

Decision

of the Bundesrat

Communication from the Commission to the European Parliament, the European Council and the Council on pre-enlargement reforms and policy reviews

COM(2024) 146 final; Council doc. 6679/24

At its 1046th session on 5th July 2024, 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):

1. The Bundesrat welcomes increased voter turnout in Germany. The outcome of the European elections should serve as an incentive for everyone to promote the European idea and fundamental democratic values even more vigorously. The elections were held against the backdrop of numerous challenges for the European Union and its Member States. These include, in particular, the Russian Federation's ongoing war of aggression against Ukraine, the altered geopolitical situation, climate change, economic transformation processes, demographic change and the digital transition, as well as global migration processes. With a view to mastering the transition to a climate-neutral economy by 2050, the Bundesrat underlines the importance of a fair transition in which no one is left behind. The essential prerequisite to attain this goal is a functioning internal market with competitive companies, whose success is profoundly dependent on a reduction in bureaucratic burdens.
2. The Bundesrat emphasises that the European Union has proven its worth, particularly in times of crisis, as a guarantor of freedom, peace, and prosperity, and has

often emerged stronger from such crises. Challenges in recent years have however made clear that the Union's ability to act is limited. Decision-making processes in the Union are sometimes lengthy, complex, and prone to blockades. There is a risk that the Union and its Member States will no longer be able to react sufficiently effectively to crises that increasingly emerge simultaneously, which could jeopardise citizens' acceptance of government action.

3. The Bundesrat refers to its Decisions of 15th December 2023 (Bundesrat Official Document 593/23 (Decision)) and of 2nd February 2024 (Bundesrat Official Document 51/24 (Decision)) and welcomes the decision to open accession negotiations with Ukraine and the Republic of Moldova. The Bundesrat underlines that enlargement of the European Union to include the countries of the Western Balkans, as well as other states that comply with the European Union's common standards and share its values is in the interests of both sides. At the same time, the Bundesrat notes that enlargement raises complex questions about further development of the institutional structure, the EU's ability to take action, the financial framework, respect for fundamental values, and in relation to some of the Union's policy areas. The Bundesrat welcomes the Commission's presentation, in its Communication of 20th March 2024, of an initial assessment of the possible effects of enlargement, and is pleased to note that the Commission has announced further detailed reviews.
4. The Bundesrat welcomes the European Council's decision in mid-December 2023, reaffirmed in mid-March 2024, to drive forward the process of addressing the Union's internal fundamental principles and requisite reforms, parallel to accession negotiations. The Bundesrat likewise welcomes the European Parliament's inclusion, in its Resolution of 22nd November 2023 (P9 TA(2023)0427, hereafter: European Parliament own-initiative report), of comprehensive proposals on further developing the Union as well as specific treaty amendments, and notes that the European Council is called upon therein to convene a Convention in accordance with Article 48(2) of the Treaty on European Union (TEU).
5. In this context, the Bundesrat welcomes the incorporation into the European Parliament's own-initiative report of some of the proposals in the final report from the Conference on the Future of Europe. That sends an important signal, especially for citizens who participated in that conference. The Bundesrat refers to its

Decision of 8th July 2022 (BR Official Document 282/22 (Decision)) on the conference's final report and emphasises that proposals from citizens make a valuable contribution to the ongoing discussion on the future of Europe.

6. The Bundesrat is attentively observing the numerous other proposals for discussion on the future of Europe from academia, civil society, and the world of politics. These enable a well-founded process of reflection and reform that is rooted in a broad conceptual underpinning.
7. The Bundesrat is taking the European Parliament's new legislative term as an opportunity to formulate its own ideas on how to further develop the European Union within the framework of the federal states' constitutionally enshrined responsibility for European integration.
8. The Bundesrat again refers to its Decision of 8th July 2022 (Bundesrat Official Document 282/22 (Decision)) and welcomes the focus in the proposals for European Union reforms discussed to date, which largely aim to strengthen and further develop the Union's resilience and ability to take action, while respecting democratic, constitutional, social, and federal principles. The Bundesrat emphasises that a European Union that is more capable of taking action is not simply in the interests of Europe as a whole. It is also in the interests of the Member States *per se*, particularly in view of the geopolitical challenges and the dwindling global influence of individual states. The Bundesrat notes that it is also possible to attain a more effective European Union that is more capable of taking action through a number of institutional developments.
9. In this context, the Bundesrat welcomes the current reflections on moving away from unanimity when taking decisions and switching instead to qualified majority voting in the realm of Common Foreign and Security Policy (CFSP) by utilising the *passerelle* clause, provided that it can be guaranteed that key national concerns cannot be ignored. The Bundesrat points out that the decision to switch to this approach requires unanimity in the European Council.
10. The Bundesrat takes note of proposals, for instance from the European Parliament, to expand use of the ordinary legislative procedure. It notes that special legislative procedures are primarily provided for in policy areas relevant to sovereignty, but generally grant the European Parliament, as well as advisory bodies

such as the European Committee of the Regions, less scope to influence the Union's decision-making process. Against this background, the Bundesrat considers that there is a need for in-depth examination of the advantages and disadvantages of deploying the ordinary legislative procedure in more policy areas of the Union than hitherto.

11. The Bundesrat likewise acknowledges the proposals for a reform of the composition of the Commission. It notes that in the past an increase in the number of Member States has always led to a larger Commission. The Bundesrat advocates using existing options in the EU Treaties to bolster the Commission's ability to take action and prepare it for enlargement, for example by reducing the size or adapting the structure of the College of Commissioners.
12. The Bundesrat notes that the European Parliament has also commented on its own role and structure when addressing institutional reforms. The Bundesrat shares the view that it is important to strengthen the democratic legitimacy of Union policies and bring them closer to citizens. The Bundesrat therefore supports the proposals for a direct right of legislative initiative. With regard to the European Parliament's proposal to strengthen instruments that enable citizens to participate in the Union's decision-making procedures under the aegis of representative democracy, the Bundesrat underlines that selection procedures, a well-balanced composition of participants, and transparency play an important role in ensuring participatory processes can be implemented successfully.
13. The Bundesrat takes note of increasing discussion of the "differentiated integration" method and use of associated instruments such as "enhanced cooperation", gradual integration of new Member States or opt-outs for existing Member States. The Bundesrat notes that Member States are already integrated to varying degrees in certain Union policy areas. In the Bundesrat's view, this approach has essentially proved its worth without forgoing necessary steps towards integration, for example in monetary policy. This approach could in future also strengthen the Union's ability to take action in certain areas. However, the Bundesrat emphasises that this approach must not become the general rule, as otherwise the Union's integrity could be jeopardised. In this context, the Bundesrat refers to the basic conditions governing "enhanced cooperation", as set out in Articles 326 ff. of the Treaty on the Functioning of the European Union (TFEU).

14. In this context, the Bundesrat also takes note of the proposals to enable accession candidates to integrate gradually into the Union in specific policy areas. Referencing its Decision of 15th December 2023 (Bundesrat Official Document 593/23 (Decision)), the Bundesrat reaffirms its view that, on the one hand, a reliable prospect of accession for the candidate countries is advisable and that, on the other hand, the fundamental principle of a performance-oriented accession process must be upheld. The Bundesrat therefore welcomes the Commission's announcement that it will look more closely into the option of gradual integration. Comprehensive assessment of the impact of such accessions on the EU's entire structure is required.

15. The Bundesrat notes that the European Parliament has made proposals in its own-initiative report concerning further development of the European Union's competences. The Bundesrat is not opposed in principle to a discussion on reform of Union competences. Such discussions should be guided by the idea of making the Union better able to take action, as well as by the subsidiarity principle. However, certain proposals are problematic. In as much as the proposal for example concerns shared competences in the area of education, it meets with considerable misgivings on the part of the federal states. In this context, the Bundesrat refers to the tried-and-tested division of competences, whereby the EU is only granted a coordinating and supporting role in the area of education.

16. The Bundesrat considers that it is necessary for a reform process to take the European Union's finances into account too. Appropriate revenues and expenditure, aligned with the Union's long-term priorities and stipulated in the Multiannual Financial Framework, are essential to ensure that the Union is able to enlarge and take action, as well as to safeguard acceptance of the EU by its citizens. The Bundesrat therefore welcomes the emerging discussions on the impacts of enlargement on the common agricultural policy and on cohesion policy, for example, as well as the Commission's stated intent of presenting a detailed analysis of these impacts in the coming year.

17. With reference to the discussion on introducing new own resources, the Bundesrat refers to its Decision of 24th November 2023 (BR Official Document 297/23 (Decision)). It reaffirms that new own resources must be used primarily to repay debt taken out to finance NextGenerationEU and to cover ongoing interest payments. The Bundesrat believes that care must be taken when introducing new own resources to preserve the Member States' fiscal sovereignty, including the rights of the federal states. Safeguards are also required to ensure that new categories of own resources do not give rise to burdens on the federal states' budgets.

18. The Bundesrat emphasises the importance of the essential fundamental values of human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including minority rights, as set out in Article 2 TEU, which define the nature of the European Union as a community of democratic Member States. These shared values of the European Union are universal and indivisible. They form the unshakeable foundation for the EU's internal cohesion, which it is more urgent than ever to defend and strengthen in the light of the multiple internal and external challenges we face today. Furthermore, these values are a prerequisite for a strong EU that is able to take action, especially with regard to possible enlargements.

19. The Bundesrat welcomes the high priority that the Commission accords to defending democracy in Europe and reaffirms the obligation of all Member States to act as bulwarks of democracy in the face of anti-democratic activities. An independent judiciary and a diverse media landscape are key achievements of pluralist democracies and must be defended. It is likewise crucial to combat disinformation, hatred, and agitation directed against democracy, its representatives and institutions. Citizen engagement is also vital in defending and strengthening democratic values. Active participation in the European elections is one expression of efforts to keep the principles of democracy alive and bolster democratic institutions. Elections are a fundamental instrument of democracy. EU citizens' active participation directly determines the composition of the European Parliament and thus has a direct influence on the way in which European policy will be shaped in the years to come.

20. The Bundesrat emphasises the importance of the rule of law as a cornerstone of both the European Union as a community based on law and of democracy. With regard to the Commission's annual report on the rule of law in the European Union, the Bundesrat emphasises that continuous work is required to remedy existing deficits in the EU Member States. It welcomes the special report on the rule of law in the EU drawn up by the European Court of Auditors (ECA) and takes note of the recommendations contained therein and of the Commission's responses. The report shows that the range of instruments for protecting the rule of law in the EU has been expanded with what is known as the Conditionality Regulation, although risks remain. The Bundesrat requests the Commission to take into account the ECA's recommendations on strengthening the rule-of-law principle, fact-based procedures, and the guidelines on establishing a sufficiently direct link between violations of rule-of-law principles and the EU's financial interests. In this context, the Bundesrat also recalls its Decisions of 8th October 2021 (BR Official Document 618/21 (Decision)) and 16th September 2022 (BR Official Document 335/22 (Decision)).
21. The Bundesrat emphasises that protection of civil rights and liberties is an indispensable pillar of shared values. Efforts to curtail citizens' fundamental rights and freedoms – including measures that jeopardise protection of minorities – are directly at odds with the democratic principles of the European community.
22. Cohesion policy plays an important role in the Union's internal cohesion in all Member States and regions. As well as providing financial resources to underpin the objective of economic, social, and territorial cohesion pursuant to Article 174 TFEU, it also creates a sense of belonging and solidarity within the EU and boosts commitment to shared values. The Bundesrat calls for steps to ensure that the considerable impact on cohesion policy resulting from enlargement of the Union is not detrimental to fulfilling the objectives of cohesion policy in all regions of Europe. Only strong cohesion policy can meet the enormous challenges and varying impacts of social, digital, and green transformation processes at the regional level. In this context, the Bundesrat recalls its Decision of 24th November 2023 (BR Official Document 297/23 (Decision)). The federal states will continue actively contributing their views to the discussion on designing cohesion policy for the post-2027 period.

23. The Bundesrat again emphasises the federal states' constitutional right to be involved in matters pertaining to the EU, as enshrined in Article 23, Basic Law (*Grundgesetz* – GG). Pursuant to Article 23(1), Basic Law, the federal states are entitled and obliged to participate responsibly through the Bundesrat in the EU's further development. That is even more germane if amendments and further developments of Union law would impinge directly on the federal states' legislative competences. The Bundesrat therefore expresses its expectation that the Federal Government will proactively involve the federal states in the further course of the reform debate and will safeguard federal states' rights of participation and involvement in accordance with Article 23, Basic Law.

24. The Bundesrat reaffirms that federal structures – where they exist – should be given central consideration in deliberations on the future of the EU by all those addressing these issues within the European multi-level system. In this context, the Bundesrat again emphasises the importance of consistent compliance with the principle of subsidiarity to support effective cooperation between the EU and Member States in the European multi-level system. To that end, a shared understanding of subsidiarity among all those involved in EU policy-making is vital. Oversight of compliance with the subsidiarity principle serves to safeguard the treaties and implementing this principle keeps decisions at the level closest to citizens. At the same time, this strengthens acceptance among citizens of EU actions. The Bundesrat welcomes the Commission's application since 2022 of the assessment grid from the Task Force on Subsidiarity and Proportionality for politically sensitive and important legislative proposals, thus contributing to fostering a shared understanding of subsidiarity.

25. The Bundesrat again appreciates the opportunities for national parliaments to participate in the European decision-making process. It welcomes use of national parliaments' existing instruments and reiterates its call to strengthen their role as the “guardians” of the subsidiarity principle (see Bundesrat Official Document 282/22 (Decision)). The Bundesrat therefore emphatically welcomes the European Parliament's move to support introducing the “green card” mechanism for legislative proposals from national parliaments and extending the deadline for national parliaments to submit reasoned opinions from eight to twelve weeks. Extending the deadline would make it easier for national parliaments to carry out subsidiarity checks. The Bundesrat views the “green card” mechanism as a suitable instrument to ensure more active involvement of national parliaments in the

European legislative process, thus strengthening the democratic legitimacy of this process. At the same time, the Bundesrat reiterates its call to provide for appropriate quorums for submitting “green cards” with a view to ensuring that such initiatives align with the Union’s interests (see Bundesrat Official Document 738/21 ((Decision)).

26. The Bundesrat takes note of the proposal in the European Parliament’s own-initiative report, which suggests that the opinions of regional parliaments with legislative powers be taken into account in national parliaments’ reasoned opinions on draft legislation, and views this as a further contribution to the debate on further development of the subsidiarity check. However, this proposal still requires in-depth examination, given the associated legal issues and practical consequences for the federal states’ participation in subsidiarity checks.
27. The Bundesrat once again emphasises the importance of the regions in achieving the goal of better lawmaking in the European Union and is in favour of examining ways to further develop the Committee of the Regions’ role, with a view to ensuring that closeness to citizens is central to actions undertaken by the Union.
28. The Bundesrat also advocates critical examination during the reform process of the Commission’s growing use of the legal instruments of regulations, as well as delegated acts and implementing regulations. Involving the regional level effectively in the Union’s decision-making processes and providing sufficient opportunities to shape policy at the local level are not ends in their own right, but contribute significantly to ensuring acceptance of the Union by its citizens.
29. The Bundesrat advocates transforming the ongoing reform discussions between the Member States at EU level into a structured process and welcomes the analyses announced by the Commission. In this context, structures should be created as soon as possible at working level to drive the reform process forward. As well as the European Parliament, the Commission and national governments, this process should also involve the regional level and citizens. The Bundesrat considers the 2024 to 2029 legislative term of the European Parliament to be a suitable timeframe.

30. The Bundesrat points out that many of the reforms under discussion do not require any changes to the Union treaties. This applies, for example, to use of the *passerelle* clauses, the composition of the institutions, gradual integration of new Member States, and strengthening of instruments to protect the rule of law. The reform process should be geared towards a well-substantiated yet focussed discussion that strives to attain realistic results. It should therefore remain open to discussion on amendments to the treaties, but prioritise reforms that can be implemented under the current treaties.

31. In the light of the European Council's roadmap for future work on internal reforms, adopted on 27th/28th June 2024, the Bundesrat calls on the Federal Government to take the concerns of the federal states raised in this Decision into account in negotiations at the EU level.

32. The Bundesrat shall forward this opinion directly to the Commission and the European Parliament.