU. In drafting and implementing the legal provisions – in particular the specific regulations for the ERDF and ESF – particular attention should be paid to ensuring that education, science, research and culture are taken into account appropriately in all three objective areas by all the funds involved there.

9. In promoting access to transport and telecommunications services however large urban centres should not be excluded a priori. The Bundesrat suggests “growth and employment dynamic of SMEs” as a further funding priority. Particularly in regions with socio-economic problems it is important to be able to support entrepreneurial areas of action such as establishment of firms, transfer of firms, corporate dynamics, export trade and the development of competence areas, as well as to create the requisite infrastructure, which is a prerequisite for economic growth and more jobs.
10. The Bundesrat endorses the planned integration of urban problem areas into the Mainstream Programme as stipulated in Article 8 of the draft Regional Fund Regulation rather than a continuation of the URBAN community initiative. This also applies for areas outside urban agglomerations.
11. The Bundesrat supports the labour market policy approach of the ESF, including support for social integration through integration into working life. It welcomes the Commission’s proposals for ESF funding priorities under the objectives “Convergence” and “Regional Competitiveness and Employment”. At the same time the Bundesrat notes that in structuring the ESF to foster human resources, all business-related measures, such as encouraging the entrepreneurial spirit, supporting business start-ups and promoting the information society, must continue to be possible. In the spirit of a proactive labour market policy, the Bundesrat advocates that measures for education oriented to professional life and to further develop the systems of vocational training and further training also be envisaged in the context of the objective “Regional Competitiveness and Employment”. Furthermore, the Bundesrat calls for the envisaged fostering of modernity and reinforcement of labour market institutions not to be limited purely to labour administrations. Each region should be able to decide whether labour market institutions require support and

which should receive funding. The Bundesrat assumes that the federal states will be able to devise their own labour market policies within ESF programmes on this basis and within the framework of the national labour market and employment policy strategy.

12. In Article 2 "Definition of terms" not all the terms used in the Regulation are defined (e.g. intervention, measure, auditing authority, financial auditor, authorised auditor, negligence, irregularity). Furthermore, the terms, unlike the previous definitions in the existing Regulation, should be defined consistently and used in a uniform manner. This article should be extended along these lines to make it clearer.
13. The Bundesrat supports the criteria proposed by the Commission for eligibility for funding from the EU Structural Funds in the context of the objective of "Convergence".
14. The Bundesrat particularly welcomes the special support under the objective of "Convergence" to be made available to regions affected by what is known as the statistical effect. However, the way in which this provision is structured at present in the draft Regulation does not go far enough, as it does not provide planning security in terms of the scope of support and the provisions on the legal status of state aid. An acceptable compromise would be for 85% of the sum foreseen for "classical" convergence areas to be available to these regions at the start of the funding period, which would fall to c. 60% of the financial allocation by the end of the funding period, provided that it was accompanied by an appropriate level of state aid and by the provisions on the legal status of such state aid as stipulated in Article 87 Sub-Section. 3 point a TEU. In the interests of fair treatment of the regions concerned compared with regions excluded due to their positive development, there must not be a further reduction in the funds available and the intensity of funding possible. The Bundesrat calls for this provision to be incorporated into the text of the Regulation. Preliminary establishments of provisions for the next but one funding period should not be incorporated into the Regulations that will be in force until 2013.
15. The Bundesrat is also on the whole in favour of the involvement of the Cohesion Fund for the funding priority "Convergence". This applies both to

strict application of the 90% criterion for selecting the Member States eligible for payments from the Cohesion Fund and also for the link between Objective 1 programmes and Cohesion Fund infrastructure measures. As the Cohesion Fund is financed by funds from the “Convergence” objective, payments from the Cohesion Fund must also be included in the calculation when allocating the remaining funds for the objective of “Convergence”.

16. The Bundesrat welcomes the continuing regional approach to be adopted in the field of regional competitiveness. The Bundesrat however objects to the Commission’s proposal in Article 6 of the Regulation with general provisions (2004/0163), whereby all regions outside of Objective 1 should be eligible for funding. This is in contradiction to the need to concentrate funding, which has arisen due to the accession of ten new Member States. This approach also contradicts the objectives of Articles 158 and 160 TEU, whereby the Regional Funds should contribute to levelling out the most significant regional imbalances in the Community. Nor is the Commission’s erroneous approach remedied by the stipulation in Article 6 that while all regions outside Objective 1 are eligible for funding, de facto only regions selected by the Member State in question will be funded. The selection should actually be on the basis of thematic considerations rather than on the grounds of a regional imbalance in respect of the rest of the EU.

17. From the Bundesrat’s point of view, funding should only be considered for regions with particular socio-economic problems. It should also serve to tackle problem areas in border regions between the EU-15 and the new Member States.

This funding also includes the need to enhance competitiveness and innovation, to create sustainable jobs and to foster environmentally-friendly growth.

Eligibility for funding must be appraised exclusively in terms of objective and calculable socio-economic criteria. Purely geographical criteria would therefore be excluded. These criteria must apply across Europe.

18. The Bundesrat welcomes the Commission’s proposal to create a new objective “European Territorial Cooperation”.

19. The Bundesrat supports the Commission’s proposal to also foster cross-border

cooperation at all internal borders within the Community. The Bundesrat rejects the Federation's demand that European territorial cooperation be limited to cross-border cooperation at the EU's new external borders and at its new internal borders. The European Union needs to grow together across the borders between the old Member States too.

20. The Bundesrat welcomes the draft Regulation's recognition of the particularly problematic situation of areas at the external borders of the Community until 30th April 2004, which now no longer enjoy this status. This aspect should also be taken into account in the context of the future objective of "European Territorial Cooperation".
21. However, the Commission proposal envisages incorporating only cross-border and trans-national cooperation into the new objective. Inter-regional cooperation would only be possible in the form of cooperation networks and exchange of experience, as well as through the programmes for the other objectives. Interregional cooperation must also be possible as an independent programme within the framework of European territorial cooperation.
22. The proposals on structuring trans-national cooperation, as well as allocation of funds and the implementing provisions for the objective of "European Territorial Cooperation" have yet to be examined. However, particularly in support programmes managed across borders, considerable efforts should be made to simplify administration, as to date the highly complex legal and administrative provisions of the European Union have constituted a significant impediment to cross-border cooperation and integration. Furthermore, "cross-border cooperation" should be given a clearer weighting as a priority than is the case in the current version.
23. The Bundesrat rejects the allocation of budget funds within the objective "European Territorial Cooperation" as currently comprised in Article 18 of the general Regulation. In the future too trans-national cooperation should be given an appropriate degree of importance; however there are no grounds for the great increase in funds available for this when compared with those available for cross-border cooperation. The allocation of funds does not correspond to the main priority of cross-border cooperation as envisaged by the Commission, the European Parliament and the Committee of the Regions. Funding for cross-

border cooperation must continue to be the main priority.

The Bundesrat also feels it is problematic that the 12.12% share envisaged for the new Neighbourhood Instrument is to be funded at the cost of funding for cross-border cooperation.

24. On the whole the Bundesrat welcomes the Commission proposals to continue the programme approach and to accord the Member States and regions greater powers in this regard. However, the Bundesrat feels there is a need to render the structures considerably simpler and more efficient, as well as to place considerably more emphasis on the principles of proportionality, subsidiarity and partnership.
25. The Bundesrat regrets that in contrast to the current funding period the Commission is envisaging focussing the partnership it seeks solely on the Member States. In the Bundesrat's opinion the Commission should commit more clearly to an equal partnership with the Member States and the regions and thus achieve greater involvement of the responsible players in the funding regions in the overall process of planning and implementation of structural fund interventions. The Commission should at least help to ensure that the federal states and regions are involved as partners in establishing national spheres of competence and continue to take responsibility in the future for the specific shape given to the partnership within the framework of operational programmes in the regions receiving funding. The Commission's expertise and in particular its contribution to identifying tried-and-tested procedural methods must continue to be available to the regions as they realise the Lisbon goals.
26. The Bundesrat supports implementation of the operational programmes according to the proportionality principle. However, in the Commission proposals this principle is only actually applied in a few places in the Regulation. We call on the Commission to apply this principle throughout.
27. With reference to the administration of funds, the Bundesrat advocates the principle of subsidiarity and proportionality as envisaged here. The administrative and control provisions of the Commission, which are not identical with national law, give rise to significant additional efforts, for which support should certainly be made available from EU funds through technical

assistance schemes, as has been the case in the past.

28. The Bundesrat recognises that the funding from the Structural Funds may not take the place of national public structural expenditure. However, in determining the level of public structural expenditure, the development of the macroeconomic context, in particular the need for consolidation of the public budgets in question, must be taken into account, both in respect of comparative data from the previous funding period and in respect of the ongoing programme period. The Bundesrat rejects ex-post financial corrections, as this places too much of a strain on national and regional budgets and causes a lack of planning security for all aspects of programme implementation.
29. The Bundesrat is of the opinion that the orders of magnitude proposed by the Commission for the allocation of funds to the individual priorities strike a fair balance between the various interests.
30. The Bundesrat welcomes the objective and transparent criteria to be applied for allocation of funds within the “Convergence” objective. Here however, the severity of the problems in the regions receiving funding should be taken as the basis to a much greater extent than in the past. The indicative allocation of funds must take regional prosperity as its starting point. National prosperity is already taken into account in Member States’ contributions to the EU budget. Unemployment must be given a greater weighting than has been the case to date. The allocation of funds for the categories within the convergence objective cannot be determined unless current socio-economic data are available and it is clear what percentage of the population is included in this data.
31. The Bundesrat supports the Commission proposal that the annual funding paid to a Member State, including contributions from the European Agricultural Fund for Rural Development and the European Fisheries Fund, which contribute to the objective of “Convergence”, should not exceed 4 % of gross domestic product of the Member State in question.
32. In contrast with Article 17 of the draft general Regulation, the Bundesrat calls

for the allocation of funds from the Regional Funds to Member States for the objective “Regional Competitiveness and Employment” to be effected on the basis of regions eligible for funding in terms of socio-economic criteria. Funds should be allocated to these regions and thus to the Member States in keeping with these criteria and on the basis of the number of inhabitants in the regions eligible for funding.

33. Furthermore, the Bundesrat also considers that pure free rider effects, which may arise in cases of simple corporate relocation both within an EU Member State and also from one EU Member State to another, should not be supported. The Bundesrat is therefore in favour of incorporating an additional provision into the Regulation as proposed by the Commission, whereby funding may be excluded for projects that cause a significant loss of jobs or the closure of a production location at its existing site.
34. The Bundesrat welcomes the reduction of the number of planning documents to be provided, thanks to the Commission scrapping the regional development plan, the community support concept and the supplement to programme planning. At the same time however “National Strategic Framework Plans”, to be submitted by the Member States, have been introduced. The degree of detail required in this document is comparable to the previous programme planning documents, which means that in practice a reduction in programming effort is not to be expected.
35. The Framework Plans should only list the underlying strategic guidelines. Details such as quantified indicators do not form part of strategic guideline papers. With a view to respecting the proportionality principle, steps should be taken to ensure that the Strategic Framework Plans do not constitute an obstacle to states’ independent priorities, which are of considerable importance, or to devising and implementing the various operational programmes.
36. The Commission’s requirement for all operational programmes for the objectives “Convergence” and “Regional Competitiveness and Employment” to be integrated into one single framework plan, along with additional coordination with the Agricultural Fund for Rural Development, as well as the national action plans for employment, to be drawn up annually, gives rise to additional and unjustified effort expended on coordination. This merely slows

down the process of drawing up the programme documents. The Bundesrat proposes that the National Strategic Framework Plans for the two objectives be drawn up separately and be limited to the minimum data required to depict the strategies selected. The Strategic Framework Plans should not prevent changes to the operational programmes pursuant to the mechanism envisaged in the draft Regulations.

37. The Member States' annual implementation reports, the Commission's annual report and the Council's annual review should not give rise to additional reporting and evaluation obligations for the areas receiving funding. The Bundesrat vigorously rejects the idea of annual adjustments to the Operational Programmes, which might result from Council deliberations, the Commission's employment policy guidelines and national employment action plans, also drawn up annually. This would disproportionately increase administrative effort and would lead to a loss of multi-annual planning security, which is a prerequisite for efficient programme implementation. Furthermore, the Bundesrat also draws attention to the fact that sufficient up-to-date data would not be available for annual review of Structural Funds interventions. Review by the Council should therefore be linked to the Cohesion Report and to the Mid-Term Review.

The Bundesrat therefore proposes dispensing with annual reporting.

38. It is important to ensure that the procedure for the strategic cohesion concept is carried out by a tight deadline and that this does not delay authorisation and the start of the operational programmes. Delays occasioned by the Commission must not be to the detriment of the Member States.
39. The Bundesrat welcomes the reduction in the number of documents and the use of the Operational Programmes as the central programme planning document. It assumes that the federal states will ensure consultation at their level with the state and non-state partners affected. It requests the Federal Government, in the interests of greater planning security, to take steps to ensure that the deadline for authorisation of the Operational Programmes and subsequent programme amendments is limited to three months and that this be incorporated into the draft Regulation. The procedure and the substantive requirements of the programme should be consistently streamlined with a view to enabling the

Commission to adhere to the deadlines established, in contrast with the situation in the current funding period. The Bundesrat, in the light of the subsidiarity principle, is opposed to an obligation to amend the Operational Programmes at the initiative of the Commission.

40. With reference to programme documents, there must be greater scope to transfer funds between priorities without a need for this to be approved by the Commission, in the interests of effective structuring of programmes and in keeping with the subsidiarity principle.
41. In Article 33 the Commission proposes that supplementary funding may be made available for measures falling within the sphere of action of another programme, to the tune of 5% of each priority of an Operational Programme with the proviso of the exceptions for the ERDF and the ESF envisaged in the specific regulations for these funds. The Bundesrat considers that a higher percentage (up to 15%) with reference to the total volume of the Operational Programme in question should be authorised.
42. The Bundesrat welcomes the possibility of integrating measures for inter-regional and/or trans-national cooperation into the ERDF and ESF programmes. This should however be only an option and not an obligation.
43. In the provisions on the implementation and control system it is stipulated that the description of the administration and control systems shall be submitted within three months of authorisation of the Operational Programmes. It should also be stipulated that for its part the Commission shall confirm the administration and control systems formally by a specified deadline. Furthermore, the preconditions and criteria for cases in which the Commission authorises the auditing authority to act as an audit office shall be stated clearly.
44. The Bundesrat calls for a uniform threshold of 50 million Euro for large projects. For practical reasons it is not possible to draw up an indicative list of large projects at the start of the programming period. The proposed provision should therefore be dropped. The deadline by which the Commission should take a decision on applications for large projects should be two months, as previously, and this should be added to the text of the Regulation.

45. The Bundesrat draws attention to the fact that the requirements for evaluation of the plans and programmes must be strictly governed by the principles of subsidiarity and proportionality. Ex-ante evaluations in particular should be kept to a minimum. A decision should be taken in due time before the start of the new programming period by the Commission in agreement with the Member States and the areas receiving funding as to the methodological details and the evaluation standards.

The evaluation system has proved its worth in the current support period. Extending this by introducing ad-hoc evaluations as a precondition for programme changes or ad-hoc evaluations at the initiative of the Commission is too unspecific and the Bundesrat rejects this approach.

The point in time at which the interim evaluation is effected should be adjusted to the actual course of programme implementation in the light of experience in the current support period. It should be determined by the Monitoring Committee roughly halfway through actual implementation of each programme.

46. The Bundesrat considers that the instrument of the performance reserve has proved unsuitable in the current funding period. Furthermore qualitative evaluation and the allocation of reserves at the programme level should be effected on the basis of macroeconomic data, which can only be affected to a limited extent by the programmes and/or cannot be measured and are not available in a sufficiently up-to-date form at the time of the evaluation. The provisions on a reserve for performance and quality should therefore be deleted from the text of the Regulation.
47. The national reserve for unforeseen events proposed by the Commission should also be deleted. Instead the Operational Programmes should be adjusted in the short term for the funding areas and funds affected in the case of unforeseen economic and social restructuring. The effort to achieve this will be less in practice than efforts needed to draw up the specific operational programmes as proposed by the Commission.
48. The Commission proposes moving from the existing system of co-financing of overall costs eligible for support from the European funds to a system in which the funds participate exclusively in co-financed public expenditure. The Bundesrat vigorously rejects this proposal. A provision of this nature would

increase the need for co-financing in the funding areas compared with the current programme period and would thus be an additional strain on budgets. There would be a risk that monies from the Structural Funds would be not utilised, as co-financing would not be made available from public budgets. In addition the proposal contradicts the Commission's approach of mobilising private sector funds, particularly in the context of public-private partnerships. It also contradicts the Commission's intention of making the funds' contribution dependent on the degree of mobilisation of private-sector funds. The Bundesrat proposes that the provisions for fund participation in the current funding period be maintained.

49. Pursuant to the draft Regulation, participation of the funds for the individual priorities should be stipulated with an indication of the maximum rate (% participation) and the maximum amount. In the Bundesrat's opinion, agreeing on an intervention rate for the whole intervention or allowing flexibility across the priorities would give more appropriate results.

50. The Bundesrat is pleased to see that the rules for funding eligibility for expenditure are to be determined at the national level.

Here however there should be greater leeway in terms of competition law. Facilitation is needed primarily in the system of exemptions authorised pursuant to existing EU state aid law, which should also be extended, to enable the federal states to pursue independent economic and regional policies. An increase in the de minimis threshold in particular would be appropriate and would give rise to further simplification.

51. The Bundesrat calls for flat-rate sums to also be explicitly recognised as fundable expenditure provided that certain conditions pertain. This applies particularly to cases in which determining the actual costs would only be possible with disproportionate effort and if the administrative authority is convinced that the flat rates employed are appropriate.

Analogously to the draft ESF Regulation, in the ERDF context non-refundable value added tax should be maintained as fundable expenditure.

52. The Bundesrat assumes that the notion of durability of projects co-financed by the Structural Funds is intended to signify avoiding changes in ownership

relationships for infrastructure items, production relocation and associated free rider effects in keeping with German budgetary deadlines for earmarking of funds. In making financial corrections the Commission should also handle non-recoverable claims, for example in cases of bankruptcy, differently to other changes

53. The Bundesrat welcomes attempts to organise the administrative and control systems for structural funding and for funding to promote development of rural areas analogously in parts. There is a need to improve this further, to ensure that either uniform systems are created or that a clear distinction is made (example: certifying body and certifying authority with different functions). The same terms must have the same meaning throughout the Regulations.
54. The Bundesrat welcomes the Commission's intention to delegate control functions to the Member States. At the same time the Commission has preserved a great deal of scope for its own on-the-spot inspections. In exercising this power the principle of proportionality must be respected, as is the case for all controls.
55. The Bundesrat is also pleased to note that interventions are to be accompanied by a Monitoring Committee. However, the Bundesrat regrets that contrary to the Commission's simplification proposals dated 25th April 2003, in the future the Commission may only be represented in the Committee in an advisory capacity at its own request. The previous provision has proved its worth and should be maintained.
56. Due to the multiplicity of bodies involved with partially overlapping tasks, the control structures will not become simpler but will instead be more complex than in the past. The Bundesrat considers that this is detrimental to efficient structural support. Against this background the idea that certain control activities should be carried out by a single body is to be welcomed. Irrespective of this, an unambiguous definition of terms relating to the bodies involved in implementation, as well as a clear description and delimitation of their activities should be incorporated into the Regulation. The Bundesrat is opposed to the creation of more administrative units in addition to those in the current funding period in the light of the obligation to simplify.

57. The goal of using pragmatic settlement structures that are kept as simple as possible should be pursued consistently and encompass all support instruments including the EAFRD.
58. The additional implementing measures that the Commission intends to publish should be kept to the minimum necessary.
59. The more stringent conditions than in the current funding period for financial settlement, in particular provisions on interruption, retention and suspension of payments, increase administrative effort and would pose a risk of considerable delays in programme implementation. The Bundesrat therefore feels that there is a need to review the substance of the rules comprised in these provisions and to reduce them to a level that is in keeping with the idea of partnership
60. The general Regulation envisages Member State responsibility for recovery of Community funds. If it is not possible to collect Community funds that have been wrongly disbursed, it is also incumbent on the Member State to demonstrate to the Community that the loss of Community funds incurred was not due to irregularities in the Member State's system or due to negligence. The burden of proof is thus incumbent on the Member State. National budget provisions comprise a clear legal base stipulating when claims may be dismissed or waived. This legal basis should be applicable and should serve as a basis in cases where Community funds cannot be recovered. The Bundesrat is opposed to a burden of proof with a broader scope than this. Furthermore in the individual clauses of the Regulation the term "irregularities" must be clarified.
61. A distinction is drawn for the expenditure to be indicated in the declaration of expenditure between expenditure that does not constitute state aid and expenditure that constitutes state aid in the meaning of Article 87 TEU. This distinction is not clear and must be made more specific. The Bundesrat rejects the idea of requiring more proof of expenditure than is the case in the current funding period.
62. The Bundesrat notes that before a financial correction procedure is initiated the responsibility for the irregularity in question must be established beyond doubt. The Bundesrat is opposed to the idea of flat-rate or extrapolated financial corrections, which give rise to liability independent of the responsibility of the

state in question. This would contradict national budget law, particularly as there is to date no legal basis for cross-border debiting corresponding to the sums giving rise to the correction in each case. It is recommended that an independent arbitration body be established for cases of disputed financial corrections.

63. The Bundesrat recognises that automatic decommitment of funds pursuant to the n+2 rule should improve financial settlement for the operational programmes. Implementing high-quality innovative projects in keeping with the Lisbon goals may in substantiated cases require suspension the deadlines governing commitment of funds, as experience has shown that such measures require a longer start-up period.
64. The Bundesrat urges that this rule be extended by one year (n+3) for programmes in the context of the objective “European Territorial Cooperation”, as the involvement of further European partners and the increased coordination effort may occasion delays in programme start-up.
65. There are very tight deadlines for the start of the programmes. For that reason deadlines should also be stipulated for the Commission, particularly in cases where their decision is a precondition for payments to the Member State or for further action by the Member State. The start of the time frame for preserving supporting documents should also be stated specifically.
66. In cases of force majeure the Commission envisages exceptions from automatic decommitment of funds. The Bundesrat is of the opinion that this should also encompass substantial changes to important framework conditions for programme implementation, which cannot be influenced by the Member States and regions, as well as changes in the business cycle or in particular sectors of the economy or substantial delays in programme authorisation.
67. Furthermore the Bundesrat also advocates adjustment of the annual allocation of funds as a function of the actual requirement for funds in programme implementation.
68. The deadline envisaged in Article 87 of the basic Regulation for applications for final payment should be 31st December 2016.

As shown by previous experience with winding-up of programmes, the six-month time-frame between the end of the approval and disbursement phase (31st December 2015) and the submission of applications for the final payment (30th June 2016) is too short.

Twelve months should be the period stipulated for this in the draft Regulation.

69. Winding-up of the ongoing funding period should occur pursuant to the Regulations currently in force. By way of clarification the following paragraph should be added: “The repealed Regulation shall continue to apply for measures approved by the Commission before 1st January 2007 on the basis of the aforementioned Regulation.”
70. The procedure suggested for revenue-generating projects has the effect of leading to reduced funding for infrastructure refinanced via taxes, such as water supply, waste water disposal and waste management, and as a consequence to higher utilisation fees for the infrastructure in question, increasing the burden on business and the general public. The Bundesrat therefore feels there is a need to review the substance of these provisions.
71. The Bundesrat’s Opinion shall be given the greatest possible respect by the Federal Government pursuant to § 5 Sub-section 2 EUZBLG (Act on Cooperation between the Federation and the Federal States in European Union Affairs), as the Regulation primarily affects regional economic policy and the administrative procedures of the federal states.

Grounds:

These provisions predominantly concern provisions on regional and structural policy – as demonstrated by the title of the Regulation -, which is a matter for the federal states pursuant to Articles 30 and 70 Sub-section 1 of the Basic Law. The Regulation contains detailed provisions on procedures for implementation of structural policy at the regional level and thus primarily affects the federal states’ administrative procedures.

The Regulation also contains provisions on financial matters. However, in as much as these concern financing of the project as a whole and thus the federal budget, here decisions already taken in the context of the Financial Perspectives and the Resolution on Own Resources are merely given effect.

On the question of provisions on state aid as a part of financial matters, the funds in question are once again funds to attain the objectives of structural policy and thus fall within the sphere of competence of the federal states.

In terms of the qualitative issues, legislative powers and administrative procedures of the federal states are primarily affected.