Bayerische Staatsregierung

NEW TERM OF THE EU INSTITUTIONS – VIEWPOINTS OF THE BAVARIAN STATE GOVERNMENT

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New Term of the EU Institutions – Viewpoints of the Bavarian State Government

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Preface

The Bavarian State government is committed to Europe and to European integration. This unparalleled project of post-war history has brought our continent peace, freedom, growth and prosperity. The European internal market creates outlets for our businesses, and in doing so secures jobs. The common currency simplifies payment transactions. The elimination of border controls makes travel easier.

Particularly because the success of European integration is so fundamentally linked to the well-being of us all, one must face today's problems clearly and soberly. Undesirable developments only lead to rejection and disenchantment.

The collective involvement of all affected parties is needed to ensure that people can more strongly impact political decisions again and that the EU concentrates on the essential and acts sparingly and efficiently in doing so.

We also need more political involvement of the EU

- to create good competitive conditions for the European businesses in the internal market and in the world, because this is the only way to secure jobs;
- to successfully represent our interests in the world in commercial policy as well as in foreign and security policy;
- to promote internal security on our continent in the presence of cross-border crime and migration flows.

Such an EU that gets back to its core competences and faces the challenges of the future offensively and with commitment will also find acceptance among the people of Europe.

Concrete proposals are made below; their implementation would allow these goals to be achieved. They can be summarized in five core theses:

End the economic crisis, fight unemployment

The existing economic crisis and the high unemployment rates in many Member States of the EU are not a result of unforeseen events. To manage them in the long term, the EU and its Member States must once again provide the space that is necessary for entrepreneurial activity to unfold.

Guarantee internal security, fanage migration flows

To be able to guarantee internal security in a place with unbounded freedom, the police and the justice system must work together in an effective cross-border collaboration.

Keep evolved democratic structures alive

The democratic structures, some of which have evolved in the Member States over centuries, are an expression of diversity and the inner strength of the peoples of Europe. The European Union should respect these citizen-oriented structures and the decisions taken in them, and take its own action only if their European added value is indisputable.

Strengthen the foreign policy role

In a globalised world, only the EU has the necessary weight to assert Europe's interests with success.

Keep an eye on the future – Digitalisation, industrial and energy policy

The EU must dedicate itself to the fields of the future more strongly to continue to keep the promise of prosperity and social security. Energy security and digitalisation stand at the forefront.

End the economic crisis, fight unemployment

The economic situation is desolate in many parts of Europe, and unemployment has taken on frightening proportions. For many people in Europe, decreases in wealth are no longer just an abstract cause for concern, but concrete reality. This development, which directly affects acceptance of the European integration process and the underlying promise of prosperity, should give rise to critical debate. It is important to subject the decisions and developments that have led to this situation to sober analysis in order to build on this and develop strategies so that economic recovery can once again be guaranteed.

1. Overcome the sovereign debt crisis in the euro area

The following cornerstones should be kept in place to overcome the debt crisis in the euro area:

- no purchases of government bonds by the ECB
  the ECB is to be dedicated solely to the objective of monetary stability, i.e. it should not undertake any state financing with the help of the money printing press
- maintenance of a restrictive rescue strategy
  Necessary support by the Union must continue to be tied to recognizable reforms while maintaining a policy of cutbacks in the crisis countries. The troika must continue to play a central role in the implementation of rescue packages.
- consistent involvement of the Bundestag in all issues that include any liability of the German taxpayer
- no communalisation of debt

As forms of a transfer union, Euro bonds and debt funds are to be rejected. Such instruments, which result in some states of Europe assuming the debt of other states, not only lead to massive decreases in acceptance, they also give rise to massive disincentives since the importance of a generationally fair and sustainable state fiscal policy can no longer be conveyed.

- a rigorous application of the stability and growth package (SGP) by the Commission (deficit process) is needed for the same reason.

The Bavarian State government believes that an orientation along the above-named principles is the only promising course for handling the debt crisis in the euro area. The developments in Spain, Ireland and Portugal, whose adjustment programmes were successfully completed, show that the strategy of restrictive rescue is best suited to re-establishing more competitiveness in the crisis countries. To maintain the credibility of the reformed SGP, the Commission must apply it consistently.

A communalisation of debt should continue to be strictly rejected. Otherwise, the Member States operating solidly in economic terms would be overburdened and an incentive to have healthy budget policies would be lacking.

2. Strengthen competitiveness

The economic crisis in many states of the EU is primarily a crisis of competitiveness. In many Member States, structural reforms were neglected for decades and resulted in fossilized governmental and societal structures. These have caused businesses to lose faith, refrain from investing and thus lose market shares and ultimately eliminate jobs. With this background, neither state, debt-based growth programmes nor "extraordinary measures" of central banks can offer a solution.

There is no way around serious structural reforms if one wants to counter the economic crisis with a lasting effect. Only a reliable environment that is attractive for businesses creates actual incentives for economic activity. Therefore, the Member States should tackle structural reforms of their

own accord and based on the necessity they themselves have recognized. The "European Semester" enables the Commission to support these states on a European level.

More effective implementation of the European Semester

When executing the "European Semester", the new Commission should focus more strongly on the Member States with considerable structural problems. An improved democratic legitimisation through stronger incorporation of the national parliaments is needed in this context:

The European Semester must be concentrated to a greater degree on the Member States with considerable structural problems. It is problematic when soundly operating Member States like Germany are also subjected to considerable political pressure from the Commission, particularly in fields in which the EU has no competences (e.g. income splitting, child care subsidy). Therefore, we must generally work toward having the country-specific recommendations of the Commission retain their non-binding character and not develop into "quasi-contractual" agreements between the Commission and the Member States.

Furthermore, the very tight deadline corset has resulted in democratic legitimisation deficits in the European Semester . There is no time for in-depth national parliamentary debate on the recommendations between the introduction of the country-specific recommendations by the Commission in May and the adoption by the European Council in June or July.

3. Dismantle bureaucracy

Bureaucracy and over-regulation are the greatest obstacles to economic development, employment and prosperity. Unnecessary bureaucracy costs time, uses up resources and reduces competitiveness. Studies in Germany have demonstrated that a good half of the bureaucratic burdens result from imposed European regulations.

For example, a manufacturer of electronics must – in addition to other technical regulations – observe the following European law requirements: Battery Directive, Packaging Directive, REACH Regulation, RoHS Directive, CE Marking Directives, WEEE Directive, and Ecodesign Directive. The WEEE Directive alone imposes the following obligations: Registration with the waste electrical appliances foundation (EAR), product labelling, annual verification of an insolvency-proof guarantee for the financing of the return and disposal of the appliances, monthly and annual reporting of the quantities sold, and statement of the WEEE registration number in the correspondence.

Bureaucracy not only burdens the economy, but also the administrations of the Member States and the EU, and thus leads to unnecessary costs for the general public. It also burdens the citizens and ultimately leads to a decrease in acceptance of the political processes in general.

Especially after accidents, new regulations are demanded to increase safety. A society cannot function without rules, but it is important to create a balance between personal responsibility on the one hand and over-regulation as an expression of the desire for safety on the other hand.

Therefore, the prime objective of a decrease in bureaucracy must be to put in place suitable structures that prevent the creation of unnecessary bureaucratic regulations from the outset. This also includes measures for improving the assessment of legislative impact and for a conservative EU fiscal policy in addition to a reduction in the number of the Commission's portfolios.

Improved assessment of legislative impact on the EU level

An external committee of independent experts which examines all costs of compliance for citizens, businesses and administrations by means of a uniform methodology could allow legislators to visualise the consequences of a law more clearly. In addition to the compliance costs, aspects of international competitiveness, particularly for SME, should be taken into account and established as integral parts of the legislative process.

Adherence to a conservative EU fiscal policy

The new Commission should undertake to comply with the following principles regarding fiscal policy:

- strict discipline in spending (limit spending to 1% of GNP)
- no new self-funding (key word "EU tax")
- no circumvention of debt prohibition.

We are pleased that the liability authorisations are limited to 1% of the EU GNP in the 2014-2020 multi-year financial framework. Keeping within this spending limit is particularly important in the future as well, since Germany has been the largest net payer in the EU for years.

The introduction of new self-funding for the EU budget (EU taxes) should be categorically rejected. The right to assess and collect taxes should remain solely with the nation states. EU taxes would also not be compatible with the character of the EU as an association of states.

The debt prohibition applies to the EU. It may not be circumvented by introducing new financing instruments (e.g. project bonds or the introduction of an instrument for convergence and competitiveness with an autonomous EU budget split off from the multi-year financial framework).

4. Prevent unemployment

A high employment rate is the result of coherent and responsible action by politicians and by business and social partners. Employment and prosperity cannot be generated by government regulations and economic stimulus packages.

The European Union should support the Member States in this process. Programmes like ERASMUS+ promote mobility in Europe and ensure the removal of barriers that might prevent someone from working in another Member State.

In addition, the European Union should refrain from taking any measures that result in a loss of jobs in the Member States. In the field of market regulation, in particular, there is a strong tendency within the EU to neglect the impact on the economy and employment in favour of ostensibly high safety standards in individual fields.

In the Bavarian State government's view, harmonizing European social systems would be the wrong course to take. The nationally differing social systems have developed based on tradition, culture and society over long periods of time and therefore possess the corresponding democratic backing within the country. European transfer mechanisms in the social field lead to higher wage on-costs and thus put jobs at risk. They would also make it easier for Member States to shift their own original responsibility for their job markets to the Union. A successful economic policy, on the other hand, is the best social policy, since the challenges of (youth) unemployment can only be managed by the long-term creation of jobs.

This does not preclude the EU from supporting the creation of jobs with accompanying measures, e.g. supporting the introduction of dual training systems, the improved transferability of educational degrees, or better language teaching.

Guarantee internal security, deal with migration flows

1. Guarantee internal security

The newly acquired competences of the EU in the field of "justice and home affairs" lead to greater legislative activity in this field. Although the guarantee of internal security and the existence of a reliable justice system are essential components of social peace and economic development – and also have internal market relevance from this perspective – these tasks still remain the sole responsibility of the Member States.

Taking note of the competences structure, the future Commission should thus limit itself to actions that pertain directly to the internal market or promote cooperation between the police and justice authorities of the Member States.

Stronger response to illicit drug trafficking

There can be no softening in the fight against illicit drug trafficking. This is particularly important with regard to cracking down on new psychoactive substances with a high risk potential:

- more and more psychoactive substances are emerging on the EU internal market that imitate the effect of substances controlled in accordance with the UN Convention on Narcotic Drugs and are marketed as legal alternatives (so-called "legal highs");
- the proposal for a Directive of the European Parliament and of the Council to amend the definition of drug (COM(2013) 618 final) therefore rightfully aims to expand it with regard to new psychoactive substances with a high risk potential;

- at the same time, the proposal for a Regulation of the European Parliament and the Council on new psychoactive substances (COM(2013) 619 final) should create provisions to restrict the free trade of such psychoactive substances as well as EU-wide procedures for exchanging information and introduce market restrictions for such substances;
- in addition, Europe-wide restrictions must be put in place regarding the availability of the basic ingredients required for the manufacture of new illegal psychoactive substances.

2. Deal with migration flows

As an economically affluent continent, Europe will always be a migration destination. In Bavaria alone, a 70% jump in the number of asylum applicants (to 110,000) was recorded with an acceptance rate of around 25%. The tragic accidents and human dramas that took place off the Mediterranean island of Lampedusa in October 2013 are further evidence of the unchanged and persistent migration pressure.

A concentrated and coordinated course of action against smuggler bands and criminal human trafficking is needed all the more, as is a swift and simple asylum procedure. If there are no grounds for asylum, the affected parties must be deported or repatriated at the earliest stage possible. Deportation impediments must be interpreted restrictively and eliminated where possible.

Measures for a forward-looking European asylum policy

To better manage the existing and anticipated refugee flows, the asylum policy of the EU should not be limited to reactive measures, but look forward and begin with the causes of flight:

- Combating the causes of flight through a goal-oriented foreign aid policy of the European Union.
- Intensification of cooperation with transit states.
- The need for an EU Commissioner on refugees.

- Fair distribution of those truly requiring protection within the EU. Anyone who needs protection shall find a safe haven in the EU. The burdens should be divided with solidarity and equally among the Member States, and the states along the external border are not to be exempt from their responsibility. A systematic application of the Dublin Regulation would be a first step in this direction.
- implementation of measures of the Mediterranean Task Force (TFM), among other things by intensifying the fight against criminal smugglers and human traffickers, increased collaboration with EUROPOL, Frontex and EASO, and better border monitoring;
- temporary suspension of the EU visa exemption for the West Balkan states. Since the suspension of the visa requirement for Serbia, Bosnia-Herzegovina, Albania and the Former Yugoslav Republic of Macedonia, the number of asylum applications filed by citizens of these states in Germany has skyrocketed. The respective acceptance rates are around zero;
- making it possible to file follow-up applications from the country of origin;
- clarification of the Schengen Agreement that internal border controls are permitted if another Member State had violated the agreement.

Keep evolved democratic structures alive

Europe acquires its fortitude and its identity from the diversity of the civilizations comprising its Member States. Societal and democratic systems that have in some cases evolved over centuries are not an expression of expendable traditions. In fact, they constitute the very essence of our continent. It is from the productive competition of differing ideas, attitudes toward life, and cultures that Europe draws its strength.

Respecting and maintaining this creative diversity should be the fundamental principle of each and every act of the European Union. It should respect the decisions of Member States adopted in democratic processes and give the structures of the Member States the space that they need for the independent regulation of their own affairs. The role of the European Union, on the other hand, is justified by the added value that cross-border and common actions create for all involved parties. Therefore, however, the European Union should limit itself to actions with a clear European added value.

1. Improve closeness to citizens

In its strategic agenda, the European Council rightfully demanded that the EU must practice restraint in its legislative action. Indeed, the tendency of the Commission to make unnecessary legislative proposals is one of the main criticisms regarding the actions of the EU.

The principle of subsidiarity enshrined in Article 5(3) of the Treaty on European Union, according to which the EU may only act if and insofar as ac-

tion by the Member States would not be sufficient, is generally intended to prevent such abuses. Observing it would guarantee that decisions would always be made on the level closest to the citizen and the subject matter. At the same time, it must be noted that the principle of subsidiarity alone had not arrested this development. This is due to the interplay of several factors:

- First, it can be determined that some competence clauses (for example, the internal market competence pursuant to Article 114 of the Treaty on the Functioning of the European Union [TFEU]) are used particularly intensively for conflict-laden proposals. The common criterion of these competence clauses is their unclear or open wording, which provides the Commission with great leeway for interpretation.
- In this regard one can also observe an increased tendency of the Commission to create "quasi-regulatory competences" in fields where the EU only has supporting and advisory functions according to the TFEU (for example, in the fields of education and cultural affairs) by encouraging a "back-door regulation" through political pressure on the Member States and financial incentives ("golden reins").
- Add to this a structural weakness of the principle of subsidiarity. Notwithstanding the clear wording of Article 5(3) TEU ("shall act only if [...]"), the principle of subsidiarity has been reduced de facto from a limitation on the exercise of competences to a political procedural right in political practice and in the legal rulings of the ECJ. A clearly outlined and unequivocally ascertainable list of criteria for designating the correct political level is missing; in political usage the key word "subsidiarity" is used synonymously with the evaluation of the proposal itself.
- Furthermore, there is a tendency throughout Europe to use the EU as a vehicle for regulations that may not be enforceable on a national level – for example due to opposing political majorities or because of a generally lesser degree of effectiveness on the part of the political system there.

Focusing solely on the principle of subsidiarity has not proved to be effective in handling this conflict situation. Guaranteeing a more effective delimitation between EU and Member State competences will require a solution on the level of the individual enabling acts themselves. This will require specific criteria that are custom-tailored to the respective enabling acts

and are objectively verifiable. The more concretely they are developed, the smaller the leeway for breakaway action. In a further step the relevant actors within the EU (Commission, Council, Parliament) should make a political and legal commitment, e.g. by way of so-called "inter-institutional agreements" to adhere to these criteria.

The problematic enabling acts are identified in Annexe 1 and proposals are made for this concretisation.

2. Exercise legislative restraint

However, even to the extent that the European Union is competent, it should act with restraint in exercising its competences in order to leave the Member States reasonable leeway for an implementation that is practical and citizen-oriented. This applies all the more, the stronger a proposal encroaches on evolved Member State structures.

Directive over Regulation

The new Commission should commit to giving the instrument directive (requires implementation by the Member States) priority over regulation and to limit itself to guidelines instead of detailed requirements. For preventative reasons, deviations should be subject to a special mandatory justification process.

The departments' suggestions for concrete measures presented in Annexe 2 of this paper also identify the problematic proposals for which special restraint would be appropriate.

3. Reduce the Commission's number of portfolios

To ensure that proposals for legal acts correspond to actual legislative needs, a slender and efficient administrative apparatus is imperative. Otherwise there is a risk that unnecessary proposals will be worked up which

primarily serve to justify the existence of individual commissioners or offices.

The current structure of the Commission favours such undesirable developments. The Commission currently maintains 33 Directorate-Generals, among them some with only a very small portfolio (e.g. “data processing”), some with overlapping responsibilities (e.g. “climate policy” and “environment”) and some with responsibility for issues for which the EU has no or only very subordinate competences (e.g. “education and cultural affairs”). This administrative apparatus – of considerable size even in comparison with the national one (the German federal government, for example, maintains 15 departments and the Bavarian State government 10, which cover the entire scope of state action) – supplements this with another 50 facilities such as decentralized agencies, executive agencies, institutes, or joint ventures.

Although the long-term goal should still be to reduce the total number of commissioners, the new Commission should at least counteract the trend toward more and more expansion with a true reduction in the number of its portfolios. It is not enough to let the portfolios continue to exist and supplement them with a superior “coordinating” level of vice-commissioners. On the contrary, in the course of a true administrative reform, portfolios should be completely dissolved, competences combined and clear decision-making structures created.

Strengthen the foreign policy role

1. Strengthen joint foreign trade policy

One of the undeniable benefits of the European Union lies in the added value that uniform or coordinated action offers in a globalised world. Only an innovative and export-oriented industry can secure lasting prosperity. Therefore, we want the EU to dedicate itself more intensively to building commercial relations with third-party states. Strengthening the EU's joint foreign trade policy must become a central component of any reorientation of the EU in the future.

Enter into a sensibly negotiated TTIP

The new Commission should continue the negotiations on TTIP and bring them to a successful conclusion in which the European standards of protection (particularly regarding consumer, environmental and health protection) are maintained. In the view of the Bavarian State government, provisions for investment protection and investor-state dispute settlement in relation to the USA are not necessary. A successful conclusion of the negotiations on TTIP would establish the largest economic area in the world and thereby define the standards of world trade for a long time. The EU should not miss this opportunity to influence this process actively. A balanced free trade agreement with the USA would not only be beneficial for the Bavarian economy, but for the entire European Union as well:

- a strengthening of the competitiveness of the Bavarian export economy – comprising mostly mid-sized businesses – will secure prosperity for the coming generations as well;

- without lowering the high level of protection on both sides, the mutual recognition of standards or common standards would eliminate considerable costs for double testing and licensing;
- through easier access to new sales markets, the agreement could also help economically weaker Member States get back on their feet through their own efforts.

However, the agreement will only be successful if negotiations are conducted with the utmost possible transparency and the European levels of environmental, labour, consumer and data protection are not compromised. Cultural affairs and education must be protected as must communal public services and the rights of statutory health insurance (e.g. in pricing and setting cost limits for the supply with medications).

2. Manage international crises

Whether in Syria, Libya or Ukraine – the demands on and expectations of European foreign policy are high. The European Union must improve its abilities to find one concentrated voice and to react quickly if it wants to serve world peace.

Give the European Foreign Service its own role

Europe needs a potent foreign and security policy. Only through a strong voice, can the EU serve peace in Europe and the world, and create clear added value.

- It is incumbent on the European foreign service to design reaction scenarios in advance of crises and to simplify the coordination processes for civil, political and military measures.
- The military capabilities of the EU States must be coordinated within the NATO framework and supplement it appropriately. Here too, the European foreign service could contribute to an improvement in the joint use of military capabilities through better coordination mechanisms, or to a joint or at least coordinated procurement policy of the Member States.

Keep an eye on the future – Digitalization, industrial and energy policy

To be able to deliver on the promise of prosperity and social security, the EU must take care not to lose sight of the fields of the future, especially energy and digitalization.

1. Promote digitalization

A heretofore inadequately exploited potential for further economic development of the EU lies in increased digitalization. Successful economic impulses can be set here through standardising and de-bureaucratizing measures on the European level.

De-bureaucratization of aid in broadband promotion

Broadband promotion must be de-bureaucratised and simplified. To do this it is necessary to limit the European broadband guidelines to the fundamental basic requirements (upstream market research, competitive selection processes, open network access/limited to bitstream).
The upgrading of high-speed broadband networks is one of the most important tasks for the next few years. In a liberalised telecommunications market, such networks do not originate on a market-driven basis everywhere and therefore require state support. The complicated aid requirements of the EU Commission (particularly the broadband guidelines) lead to much bureaucracy and run counter to this objective.

In addition, the European Union should become involved as a standard-setter in the field of network policy. In light of worldwide networks, national and regional initiatives only have a very limited reach.

Network policy of the EU

The EU's network policy should be oriented along these guidelines:

- The goal must be for Europe to regain a leading role over the medium term in the field of telecommunications networks, software and hardware, and in internet services and the entire ICT industry. To do this, priority, consistency and credibility must be ensured across all Brussels policy fields;
- creation of suitable parameters for improved European data security in the internet;
- creation of parameters (in the sense of IT security) in order to promote the establishment of independent European chip manufacturers and thereby to reduce existing dependencies on American or Asian manufacturers, for example;
- securing of internet neutrality and the best-effort principle to safeguard an open, free and innovative internet in the future as well;
- For a strong European ICT industry that must be competitive on a global scale, larger mergers may be necessary in order to make the required investments possible and achieve the respective magnitude effects. In telecommunications regulation and in merger control processes, the aspects of competitiveness in a global context must be taken into account more strongly.

2. Set up an attractive regulatory framework

Businesses will only be willing and able to invest and create jobs if they are positioned in a stable and attractive regulatory framework. Therefore, the Commission's regulatory activities should be limited to providing a reliable regulatory framework that can serve as the basis for solid and sustainable economic development.

Creation of an "Industry Competitiveness Check"

The strengthening of European industrial policy is an important prerequisite for Europe to regain its economic health. As an integral part of the legislative process, an independent institution should assess the impact of other policy fields, such as environmental, energy and climate policy, innovation and research policy, on the industry. This should also include the already existing legal situation.

Feasible proposals are made for individual policy fields in Annexe 2.

3. Complete the internal energy market

Securing an independent, affordable, safe and resource-saving energy supply is among the core challenges for the next few years. As a state with few natural resources and being a strong industrial location, Bavaria has a self-interest in unimpeded and liquid European power and gas markets.

Greater Europe-wide diversification of energy sources is a crucial prerequisite both for the improvement of supply security and for lower prices. Through intelligent lawmaking the European Union can create a framework that makes the development of renewable energies easier on the one hand, but also sets pertinent incentives for the new construction of flexible power plants, among other things.

A better Europe-wide linking of energy infrastructures is needed additionally in order to guarantee supply security and allow the unimpeded transport of energy. A stable market cannot develop in "energy islands." This is why a productive, cross-border energy infrastructure must be built.

The liberalisation of the power and gas markets has led to a considerable reduction in energy prices (before taxes, fees and charges), particularly for end consumers, while continuing to ensure supply stability. The fact that liberalisation gains were eaten up by new state charges (power tax, EEG reallocation charge) cannot be blamed on the liberalisation. The additional bureaucratic burdens accompanying the liberalisation must also be accept-

ed, since the usefulness of the competition clearly outweighs the disadvantage of the extra costs. Further efforts are needed, however, to fully realise a European single power and gas market. So far, a Europe-wide power market design has failed because of the differing fundamental ideas of the Member States regarding energy policies. The European Commission is now challenged to create a legal framework going beyond the requirements for national subsidy systems established by the 2014-2020 Guidelines on State aid for environmental protection and energy in order to eliminate impediments to the internal market. The proposal to centralise European gas procurement using a European purchasing agency in the future would represent a "reversal" of liberalisation and should therefore not be further pursued by the new EU Commission.

Annexe 1 - Enabling Provisions of the TFEU that are Problematic with Regard to the Division of Competences

1. Article 114 TFEU (Internal Market Competence)

The internal market competence is the preferred enabling provision for legislation associated with a manifest transgression of competences. Originally created to promote the internal market, i.e. the free movement of goods, persons, services and capital, it is meanwhile used to justify any market regulation, regardless of whether it actually promotes the internal market or is at least related to it. This leads to EU requirements in fields for which the EU has no competence.

This overstretching of the bounds of competence is promoted by two circumstances: first, Article 114 TFEU is worded like a general clause, and this makes an exact demarcation of competences difficult. Secondly, legislative acts under Article 114 TFEU can be passed by a majority vote of the Council, i.e. individual Member States can be overruled.

> For instance, Article 114 TFEU has been used for measures on health protection (in which legal harmonisation by the EU is expressly precluded by the Treaty), for the Single Resolution Mechanism for euro states only (i.e. outside the internal market) or currently for extensive harmonisation and agency centralisation concerning network and information security – without relevance to the internal market.

To counter this, the Commission should develop bellwethers by way of an inter-institutional agreement in light of which it could be determined whether the legislative act actually does promote activity on the internal market. This would remove the basis for legislation previously based on Article 114 TFEU for the sole purpose of a general market regulation. By exercising self-restraint, the Commission should also limit itself to provisions in conformity with federalism when setting up requirements for the organisation of authorities and refrain from requiring certain central agency models.

2. Article 290 et seq. TFEU (Implementing Acts and Delegated Acts)

The Commission's options for issuing legislative acts independently (i.e. without needing the approval of the Council or Parliament) were fundamentally revised by the Treaty of Lisbon:

- In accordance with Article 290 TFEU, the Commission can be granted the authority to independently supplement or amend certain non-essential elements of a legislative act (delegated acts).
- Pursuant to Article 291 TFEU, implementing powers can be granted to the Commission where uniform conditions for implementing legally binding legislative Union acts are needed (implementing act).

It can be observed that these options are sometimes provided for quite excessively in the legislative acts and also affect areas that go beyond being purely collateral provisions or procedural regulations. The Commission uses the available options not only to accelerate decisions, but clearly also as a means to obtain additional competences in areas where it actually has no jurisdiction. Such acts are even used to annul political decisions that were taken with a different intention.

> As regards greening, for example, first drafts of delegated acts saw an attempt to defy the underlying legislative act by narrowing the leeway for national implementation that the Council intentionally established in the underlying legislative act. Although some corrections were made after political resistance on all levels, the adopted legisla-

tive acts still subject the Member States to an increased control and accountability risk.

Against vehement opposition from Germany, the "Creative Europe" programme made it possible for the Commission to introduce new bellwethers in the field of cultural policy independently without the participation of the competent Member States. This paves the way for the long-term control of national cultural policy by the Commission.

To curb the excessive use of Article 290, 291 TFEU, the Commission should obligate itself within an inter-institutional agreement to only make use of the existing powers in urgent cases that cannot be postponed. In the remaining cases, the Commission should undertake to make proposals for provisions in the underlying legislative act if legislation on the EU level is necessary.

3. Article 192 TFEU (General Environmental Competence)

Article 192 TFEU currently permits the issuance of requirements in all environment-related areas. It does not differentiate between the areas of environmental policy that are supposed to be handled on the community level or on a Member State level, or by whether there is any cross-border relevance at all. Environmental policy acts of the European Union are only justified, however, when environmental concerns cannot be reasonably resolved by individual Member States, specifically because of their cross-border impact. The EU Commission's activities do not consistently reflect this, though (e.g. in the former proposal for a soil framework directive or the recommendation providing for minimum criteria for environmental inspections of 4 April 2001).

Purely local subject matters without cross-border relevance – e.g. the soil protection directive – or mere procedural regulations should therefore not be subject to regulation under Article 192 TFEU in the future. Rather, the EU's activities with regard to the environment should concentrate on

- managing environmental protection tasks with EU-wide (cross-border) implications, such as EU requirements to keep the air clean through emission and immission standards
- uniform substantive EU regulations that actually relieve the strain on the environment better than Member State provisions
- indispensable common standards in the interest of environmental protection.

The Commission should commit politically to only using its environmental competence in the cases mentioned above.

4. Article 16(2) TFEU (Data Protection)

Article 16(2) TFEU empowers the EU to lay down the rules relating to the protection of personal data and to the free movement of such data only to the extent that the data processing falls within the scope of EU law. Despite this restriction, the Commission increasingly makes use of this competence basis to pass legislation in areas with no, or only very limited, regulatory competence pertaining to EU law (e.g. in the fields of internal and national security).

For instance, the proposal of a general data protection regulation also contains binding requirements for domestic data processing by public offices.

The proposal for a directive to regulate data protection in the field of police and justice is not intended to only apply to cross-border data exchanges within the EU, but also to purely domestic cases.

One could limit the legislative competences under Article 16 TFEU by striving for an inter-institutional agreement. Like Declaration Nos 20 and 21 of the Treaty of Lisbon, this should make clear that the legislative powers under Article 16 TFEU do not amount to a comprehensive delegation of competence. Instead, Article 16 (2) TFEU should, as a so-called annex competence, remain limited to matters in which the EU has original law-making competences.

5. Article 83(2) TFEU (Substantive Criminal law)

In areas not related to particularly serious crime, the EU may only harmonise the criminal law of Member States if this is essential. This annex competence must be interpreted restrictively. The fact that the EU's actions could turn out to be "useful" or associated with "added value" is not sufficient in this context. Nevertheless, the initial proposals the Commission has submitted in this area show that it assumes a broad scope of application (e.g. the proposal for a directive on criminal sanctions for insider dealing and market manipulation or proposals for criminal sanctions in the areas of food safety, market abuse and intellectual property in the notification regarding the "post-Stockholm" process).

In accordance with the rulings of the German Federal Constitutional Court (BVerfG), an inter-institutional agreement should stipulate that Article 83(2) TFEU can only be made use of if a serious enforcement deficit actually exists and can only be eliminated by threat of punishment. Mere differences between national sanctions are not enough.

6. Article 113 TFEU (Harmonisation of Indirect Taxes)

Article 113 TFEU empowers the European Union to harmonise the legal provisions on indirect taxes (e.g. sales tax) in order to allow the burdens placed on all entrepreneurs in the internal market to have a neutral effect. Nevertheless, the article is also used for proposals that go beyond pure harmonisation of the provisions on the tax assessment basis (e.g. proposals for a directive to introduce a standard value added tax return in the EU).

Therefore, Article 113 TFEU would need to be written more restrictively with the aim of generally rejecting any regulatory competence on the part of the EU with regard to administrative proceedings in the area of indirect taxes. The new Commission should undertake to do this – for example, by way of an inter-institutional agreement.

7. Article 79 TFEU (Immigration Policy)

Article 79 TFEU would make it possible to standardise the entire immigration laws of the Member States with only a few exceptions.

Directive 2003/86/EC on the right to family reunification set common criteria (minimum standards) for families to reunite. Initiatives by the Commission to expand the directive, e.g. with the objective to make it easier for more distant relatives to join the family or to prohibit language proficiency requirements prior to immigration can be expected over the medium term.

Directive 2008/115/EC set common criteria (minimum standards) for returning and deporting foreign nationals, which makes the consistent termination of the stay of expelled criminals and rejected asylum applicants considerably more difficult. For example, indefinite expulsions were forbidden, even in cases of serious criminality and potentially dangerous persons (e.g. Islamists). The enforcement of pre-deportation custody in correctional facilities, tried and tested for decades, was called into question by the imperative of separation from ordinary inmates; the results are considerable extra costs (building conversion measures, separate facilities for pre-deportation custody). As a result, it is currently not possible to enforce pre-deportation custody in some German federal states.

The new Commission should only make use of the competence regarding family reunification, deportation and repatriation to regulate minimum standards.

8. Article 91 TFEU (Transport Policy)

Article 91 TFEU serves as the enabling provision for all necessary actions in the field of common transport policy.

Article 91(1)d), which permits the Union to take "any other appropriate measures" for the implementation of a common transport policy, is par-

ticularly problematic. When applying this enabling provision, an adequate differentiation from other enabling provisions is often lacking, as is the required limitation to the objective of a common transport policy.

For instance, the Commission's proposal for a regulation on the technical roadside inspection of commercial vehicles ("rolling inspection") not only determines the content of the inspection, but also prescribes specific inspection quotas, the selection of vehicles to be inspected and the location of the inspection for the Member States.

EU Directive 2008/68/EC on the inland transport of dangerous goods is another example. It compels the police to transport seized objects according to the rules for dangerous goods transports. The Member States no longer have the option to adapt these provisions to the special needs of the transport of seized objects.

The new Commission should prepare a list of criteria to replace the current non-specific goal orientation with specific goals that are worded in a way that limits competence. The EU's competence regarding issues of transport safety should be limited to technical provisions (roadworthiness).

9. Article 165(1) subsection (1) and (2) points 1-6, 166, 167 TFEU (Education and Cultural Affairs)

Pursuant to Articles 165(1) subsection (1) and (2) points 1-6, 166, 167 TFEU, the EU only has supporting and advisory functions in the educational and cultural areas – but no power to issue binding requirements. The Commission has been trying for years to subvert this specification through "subtle measures", such as the "open method of coordination", recommendations and regulating preconditions for grants in order to obtain "quasi competences" in this manner.

The Commission's proposal to amend the regulation relating to the school fruit scheme/school milk scheme, for example, provides for an authorisation to pass delegated acts, by means of which the Commission could set concrete requirements for educational measures

and obligate the Member States to carry out monitoring and efficiency control measures.

The EU Commission should voluntarily commit to no longer legislate or set standards in this area on a political level and to instead limit itself to merely promoting and supporting functions as per the Treaty.

10. Article 165(1) subsection (2) and (2) point 7 TFEU (Sports)

In accordance with Article 165(1) subsection (2) and (2), point 7 TFEU, the European Union promotes and develops the "European dimension in sport". Since the term is not defined more precisely, the Commission views this authorisation as the gateway for a number of measures in various policy fields (e.g. proposal for a Council recommendation on promoting health-enhancing physical activity across sectors).

Therefore, the new Commission should no longer make use of Article 165(1)(2) TFEU.

11. Article 182(5) TFEU (Measures for the Creation of a European Research Area)

In accordance with Article 182(5) TFEU, the EU can issue supplementary measures to create the European research area. This legal basis is increasingly used by the Commission in an attempt to regulate research policies, particularly of the Member States with strong research programmes.

For instance, there are currently tendencies among the Commission and the European Parliament to set mandatory European law requirements in the area of research. This endangers the diversity of the research systems in Europe.

It should be made clear by way of an inter-institutional agreement that the EU is not authorised to regulate other policy areas within the context of its promotion of research. In addition, EU requirements and guidelines,

particularly quantitative targets along with monitoring and control rights in the field of research policy, should be explicitly excluded and the sole competence of Member States to determine, organise and finance their research policy reiterated.

12. Article 196 TFEU (Civil Protection)

In accordance with Article 196 TFEU, the EU has coordinating competences in the context of civil protection (primarily to promote rapid and efficient cooperation between the disaster management offices of the individual states). At the same time, there is the danger of Article 196 TFEU being used to create a pan-European civil protection system.

> For example, the first draft of the EU Commission on a "civil protection procedure of the Union" provided for the establishment of a European civil protection system in which the EU Commission makes the essential engagement and financing decisions (if, when, where, with what resources). In the meantime, this draft has been markedly toned down.

Article 196 TFEU could be supplemented by inter-institutional agreements to the effect that the establishment of a pan-European civil protection system is excluded.

13. Article 21(2) TFEU (Facilitation of Free Movement)

The legal basis of Article 21(2) TFEU also has potential for an extensive interpretation and a simultaneous broad effect. Article 21 TFEU is the core provision on Union citizenship. It guarantees citizens of the Union a general freedom of movement within the European Union that is independent of economic activity. Article 21(2) TFEU empowers the Union to pass provisions which facilitate the exercise of freedom of movement if action by the Union should prove necessary to attain this objective and the treaties have not provided the necessary powers.

In contrast to Article 352 TFEU, Article 21 par. 2 TFEU provides for the ordinary legislative procedure and could therefore be of interest to the Commission as an enabling provision. Article 21 par. 2 TFEU gains additional „attractiveness" due to its immense scope. Article 21 par. 2 TFEU thus has the potential of advancing to a vehicle for a political union.

The new Commission should voluntarily refrain from making use of Article 21(2) TFEU in the coming legislative period.

Annexe 2 -
Proposals for Specific Actions

1. Eliminate the duty to report under Article 9 of Decision C(2011) 9380

The Member States' duty under Article 9 of the Commission Decision to report to the EU on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest should be eliminated:

The automatic duty to report at two-year intervals places a considerable administrative burden on state and local government authorities in federally constituted Member States such as the Federal Republic of Germany, since the data for this must be requested separately. In addition, the relevance of the report, which contains only averages, is extremely limited.

2. Give better consideration to the special characteristics of services of general economic interest under state aid law

When applying Article 107 et seqq. TFEU (Aids granted by States) in the future, the Commission should give better consideration to the special characteristics of services of general economic interest (SGEI) when classifying them as state aid.

- In its so-called Altmark case, the European Court of Justice (ECJ) generally recognised a special status of SGEI in the fulfilment of the requirements of the aid definition.

- In its more recent rulings, the EGC rendered the Altmark criteria laid down by the ECJ more flexible ("…held, inter alia, that, in the light of the particular nature of the SGEI mission in certain sectors, it was appropriate to show flexibility with regard to the application of the Altmark judgment …") and emphasised the different effects of the respective SGEI on competition ("…follows that the criteria laid down by the Court of Justice in the Altmark judgment concerning transport, which is unquestionably an economic and competitive activity, cannot be applied as strictly …"), see inter alia EGC, judgment of 7 November 2012, case T-137/10 and judgment of 12 September 2013, case T-347/09.
- In his letter of 20 December 2011 (C/2011/9481 fin.) to the President of the Federal Council of Germany (Bundesrat) concerning the then-pending modernisation of the EU aid provisions pertaining to SGEI, the Vice Chairman of the Commission announced: „At the same time, better consideration should be taken of the characteristics of the social services that the Bundesrat addressed (in its comments on the communication from the Commission regarding the reform of EU state aid rules on services of General Economic Interest (COM(2011)146))."

The new Commission must take appropriate account of these developments and announcements in its legislation and in other measures to fill in the gaps in Articles 107 et seqq. TFEU.

3. Uniform European product guidelines for tram cars

The European legislator must adopt a uniform European legal framework on the basis of the New Legislative Framework in order to remove barriers to trade and standardise the approval procedure for tram cars:

Tram cars are produced and put into service across Europe. The main manufacturers are Siemens (D), Bombardier (D; A), Alstom (F), Stadler (D; CH), CAF (E), Vossloh-Valencia (E), PESA (PL), Solaris (PL) Skoda (CZ) and Transtech Oy (FIN). The most important delivery markets are in Germany, France, the UK, Poland, the Czech Republic and Romania.

The current situation of the approval procedure is characterised by the fact that the respective national approval authorities have developed and updated legal frameworks that are discrete and independent of one another. The resulting administrative effort required of manufacturers, operators and authorities is significant and does not correspond to the European requirement that the market access conditions for industrial products in the European market, which are laid down in the New Legislative Framework among other places, be simplified.

This is the common view of the federal states, the federal government, the transport companies and the major manufacturers in Germany.

4. Do not apply the legal framework for railways to trams

The European legislator must be effectively prevented from applying the European legal framework for railways without distinction to trams.

Trams and trains obviously both use track systems. However, although the track systems seem to have the same system components, the technical requirements and the necessary performance criteria are different.

This is made clear by three examples:

- trams normally do not cross borders and are thus not interoperable
- trams do not reach ICE speeds
- trams must take account of urban conditions with respect to track routing.

Applying the European legislative framework for railway systems to tram systems would lead to excessive administrative requirements and additional costs with no discernible additional advantage in the field of technical safety or any increase in the reliability in the provision of transport services.

5. Reduce rail-induced noise by retrofitting old railway vehicles with the help of a clear legal framework for the allocation of external environmental costs

The Commission should take active steps to reduce the noise level of old stock of railway vehicles in an accelerated manner by issuing implementing measures pursuant to Article 31(5) of Directive 2012/34/EU:

As a major transit country in the field of rail freight transport, Germany is particularly affected by the negative impact of rail noise. Accordingly, there are numerous calls for measures to reduce noise. It would be preferable to combat noise where it is created, i.e. the cars themselves. This has an effect on all lines in the rail network and makes it possible to charge those who cause the noise, i.e. the owners of rail vehicles for the costs.

By contrast, measures to curtail the noise along the tracks would be paid for by the public sector, which finances the expansion of the rail network. The main sources of noise currently are freight cars that were put into service before 2006. Until this time, there were no noise limits in the approval regulations. As a result of their long service life of up to 50 years, measures for current stock are necessary in order to reduce the rail noise in the foreseeable future.

Technical modifications are available, but they result in added costs on the part of the operator and are therefore unattractive. A statutory obligation to refurbish old railway vehicles is legally problematic because it involves interference with private property and is also not likely to receive majority support for other reasons. Interested Member States must therefore promote retrofitting by offering financial incentives in the form of noise differentiated infrastructure charges for the rail network. Differentiation has already been implemented for the railways of the largest network operators in Germany. However, the originally planned incentive had to be reduced drastically at the request of the EU Directorate-General for Competition, as a result of which there is practically no incentive effect at present. The Commission should therefore exercise its regulatory competence as quickly as possible and create a clear legal framework for the allocation of external environmental costs.

6. Fundamentally change the proposed directive on data protection in the field of police and criminal justice matters

The proposed Directive of 25 January 2012 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating or prosecuting criminal offences or the execution of criminal penalties and the free movement of data (COM [2012] 10) is intended to guarantee the protection of individual rights with regard to the processing of data in the field of police and criminal justice matters. Unlike the previous Framework Decision of 2008, the proposed directive is not restricted to cross-border data exchanges, but rather also expressly includes the processing of data for purely domestic matters. From the Bavarian perspective, the following changes, in particular, are required:

- restriction of the scope of application of the directive to cross-border data processing
- a uniform regulatory regime for police measures to protect against threats both related to and unrelated to criminal offences
- expansion of the justifications for processing personal data, particularly the consent of those affected
- elimination of unnecessary bureaucratic provisions.

With respect to the scope of application of the draft directive, the European Union lacks the competence to regulate purely domestic matters in the field of criminal justice. Besides this, the scope of application of the draft directive does not include protection against threats unrelated to criminal offences. This creates unnecessary definition difficulties, as well as differing regulatory regimes (keyword: General Data Protection Regulation) in police work. Furthermore, the justifications for data processing specified in the directive are defined too narrowly (in particular, there is no justification on the grounds of consent) to meet the legitimate public interests that make the transmission of data necessary. Provisions such as Article nos 5 and 11 of the proposed directive, which give rise to fears of excessive bureaucratization of the work of the police and criminal justice authorities and significant administrative effort, should be eliminated.

7. Preserve the standards for judicial cooperation in criminal matters (Eurojust)

- The authority of the national members of Eurojust to issue orders must be restricted to investigative measures that are not coercive.
- Members of Eurojust may not, even in urgent cases, exercise powers that exceed those available to the national public prosecutor.
- The existing exception for federal or constitutional requirements in connection with the authority to issue orders of Eurojust members must be maintained.

The aim of the Commission's proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), COM (2013) 535, is to further improve Eurojust's ability to act for the purpose of effectively combating international crime, which is a laudable goal.

However, the Commission proposal envisages that the national member may order investigative measures in agreement with the competent national authority. In urgent cases, the national member will even be able to order investigative measures without the consent of the competent national authority. The proposal, though, does not define what „investigative measures" are. The power of Eurojust members for investigative measures that are coercive is not covered by the legal basis (Article 85 TFEU).

The rule on urgent measures envisaged in the Commission's proposed regulation runs the risk of eroding the exclusive authority of national judges in cases in which it is not waived even when there is imminent danger. It must be ensured that orders that the national public prosecutor's office cannot issue in urgent cases are also not available to a national member of Eurojust. The elimination of the existing exception for federal or constitutional requirements in connection with the power of Eurojust members to issue orders limits the existing flexibility of Member States. In view of the constitutional jurisdiction of the states in the field of criminal law enforcement, this is not appropriate.

8. Substantially revise the proposal on procedural safeguards for children suspected or accused in criminal proceedings

The proposed directive on procedural safeguards for children suspected or accused in criminal proceedings (COM (2013) 822) of 27 November 2013 defines minimum rights and minimum procedural standards for children who are suspected or accused in criminal proceedings, where „child" under the terms of the proposed directive is any person under the age of 18. Some aspects of the proposed directive should be rejected as too broad.

From the Bavarian perspective, therefore, the following changes, in particular, are required:

- the requirements for appointing a defence lawyer should be made more flexible
- audio-visual recording of interrogations should be restricted
- the specialisation, training and continuing education requirements for judicial authorities, law enforcement authorities and prison staff should be reduced.

The mandatory and indispensable involvement of a defence lawyer during the entire criminal proceeding envisaged in the proposed directive is not appropriate.

In particular, for minor offences in which the proceeding is dismissed by the public prosecutor with no sentence or in exchange for meeting what are mostly low-threshold requirements, this is not reasonable, even taking account of the concept of education. The requirement to make an audio-visual recording of every interrogation as envisaged in the proposed directive should also be viewed critically due to the increased time and staff resources it would require. In addition, the personal rights of the affected child are not sufficiently taken into account.

Indeed, children should not be made the object of a proceeding, but should instead take part in and be able to influence the course of the proceeding as a subject.

There are serious reservations – especially in terms of competence – regarding the specialisation, training, and continuing education requirements for judicial employees of the authorities, law enforcement authorities and prison staff that are envisaged in the proposed directive. This would lead to a significant expansion of training courses and thus additional budgetary costs.

9. Revise the proposal on procedural rights in criminal proceedings

The proposal for a directive to strengthen certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (COM (2013) 821) is part of the fourth legislative package of the Commission of 27 November 2013 to strengthen the procedural rights of suspects and accused persons in criminal proceedings.

In particular, under the proposal, those affected have the right not to be publicly presented as guilty by the authorities before the final judgment; the burden of proof rests with the prosecution and any reasonable doubts regarding guilt should benefit the suspect or accused. In addition, the proposal also governs the right of the accused to be present during the trial and provides for a regular evaluation by the Commission on the basis of the data to be collected by the judicial and law enforcement authorities concerning the individual cases.

While the goal of the proposed directive is laudable, the following changes are necessary from the Bavarian perspective:

- the conditions under which judgments in absentia are permitted should be expanded
- the requirement that judicial and law enforcement authorities must collect data should be limited.

The conditions under which judgments in absentia are permitted are too narrowly defined. They should also include the situation when the defendant leaves the trial without authorisation or the act of intentionally making oneself unfit to stand trial. Furthermore, it should be possible to exclude the defendant for the protection of the witness.

The collection of data in individual cases envisaged in the proposed directive would result in considerable administrative effort and expense. Moreover, simply recording the case statistics does not take account of the differences between the legal systems and traditions of the Member States and is therefore not very illuminating.

Other already available mechanisms of evaluation seem better suited to assessing the extent to which the goals of the proposed directive have been met.

10. Revise the proposal on „provisional legal aid"

The proposal for a directive on provisional legal aid for suspects or accused persons deprived of liberty and on legal aid in European arrest warrant proceedings (COM (2013) 824) is part of the fourth legislative package of the Commission of 27 November 2013 to strengthen the procedural rights of suspects and defendants in criminal proceedings. The aim is to define EU-wide minimum standards in the field of legal aid in criminal proceedings. Here, legal aid includes the provision of financial resources and support for suspects and defendants so that they can effectively exercise their right of access to a lawyer pursuant to Directive 2013/48/EU.

From the Bavarian perspective, the following changes need to be made:
- the right to provisional legal aid should be restricted
- the data collection requirement should be restricted.

While the concept of legal aid is foreign to German criminal law, the concept of mandatory defence already existing pursuant to § 140 of the Code of Criminal Procedure (StPO) and of counsel pursuant to § 40(2) of the Act on International Cooperation in Criminal Matters (IRG) are generally suitable for largely meeting the requirements of the directive. However, granting provisional legal aid without exception upon imprisonment as envisaged in the directive must be viewed critically. Such an expansion of the appointment of a public defence counsel in cases in which the defendant is imprisoned only for short periods – e.g. for a few hours – is not appropriate.

Furthermore, this would result in additional costs and significant administrative effort with a view to subsequent claims for recovery of costs (which are not always assertable) following conviction. The rule on the provision of data by Member States envisaged in Article 6 of the proposed directive must also be viewed critically. Such extensive and complex data collection for the mandatory defence would lead to a disproportionately high level of administrative effort.

11. Substantially revise the proposal for a „single-member private limited liability company"

Bavaria welcomes the objective of the proposed directive on the single-member company private limited liability company (societus unius personae, or SUP) of making cross-border activity in the domestic market easier for small and medium-sized companies (SMEs), and thus promoting these businesses. However, it rejects the present version of the proposed directive.

The proposal by the European Commission for a directive of the European Parliament and of the Council on single-member private limited liability companies (COM (2014) 212) poses a number of fundamental problems which, from the Bavarian perspective, call into question its appropriateness. These include:

- The basis for authority: The provision that is invoked only supports the proposal to the extent that cross-border incorporation issues are affected.
- Fitness for the intended purpose: A partially harmonising directive will lead to a number of different national legal forms. This will make cross-border activity more, and not less difficult.
- Incorporation procedures: The planned online procedure would open the door to abuse and manipulation and undermine national security mechanisms (notary review, commercial register).
- Capitalisation: A limitation of liability without guarantee capital does not offer sufficient protection for legal relationships (creditors, consumers). An enforcement order against an SUP would be practically worthless.

- Separation of seats: The ability to separate the registered office from the administrative seat would enable founders to choose the most suitable law. This would start a „race to the bottom“ and largely remove the SUP from government control, with all the consequences in terms of legal enforcement.

An appropriately designed, stand-alone rule in accordance with EU law could be better suited to supporting the concerns of SMEs. An optional instrument whose application would be limited to cases of cross-border incorporation should be considered.

12. Do not expand the Small Claims Regulation

The Free State of Bavaria generally welcomes the desire of the European Commission to make access to justice for disputes involving small sums in cross-border cases easier for consumers and SMEs by a simple, quick and inexpensive procedure. However, there are significant reservations regarding the planned extensive expansion of the Small Claims Regulation (proposal of the European Commission to revise the regulation for establishing a European Small Claims Procedure and the regulation creating a European order for payment procedure (COM (2013) 794). This holds particularly true for:

- the fivefold increase in the maximum value of the claim to EUR 10,000
- the expansion of the definition of cross-border legal cases
- the exceptional nature of oral hearings, the obligatory introduction of video and telephone conferences for oral hearings and the restrictions placed on the taking of evidence
- the cap on court fees.

There is no need for legislative action. Instead, consolidation and implementation of existing rules are required to increase awareness of them:

Disputes in the range of EUR 10,000 are no longer „small claims“. The envisaged increase of the scope of the regulation would have a significant impact on national civil procedure law and the court system. There is no need to expand the cross-border reference to include disputes between

parties in which the dispute has a foreign element but both parties have their domicile or usual place of residence in the same Member State. Nor can the comprehensive clarification of the matter in an oral hearing be replaced by the use of modern technology. The cap on court fees runs contrary to the objective of increasing the cost recovery rate in the judiciary.

13. Rewrite the proposal on the Common European Sales Law

The proposal of the European Commission for a Regulation of the European Parliament and of the Council on a Common European Sales Law (COM (2011) 635) appears to be ill-conceived. From the Bavarian perspective, it would be appropriate to withdraw this now obsolete proposal and submit a new text to the European panels that might represent a useful basis for discussion:

Bavaria welcomes the appropriate continued development of European contract law and continues to view the plan for a Common European Sales Law (CESL) proposed in 2011 as an interesting contribution to the discussion. However, in view of the economic significance of sales law, the requirements for a practicable sales law regime are high. This subject matter is in no way suitable as an object of political posturing. An optional instrument must also be factually correct, consistent and compatible with the civil law regime in the Member States with regard to all the key issues.

The discussions over the past three years have shown that the text proposed by the Commission – which was prepared in 2011 under enormous time pressure – was in need of considerable revision. The first draft has since been further developed in many respects; the original text is no longer relevant. In order to promote an informed discussion regarding the proposal, which continues to be desirable, it would seem appropriate to replace the original text with a consolidated version that not only reflects the current position, but also adequately takes account of the results of the discussions that have taken place since 2011 in an explanatory statement of the individual provisions.

Bavaria has played a constructive role in the discussion of the CESL from the beginning and will continue to do so in future.

14. Do not eliminate the Apostille system

The Commission's proposal for a regulation promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents within the European Union and amending Regulation (EU) No. 1042/2012 (COM (2013) 228 final) envisages, among other things, largely replacing the efficient Apostille system with an investigative system. In addition, the European Parliament is pursuing efforts to restructure the Commission proposal in such a way that the Member States would generally be obligated to take their decisions on the basis of copies of foreign-language documents and any private translations without further review. From the perspective of the European Parliament, the costs for official translations should always be borne by the Member States.

The objectives contemplated by the Commission and the European Parliament must be opposed:

The procedure for issuing Apostilles according to the Hague Convention of 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents has proven itself over the past several decades. It is not appropriate to largely replace this quick and cost-effective procedure, in which the authenticity of public documents is confirmed in the issuing country in an internationally standardised form, with a system in which a special review procedure must be initiated in cases of doubt in the country where the document is being used. Such a system would prove especially problematic in the field of land register law in particular. Authenticating foreign documents, which the land registry office is obligated to do in view of public faith in the land register, would be significantly more difficult without Apostilles and could lead to significant delays in and uncertainty regarding land register transactions.

An obligation on the part of Member States to make decisions on the basis of copies of unofficial translations of foreign-language documents would

jeopardise the factual accuracy of decisions in an unjustifiable manner. Costs for official translations must remain with the initiator and should not be passed on to the general public.

15. Do not continue the "EU Justice Scoreboard"

Monitoring and evaluation of the justice systems of Member States in the form of a Justice Scoreboard should not be continued:

In 2013, the EU Commission started subjecting the national justice systems to a comparative assessment. The instrument developed for doing so – the „EU Justice Scoreboard", in which the Member States were ranked according to their performance based on all of the parameters that were investigated – was, as announced, included in the European Semester and in the „Europe 2020" strategy. Despite the general criticism as well as the criticism of the methodology voiced by a number of Member States, the Commission continued the project largely unchanged in 2014.

The Bavarian state government views the instrument with concern:

- Firstly, the EU does not have the expertise necessary for the comprehensive coordination, monitoring and comparative assessment of the national court systems.
- Secondly, a serious comparison is only possible if it can be ensured that it is based on comparable data. However, the fields of responsibility of the courts in the Member States, their procedural requirements and the standards that must be upheld are currently – still – too different to make a reasonable comparison of the justice systems possible. Deriving conclusions from such a comparison that are used to formulate political standards with the measures of the European Semester leads in the wrong direction.
- Thirdly, comparisons using statistical parameters are misleading because they impart too much significance to what can be measured easily. The quality of justice and the decisions taken constitute the decisive criterion. Precisely this quality does not lend itself easily to statistical parameters and is clearly lacking in the design of the EU Justice Scoreboard.

The second edition of the instrument did nothing to changes these concerns either. The project should therefore not be continued.

16. Expand the European e-Justice Portal

The European e-Justice Portal should be expanded to include other functions. In future, data provided by the federal states should be added here and published.

This involves numerous legal fields, such as the commercial register, bankruptcy notices and, in future, possibly also the land register. In addition to upgrades to the European e-Justice Portal, this will also require changes to the respective administrative procedures for delivering the data. A study conducted by the German federal state of North Rhine-Westphalia regarding the transmission of data from the register portal of the German federal states estimated that this alone would cost some EUR 10 million. Costs for the states, which are by no means insignificant, can also be expected for the publication of state data from other legal fields on the European e-Justice Portal.

Therefore, from the Bavarian perspective, the costs for modifying the delivery systems should be borne by the EU in addition to the portal costs. If fees are levied for accessing data at federal state level, the European e-Justice Portal must include a payment option. An e-payment solution could be offered here that would also have to be paid for by the EU.

Publication of federal state data in the European e-Justice Portal would significantly increase the attractiveness of the portal. For Bavaria there is no discernible added value associated with this.

17. Ensure continuation of Member State systems for electronic identification and trust services for electronic transactions

At its plenary vote on 3 April 2014, the European Parliament adopted the proposal for a Regulation of the European Parliament and of the Council with regard to electronic identification and trust services for electronic transactions in the internal market. The next stages of the legislative process must ensure that the existing systems can continue to be used.

The systems created in the Member States and German federal states over the years must be preserved and the investments in them protected. The creation of completely new systems on the basis of compulsory EU requirements that deviate from the current national standards would require actual expenses, financial and staff resources that cannot be provided.

18. Do not create new recognition and transparency tools in the „European Area of Skills and Qualifications"

The European Commission plans to introduce a „European Area of Skills and Qualifications". Instead of creating new recognition and transparency tools, more time should be allowed for the establishment of existing tools.

The Commission criticises the tools existing at the European level thus far for being, among other things, too complex, not efficient enough and too slow in their development. Against this background, a European Area of Skills and Qualifications would have to be created that, firstly, addresses the range of qualifications, i.e. the question as to what skills and competencies learners need, and, secondly, the recognition of qualifications. The Commission's initiative is set to start in 2015.

The creation of this European Area of Skills and Qualifications is a new link in the series of „European Areas" (European Area of Lifelong Learning, European Higher Education Area, European Research Area). The inflation of „European Areas" should be viewed critically since it routinely involves the creation of new tools that are used to govern the education policies of the Member States. In addition, they require additional administrative effort

on the part of the stakeholders in the education system, which often does not seem justified by the results that are to be expected. Furthermore, the Member States need sufficient time to establish the existing tools.

For example, at information events on the European Area of Skills and Qualifications, the EU Commission voiced criticism of the slow pace of implementation of the European qualification framework in national systems. In Germany, further steps were taken recently at the level of the Conference of the Ministers of Education and Cultural Affairs regarding the designation of EQF/GQF levels on certificates. In this regard, it is feared that the EU – by creating new tools or restructuring existing tools in the framework of a European Area of Skills and Qualifications – will interfere in an ongoing process and weaken acceptance of the European Qualification Framework.

19. Critical review and reduction of the benchmarks in the field of education

The existing European benchmarks in the field of education should be subjected to a critical review and – to the extent that they do not prove to be relevant – eliminated. The Commission should refrain from creating new benchmarks:

In the field of education, there are currently six European benchmarks for the following subjects: early leavers from education and training, tertiary level attainment, pre-school education, students with poor performance in basic skills, employment rate among young graduates and participation of adults in lifelong learning.

The European benchmarks are conceived of as objectives on the European level, which each Member State is to help achieve, taking into account the initial situation in each country, i.e. they are not Member State objectives. However, they are used by the Commission to monitor and evaluate the quality of the education systems in the Member States, despite the fact that education is the responsibility of the Member States, and in Germany, of the federal states in particular. The introduction of another benchmark

regarding the acquisition of foreign language skills was only recently prevented in the Education Committee of the Council of the European Union as a result of negotiations led by the German federal states.

Currently, a mid-term review of the strategic framework for European cooperation in the field of general and vocational education and training („ET 2020“) is being conducted on the European level, which will define the benchmarks in the field of education. In this connection, a critical review and elimination of non-relevant benchmarks should be aimed for.

For example, the benchmark regarding the participation of adults in lifelong learning is not appropriate.

- The benchmark has the following goal: 15% of adults should participate in lifelong learning.
- The indicator for this relied on the percentage of 25 to 64 year olds who participated in general and vocational education measures in the four weeks before the data was collected.
- Due to the short data collection period, the corresponding participation rates in all Member States are automatically very low, which – promoted by the European Commission – gives the European public the impression that there is a great need for improvement in this field (see also the criticism of the Federal Council of Germany (Bundesrat) in BR Publication no 725/12 (B), 26/09 (B)).

20. Do not regulate Member States' research policies when creating the European Research Area

The Commission should not further pursue the attempt to regulate the research policies of the Member States using legal measures.

As compared to the earlier treaties, the TFEU grants the EU more extensive competences in the field of research and technology policy. The instruments available to it (Article 179 et seqq. TFEU) are very broad; they include guidelines, bellwethers, the exchange of tried and tested procedures, monitoring and evaluation.

The creation of the European Research Area (ERA) stipulated in Article 179 TFEU is particularly important, as the EU can issue complementary measures to achieve this goal (Article 182(5) TFEU); this legal basis is increasingly being used by the Commission in an attempt to regulate research policies, particularly of the Member States with strong research programmes. It has become clear from various statements of the European Union that it is seeking to adopt legislative measures in this regard. They are apt to constrain the leeway of the Member States in the field of research and technology policy.

This is rejected, which also corresponds to the opinion of the German federal government as stated in the German Coalition agreement: "We maintain that a strategy adapted to the different characteristics of the national systems is required for each Member State in the design of the ERA; harmonising legislative initiatives of the European Commission are detrimental to the diversity of the research systems in Europe which promote competition and thus science and innovation."

21. Strengthen "peer learning" measures on the European level instead of conducting "peer reviews"

The new Commission should refrain from using so-called "peer review processes" in the field of education and regarding educational topics in the field of employment, and instead strengthen "peer learning measures":

While peer learning processes are limited to the exchange of information among the Member States and the exchange of tried and tested practices, peer reviews have the added aspect of monitoring and evaluating the Member States' educational policies. In accordance with the European treaties, the European Union merely has the competence to promote cooperation between the Member States and to support and supplement their activities if necessary. With this in mind, peer review processes, as distinguished from so-called peer learning processes, should be rejected in the field of education for reasons derived from the allocation of competences. A so-called peer learning process, by contrast, can contribute to an open

discussion among the Member States about their problems in subfields of education and help them develop solutions by learning from one another.

It is true that the Commission emphasises that it refrains from performing a "critical examination" of the Member States' policies during peer reviews and that it guarantees participation to be voluntary. Nevertheless, it cannot be ruled out that the planned continuation and institutionalisation of peer reviews in the field of education will lead to increasing monitoring of and control over the educational policies in the Member States using employment policy as the legal basis.

For this reason, the 2012 Conference of the Ministers of Education and Cultural Affairs passed a resolution to make German participation in peer review processes contingent on narrow prerequisites: For instance, participation must be voluntary and the event must exhibit the character of a peer learning measure. In addition, there must be close coordination between the federal and state governments.

Peer reviews are an instrument that is also utilised in the field of employment. The usurpation of the field of education by the field of employment must not lead to an expansion of the coordination and monitoring instruments used in employment policy to include the field of education without differentiation.

22. Do not introduce European accounting principles for the public sector

The EU Commission and Eurostat want to introduce European accounting standards for the public sector on all state levels in the EU. An EU framework regulation that will be binding for all EU Member States is supposed to be passed on this matter by the end of 2015. The introduction of EPSAS is slated to begin in 2016. The new Commission should distance itself from these plans:

- compulsory EPSAS represent a massive interference with the budgetary sovereignty of the Member States and the German federal states
- the budgetary sovereignty of the German federal states is a core element of the federalist structure in the Federal Republic of Germany

- the introduction of EPSAS will result in enormous introduction costs, high additional ongoing costs and a massive increase in bureaucracy for state and local governments
- the EU Commission has not brought forth any evidence that EPSAS can effectively combat the budgetary and national debt problems of the EU Member States
- a solid and sustainable budgetary policy does not depend on accounting standards, but on political will, and can be achieved by cameralistics, as the Bavarian State has demonstrated for a long time.

In Germany, 17,500 individual budgets in the federal, state and local governments and social security institutions would be forced to arrange their accounting methods in accordance with the principle of the Anglo-American legal tradition tied to commercial double-entry bookkeeping and accrual accounting. The EU Commission estimates the conversion expense for Germany to lie at 2.7 billion euros. A high three-digit amount in the millions can be expected for the Bavarian State budget alone.

23. Introduce a financial transaction tax (FTT)

The new Commission should also set a goal of introducing an FTT worldwide, or at least Europe-wide, to prevent evasive reactions. The enhanced cooperation among 11 Member States that want to lead by example in the taxation of financial transactions is an important step in the right direction.

The tax must be designed so that negative consequences for instruments relating to old-age pensions, for small investors and the real economy are avoided. This is the only way it can make a genuine contribution to greater tax fairness. The revenue must flow to the national budgets (no income sovereignty for the EU):

The financial transaction tax is supposed to demand an additional contribution from the actors on the financial markets for managing the financial burdens on public budgets that have arisen due to the financial market and the economic crisis.

The greatest possible territorial scope of the tax is needed in addition to the concrete configuration in order to prevent evasive reactions / distortions of competition. Ideally, the G20 would agree on a taxation of financial transactions. Currently, this is not realistic, however. Even within the European Union, no consensus can be established with regard to an FTT. Especially Great Britain is putting up fierce resistance so as not to weaken London as a financial centre, as the argument goes.

Therefore, it is the order of the day to keep an eye to what is doable, even if compromise is necessary on fundamental issues. The immediate goal is a harmonised FTT to be introduced in the 11 Member States participating in the enhanced cooperation.

24. Take account of local collaboration in the proposed directive to charge value added tax to public bodies

The interests of local collaboration in particular should be taken into consideration in the development and discussion of the proposed directive on charging value added tax to the public authorities which the EU Commission has planned for the end of 2014.

The goal is to enable legal persons under public law to continue to work together without being subject to a value added tax. This would allow smaller municipalities in particular to better shoulder public services for their citizens.

The Conference of Finance Ministers has therefore issued the following joint statement to the EU: “Collaboration and various forms of co-operation among public bodies should not be burdened and made impossible by the imposition of a value added tax. The public bodies need lasting and legally secure planning bases to fulfil the common tasks from a tax perspective as well. The legal and factual peculiarities of handling public tasks in the individual Member States must be adequately taken into consideration in any future EU legislation.”

25. Improve European Territorial Cooperation (ETC)

The new Commission should continue to pursue the following goals in the field of European Territorial Co-operation (ETC), financed by the European Regional Development Fund (ERDF):

- further facilitation of EU programmes: simplifications in the administration of programmes and project implementations are also needed in the future
- interstate co-operation and strengthening of Bavaria's competitiveness as a result: especially in the trans-national areas of co-operation, namely the Danube region, Central Europe and northwestern Europe.

The above mentioned measures can guarantee that

- the funds are accessed more easily and utilised more efficiently. Access to aid programmes should be facilitated, particularly for smaller and medium-sized municipalities as important actors on behalf of the territorial development in Europe
- the levelling of regional disparities will continue and the bond in Europe will be strengthened.

26. Do no impose a duty to report indirect land use changes

The proposed directive of the European Parliament and the Council to amend Directive 98/70/EC relating to the quality of petrol and diesel fuels and to amend Directive 2009/28/EC on the promotion of the use of energy from renewable sources should not impose a duty to report indirect land use changes (Indirect Land Use Change – ILUC). The Commission should instead be obligated to submit a legal methodology to determine the effects of indirect land use changes in third-party states.

In its amendment proposal, the Commission assumes a scientifically unreliable theory for quantifying so-called indirect land use changes (according to this theory, the cultivation of raw materials for the production of biofuels displaces the cultivation of raw materials for food and feed products on other surfaces with a character deserving of protection).

At the initiative of Bavaria and Hesse, the Bundesrat adopted an exceptionally critical statement regarding the Commission's proposals on 14 December 2012 (Publication no 618/12). The Bundesratspoke out in favour of applying so-called "malus factors" for indirect land use changes within the context of the proposed amendment only if calculation models made it possible to take into consideration the requirements set for nature and climate protection and to differentiate between direct and indirect land use changes. The considerable shortcomings in the reliability of the Commission's proposal have been corroborated by several scientific studies in the meantime.

The requested reporting of indirect land use changes should be rejected for this reason. In the case of European biofuels made of domestic raw materials, such land use changes (e.g. wood clearing) are not only excluded, but also prohibited by law.

27. Exempt craftsman's vehicles from the tachograph obligation; expand the radius from 100 km to 150 km

The scope of the Tachograph Regulation (EEC) No. 3821/85 and Regulation (EC) No. 561/2006 on the harmonisation of certain social legislation relating to road transport should be changed to the effect that the duty to equip a vehicle with new electronic tachographs for vehicles starting at 3.5 t permitted total weight should only apply to vehicles that travel more than 150 km from the company's place of business:

A radius of 100 km is supposed to apply according to the compromise reached by the European Parliament in January 2014. This radius is too small for many deliveries by craftsmen (e.g. brewers, millers and construction workers) with the result that the provisions that are generally intended for professional drivers (long-distance haulers) will also be applied to craftsmen for only occasional driving that is secondary to the employees' other work. This leads to considerable costs for the businesses without obtaining the intended benefit (increased road safety).

28. Vocational training – no intervention by the EU in the competences of Member States

The new Commission should refrain from controlling the Member States' policies on vocational training by way of recommendations, e.g. on employment policy:

The field of vocational training lies in the competence of the Member States (the competences set forth in Articles 165 and 166 TFEU must not be exceeded). The educational systems in the individual countries are rightfully different, and it is neither appropriate nor expedient for standards to be set by the EU.

The EU Commission is trying vehemently to encroach on the competences of the Member States in the field of vocational training, be it through proposals, concrete initiatives or calls to action.

EXAMPLES

- proposal for a Council recommendation on the introduction of a youth guarantee (Bundesrat Publication no 756/12)
- communication of the Commission: Rethinking education: Investing in skills for better socio-economic outcomes (Bundesrat Publication no 725/12)
- communication of the Commission: Youth opportunities initiative (Bundesrat Publication no 876/11).

29. Promote pan-European digitalisation of radio

The Commission should take measures to support pan-European digitalisation of radio broadcasting under the "DAB+" standard:

- definition of DAB+ as the common European standard
- binding introduction of a pan-European standard for the reception of digital signals for radio receivers ("smart chip")
- pan-European initiative for standard outfitting of vehicles with digital receivers

- campaigns for pan-European positioning of digital radios with the consumer.

The digitalisation of radio and the development of corresponding transmitters and receivers by industry is part of the digitalisation of the economy. The digitalisation of satellite and antenna has been completed in the field of television. Digital radio (DAB+) has gained momentum in Europe, but still lags behind expectations.

The process should be supported by political initiatives on the European level. Digital radio offers several advantages as compared to VHF, for example more efficient use of the frequency resource, increased offerings for the citizen, less expensive dissemination costs, better quality, optimal cost/benefit ratio for digital mass media and additional services.

The definition of a pan-European standard of DAB+ would be very helpful, as would requirements for the devices industry and a corresponding standard installation in automobiles on the European internal market. These measures promise successful implementation of this technology on the market.

30. Promote video games with cultural or educational content

The general block exemption regulation in the field of culture and heritage conservation (Regulation (EU) no. 651/2014) should be expanded to include video games with cultural or educational content:

Digital games have now reached the mainstream of society and, just like films and audiovisual works, they are a part of German cultural property in the estimation of the German Cultural Council. This is also reflected in the inclusion of video games in the European media promotion programme, Creative Europe, which has published a separate sub-programme for the development of video games. The first call has already been issued. Like audiovisual works, games that are culturally or educationally valuable are not suited to contribute to considerable distortions in competition and must be treated the same as films.

31. Develop and implement a timely and coherent youth media protection scheme in the digital world

The Commission should take the following measures to guarantee better youth protection in the digital world:

- harmonise the level of protection in the EU
- strengthen the foundations of effective self-regulation
- promote media competence.

It is up to the state to fulfil the express duty of protection by effective actions in youth media protection, particularly by creating and enforcing effective youth protection rules. Especially in the digital world, which today is much less tied to national borders than in the past, legislative provisions must follow the dynamics of the media. Enforcement deficits in the online field must not lead to distortions of competition in the fields of radio and telemedia.

Uniform youth protection must be guaranteed across genres, providers and countries in the EU. Self-regulation mechanisms must be strengthened and developed further in addition to aligning the protection on an appropriate level. Enforcement deficits, particularly in the field of online businesses that do not participate in the self-regulation system, lead to distortions of competition between radio and telemedia, and especially among the various kinds of telemedia.

In addition, repressive legislative measures must be supplemented by preventive measures such as a stronger promotion of media competence. Existing measures on a federal or state level (media license, media competence days) can be supported by initiatives on a European level for education and awareness building.

32. Secure the dual system for vocational training in trades; do not challenge the requirement of the Master Craftsman license

The new EU Commission should undertake not to challenge the requirement of the Master Craftsman license any longer:

For years, the Commission has been challenging the protection of the Master Craftsman license in trades requiring a license. Among other things, it requests Member States to constantly justify national regulations for admission into the occupation, most recently with a country-specific recommendation in the context of the European Semester. The recommendations for Germany are supplemented by an accompanying paper in which the master craftsman license requirement is expressly named as a barrier to entering the market.

Here, the Commission fails to recognize that the requirement of the Master Craftsman license and the dual system are inseparably linked to the vocational training system (often called exemplary in Europe by the EU Commission). The master craftsman's certificate, which ensures the high standard of quality of vocational training and provides young people with a true incentive to take up a trade, is the centrepiece of dual education in trades.

33. Modernise and deregulate the AVMS Directive

The new Commission should advocate a revision of the Audiovisual Media Services Directive:

- a conceivable regulatory approach in the future should be less focused on linearity as a deciding factor, and instead should be oriented to the effect and function of the media, taking into account special technical dissemination circumstances if applicable
- deregulation of the European media economy for the sake of fair competition between linear and nonlinear content providers.

In particular, the increasing convergence of the media under the influence of the internet demands corrections to make media authorities fit for the future and able to meet the upcoming challenges; the differentiation between linear and nonlinear offers is outdated in a convergent media world. The legislation should not primarily focus on dissemination technology, and instead should focus on the effect of the medium. The Roundtable Media Policy in Bavaria is currently preparing concrete proposals for a modern

definition of broadcasting within the parameters of the AVMS Directive that is supposed to take into account the current developments. Measures for deregulation are also being examined in particular in this context.

In accordance with the current version of the AVMS Directive, provisions of varying strictness apply, depending on the type of dissemination (television – "linear dissemination" or video on demand – "nonlinear dissemination"), e.g. regarding advertisements and the protection of children ("varying regulatory density"). Thus, the consumer's level of protection does not necessarily depend on the mode of operation or functioning of a medium, and instead on the dissemination format.

34. Create a "regional aid ceiling" to limit the disparities in aid intensity in Eastern Bavaria

The future EU Competition Commissioner should advocate a retroactive addition of 'c' areas in the border districts of Eastern Bavaria. The goal is to designate the Bavarian districts bordering on the Czech Republic entirely as 'c' areas within the federal-state joint project for the "improvement of the regional economic structure" (GRW).

In advance of the redefinition of the regional development areas in Germany, the Bavarian State Government requested a special contingent of 'c' development areas from the EU Commission for the region bordering the Czech Republic (regional aid ceiling) covering around 860,000 residents to limit the disparities in aid intensity. Despite the massive engagement of politicians and business, Competition Commissioner Almunia refused to convey this special status to Bavaria.

In tough negotiations with the German federal government and the federal states, Bavaria was able to secure 'c' development areas covering a total of 500,000 residents for the East Bavarian border districts by a special national solution. However, this does not allow the border districts to be designated as 'c' areas in their entirety. It leads to different funding conditions within one administrative district (internal district disparities in aid intensity). Moreover, for communities that are eliminated from the 'c' area,

the disparities in aid intensity will increase from a previous maximum of 20 to then 25 percentage points compared to the Czech Republic in the new funding period.

The internal district disparities in aid intensity and the increase in the disparities in aid intensity as compared to the Czech Republic have led to considerable dissatisfaction in the East Bavarian border regions.

The State Government has therefore already announced that, after the appointment of the new EU Commission, it will approach the Competition Commissioner and demand an upgrade of the Bavarian 'c' development area so that the East Bavarian border districts can be entirely designated as 'c' areas.

35. Reject the obligatory indication of origin ("Made in" Regulation)

The Commission is requested to abandon its demand for an obligatory indication of origin for all consumer products ("Made in" Regulation). Article 7 of the Commission's proposal relating to the safety of consumer products should be eliminated.

- Article 7 of the proposal for a Regulation of the European Parliament and of the Council on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC provides for an obligatory indication of the origin ("Made in" Regulation). The origin of goods is to be labelled according to the new provisions regarding the non-preferential origin of goods in the customs code which empower the Commission to pass detailed requirements (so-called list rules) by delegated act. This would severely limit the range of interpretation as to when a manufacturer could label its product using the "Made in Germany" marking, for example.
- The German umbrella business organisations, consumer associations, the Bavarian State Government and the Bundesrat reject the legislative proposal. The federal government of Germany shares this view.
- Bavaria considers both the inclusion of the "Made in" provision in the product safety regulation and the tie to customs provisions to be in violation of the system, as well as too cumbersome and costly for the

manufacturer; neither do consumer protection and the principle of free movement of goods benefit from this rule. The "loss" of the "Made in Germany" label recognized throughout the world, which would be an imminent result of the application of the customs rules, would significantly damage the competitiveness of the German economy.

36. Improve impact assessment, prevent red tape

The new Commission should focus more on avoiding bureaucracy:

- Improved impact assessment on the EU level, including a consideration of aspects of international competitiveness („competitiveness check") and the concerns of SMEs („SME test"). The competitiveness check and the SME test introduced in 2012 should be applied consistently in all legislative plans.
- Appointment of an external body of independent experts to assess impact.
- Impact assessment should also be performed by the EP and the Council.
- Setting of a binding goal for a reduction of bureaucracy.

The impact assessment on the EU level must be developed further. Until now, the corresponding Directorate-Generals of the Commission have been performing the impact assessments themselves. There is only a review performed by an Impact Assessment Board that reports to the Commission President and consists of the Director Generals of the DGs. It is imperative for aspects of international competitiveness – especially with regard to SMEs – to be taken into account when businesses are affected.

Since the Commission's legislative proposals are not accepted without modifications by the Council and EP in the legislative process, impact assessments regarding the modifications should also be carried out by these institutions. The EP has already established a directorate for impact assessment - the Council, though, has not.

Only by setting quantitative goals will the political pressure needed to keep burdens as small as possible for all the affected parties develop. Moreover,

the success of the measures or a programme can be measured against them.

Example: Reform of Article 24 on the non-preferential origin of goods in the Community Customs Code

The Commission intends to change the rules on the non-preferential origin of goods when the Customs Code is modernised. The previous rule, according to which the origin of goods is determined by the last substantial, economically justified processing or finishing is supposed to be replaced by a complex list of rules that consider the origin and value of the non-originating materials used.
The previous aim was to place as little burden as possible on businesses by having rules with maximum flexibility and simplified procedures.
The new rules would pose a significant financial and administrative challenge to SMEs in particular by requiring substantial additional administrative work.

- it would be necessary to do a separate calculation for each good to determine which country of origin must be declared on the good;
- businesses would have to make a clear distinction in their books and in their organisation between materials from the EU and those from third countries;
- businesses would have to request evidence for the product confirming the origin from all prior suppliers for verification of the criteria.

Moreover, this would threaten Germany as a country of origin and could cause businesses to ask themselves why they should manufacture goods in Germany any longer.

37. Take better account of the concerns of small and regionally active businesses and service providers

The specific concerns and foundations of small and only regionally active companies and service providers must be taken into account more sustainably when setting EU-wide standards and norms in the future. This can

only be achieved by more flexible European rules for such companies or national escape clauses. This will not affect consumer protection.

EU-wide standards and norms are often oriented to larger businesses acting across national borders. The specific concerns and foundations of small or only regionally active businesses and service providers are hardly, or insufficiently, taken into account. The costs for small businesses frequently cause burdens, which are often not necessary in this magnitude.

In the future, EU-wide standards and norms must therefore be examined before they are enacted to determine whether they are absolutely necessary for smaller and regionally active businesses as well. If not, more appropriate rules or escape clauses should be included.

38. Simplify administration when implementing the EU Structural Funds

The new EU Commission should focus more on administrative simplification when implementing the European Structural and Investment Funds. The overall goal of reducing administrative burden or preventing additional administrative burden must be taken into account much better. The relevant regulatory provisions have already come into effect and can therefore no longer be influenced. However, numerous delegated legislative acts with corresponding implementation provisions are still pending. The provisions made in these legislative acts must not cause administrative burdens beyond the regulation text.

Contrary to its announcements, the EU Commission has not simplified the rules for implementation of the European Structural and Investment Funds, but rather further complicated them. Selective simplifications in individual fields stand in contrast to numerous new requirements (e.g. the establishment of a complaint management procedure, a risk management procedure and fully electronic data exchange with beneficiaries – eCohesion) that are not introduced in or covered by the existing state funding system and therefore lead to additional costs for the authorities as well as for the beneficiaries. These requirements are completely disproportionate considering the ratio between EU funds and State funds. Increasing the

requirements lowers the attractiveness of EU funds for the beneficiaries and makes systems more fault-prone.

Example: Riska management

It is intended to use a "self-assessment tool" as a first step to determine the risks inherent to the EU programmes causing damage to the Community Budget. In addition, the Commission is pushing for the introduction of an IT tool to determine so-called risk indicators. The administrative authorities are supposed to use these indicators to examine evidence of potential risks in each individual case before the approval or payment of EU funds. This groundless blanket examination of EU fund recipients is unnecessary, illegal, disproportionate and overtaxing for beneficiaries.

39. Reliable data protection for all European users

The new Commission should advocate the following principles when revising the proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (COM [2012] 11):

- revision of the scope of application: open the General Data Protection Regulation for Member State legislation in the field of public data protection laws and in special fields such as the protection of social security data
- revision of the rules on the jurisdiction of data protection authorities: strengthen the local supervisory authorities in order to ensure good governance and effective judicial redress options
- seize the opportunity for modernisation and progress
- implement data protection in Europe uniformly and effectively
- ensure a suitable level of data protection by revising / assessing the effectiveness of the Safe Harbor agreement
- include an experimentation clause for innovative projects.

The negotiations on a uniform European data protection law must be concluded quickly. However, viable European-law solutions that guarantee the continuity of national data protection law in all fields where citizens' data

are processed by state authorities or for the purpose of exercising governing powers are also needed. German data protection law has developed standards of public and sectoral data protection that today ensure a higher protection level in many fields because they provide rules that substantiate general data protection principles in specific hazardous situations such as the social sector, and which prevail over the general rules. National legislators should therefore be given the power to also enact stricter protective rules regarding specific forms of data processing.

Moreover, the rules relating to the jurisdiction of national authorities must be set up in such a way that citizens can assert their right to informational self-determination in their language in their interactions with the local authorities and before national courts. The present proposals fall short of what is needed.

Furthermore, progress must also be achieved regarding the content of the 1995 Directive by seizing the opportunity to modernise the data protection framework and overcome current implementation problems. The Bavarian state government therefore deems it necessary to create viable rules within the General Data Protection Regulation that enable those who apply the law to strike a balance between the right to data protection and diverging rights such as freedom of speech and a general interest in information. Furthermore, risks that are aggravated by digitalisation such as profiling and Big Data must be countered by additional proven protective measures. In this context, both the use and the creation of non-anonymous profiles should also be regulated.

Legal uncertainties with regard to current issues such as data protection responsibilities in connection with cloud computing and the use of social networks must be eliminated. Aspects of privacy by design and privacy by default should be taken into account better in the legislative texts. In particular, hardware and software manufacturers should be obligated to take data protection issues into consideration.

Uniform and reliable data protection is important for businesses and citizens alike. Therefore, businesses registered in other countries should not be treated differently, especially when it comes to implementing data pro-

tection requirements. User-friendliness must be a priority. In other words, attractive offers and services must not be hampered, and instead, the infringement and abuse of data protection requirements must be sanctioned. In the interest of fair competition, the European data protection regulation must be accompanied by effective law enforcement in all EU Member States. Such a level playing field cannot be guaranteed by a European Data Protection Regulation alone. The same rules must also apply to American companies with operations in Europe and be enforced accordingly.

In this context, instruments of self-regulation offer commercial enterprises a high degree of freedom and flexibility at the same time, enabling them to find adequate solutions and to do so quickly.

However, sufficiently high minimum standards are needed for these measures to be accepted. Compromises on the basis of a minimum consensus would not be considered an adequate alternative to corresponding regulation measures in cases of doubt, as they would neither be able to satisfy legislators, nor the supervisory authorities or consumers.

In Germany, many highly innovative digital projects fail or are delayed today, because they are blocked by complicated data protection rules and audits.

This has led to the demand to have these provisions be suspended for innovative projects or a special clause for experiments to be introduced, as otherwise, these innovations cannot be realised in Germany/Bavaria and will be carried out successfully elsewhere instead.

> For example, based on the so-called Safe Harbor agreement with the USA, the EU Commission generally accepts the adequacy of data protection in American businesses. In the USA, though, the companies registered with the US trade ministry are not checked to determine whether they actually comply with European data protection standards. As a result, the agreement leads to insufficient protection of European internet users' data and a competitive disadvantage for German and European businesses.

40. Future development of the European Banking Union

The basic foundations of the banking union have been established. The following holds for the future:

- Supervision by the European Central Bank must be limited to the group of banking institutions of systemic importance. It must be ensured that small and medium-sized banks in Germany are supervised solely by the Federal Financial Supervisory Authority and the Deutsche Bundesbank.
- The principle of proportionality must be observed when calculating the EU levy on banks to be paid into the bank resolution fund. Following the model of the German bank levy, smaller banks with total assets of less than EUR 500 million and German development banks (LfA) should be exempted from the obligation to contribute.
- A common European Deposit Guarantee Fund should be categorically rejected.
- Furthermore, the specific interests of small and medium-sized banking institutions and of the development banks should be considered when the European Commission and the European Banking Authority (EBA) finalise the CRD IV rules (Capital Requirements Regulation and Capital Requirements Directive). In particular, when finalising the liquidity requirements, bonds issued by the German States' development banks should be fully recognised as highly liquid assets. Furthermore, the new liquidity requirements must not lead to negative effects on the proven culture of long-term thinking in the credit business.

An expert group in Brussels is currently working on drafts for the delegated acts (EU Regulations) on the implementation of the Directive on the recovery and resolution of banks and the Regulation for a Single Resolution Mechanism for banks. How to organise the European levy on banks is a central issue.

According to the current status, there will be no exemption threshold. Moreover, a base contribution that is not risk-dependent should be emphasised. This would ignore the facts, in particular with regard to the small German cooperative and mutual savings banks. In contrast to big banks, their business model and the fact that they belong to institutional guaran-

tee schemes make them very low risk. The situation of the development banks and smaller private banks is likewise ignored. The contributions to the resolution fund should especially take the size, risk and systemic relevance of a bank into consideration.

41. Keep the capital requirements deduction for credit risk on exposures to SMEs in the Basel III rules

In order to ensure stable credit allocation to small and medium-sized enterprises, the capital requirements deduction in the EU rules on Basel III must be maintained beyond 2016.

Studies by the German Bundesbank suggest that a corrective factor is justified in Germany, not only due to the great importance of medium-sized businesses for the national economy, but also in consideration of risk aspects.

In order to create a complete picture of the risks of medium-sized business financing in Europe, other EU Member States should study the risks inherent to SME loans according to the methods of the German Bundesbank. A general elimination of the capital requirements deduction must be prevented if the results obtained for the states vary greatly. Instead, the framework should be adapted in a way that permits country-specific rules:

Major sections of the Capital Requirements Directive (CRD IV) and the associated Capital Requirements Regulation (CRR) implementing the Basel III rules came into force in 2014. The package legislation is causing the capital and liquidity requirements for banking institutions to gradually become more stringent. A corrective factor was included in the final CRR text in order to prevent an increase in financing costs for medium-sized businesses. It balances the intended general increase in capital charge for loans to companies with a sales volume of up to EUR 50 million.

The SME correction mechanism is subject to a scrutiny reservation. There is a risk that it will be cancelled – after scrutiny by the European Commission and the European Banking Authority by the middle of 2016. The

capital requirements for loans to SMEs would increase as a result. This would make loans for medium-sized businesses more expensive, leading to a shortage.

42. Stronger regulation of shadow banks

Shadow banks must be placed entirely under the banking authority's supervision. A uniform concept of banks would be a decisive step.

In accordance with the German Coalition Agreement, institutions engaging in shadow banking must be subject to the same regulations as the traditional banking sector when engaging in the same kind of business with the same kind of risks for the stability of the financial system. Any business relations between banks and institutions engaging in shadow banking must be made transparent and contagion risks limited. Therefore, further stringent regulation and greater efforts to achieve uniformity in the field of shadow banking are needed. Regulation of the shadow banking sector must be addressed quickly and on an international scale.

43. Maintain leeway for Member States in the field of economic consumer protection

The new Commission should scrutinise the required degree of harmonisation with greater care in the field of legislation on economic consumer protection. The leeway required for a dynamic development of law in the Member States should be maintained.

In the field of economic consumer protection, the EU is increasingly moving from the principle of minimum standards to full harmonisation. The European Commission often considers the diversity of Member State rules on the basis of a minimum standard to be a trade barrier inside the internal market that slows down cross-border internet commerce in particular.

However justified the promotion of an internal market may be, it is important to maintain the option of dynamic development of the law within the

Union and its Member States. As shown by the Consumer Rights Directive, the experience of the Member States and their impulses are needed to further develop European law. Therefore, it should be possible to also test new legislative approaches on a small scale and to react in a timely manner to certain developments and new business methods that require consumer protection in the future. The degree of harmonisation should be examined carefully with each legal act, and the leeway needed for dynamic development of the law should be taken into due consideration.

44. Revise the food controls regulation

The following issues should be considered when revising the food controls regulation

- the EU should maintain the reliable principle not to charge fees for regular controls except in those fields where EU law already prescribes the charging of mandatory fees;
- the legislation on the discharge and handling of genetically modified organisms (GMOs) should be deleted, because it contravenes the principle of subsidiarity;
- the numerous delegated acts should be revoked.

The food controls regulation (R (EC) No 882/2004) is currently being revised (COM 2013, 265)). It is feared that changing the financing of fees for food controls will lead to an increase in administrative costs and a higher burden on small and medium-sized enterprises. The draft regulation also contains a large number of authorisations to pass delegated acts, which would lead to a problematic shift of competences to the Commission (democracy deficit).

45. Simplify the implementation of the „EU hygiene package"

Reporting of national provisions for special regional characteristics within the scope of the „EU hygiene package" (EC Regulations nos 852/2004, 853/2004 and 854/2004) should be handled faster and more generously in the future. A multiple regulation of controls in different, legally related

legislative acts should be avoided along with the revision of the overall EU hygiene package:

- The EU hygiene package stipulates that various situations can be reported to the EU Commission and subsequently regulated by national law. This makes it possible to establish national provisions that take account of the special characteristics of regional structures in Germany. However, the EU is blocking reporting if it intends to regulate certain issues or considers the national provisions to be too extensive, even if they only affect the Member State's territory. On the other hand, sometimes no regulation is enacted or it takes years for the regulation to be enacted. This leads to disadvantages for the businesses concerned, as well as for the national food control authorities. Further concessions must be made to the Member States in this context.
- The Commission announced that it intends to revise the EU hygiene package (among other things, a new classification scheme within a regulation). This is unnecessary. The existing system should be maintained and adapted to new circumstances as needed. We would like to recall the „animal by-products" law, by which Regulation (EC) no 1774/2002 was replaced by Regulations (EC) nos 1069/2010 and 142/2011. There are still great legal uncertainties in this field which have not been resolved to date despite several appeals by the German Federal Ministry of Food and Agriculture to the EU.
- Specifically regarding Regulation (EC) no 2073/2005 (regulation on microbiological criteria for foodstuffs): this regulation addresses food business operators and establishes certain requirements for their self-checks (e.g. salmonella tests). At the same time, though, Regulation (EC) no 854/2004 was replaced by Regulation (EU) no 218/2014 which obligated the authorities to take samples at the slaughterhouse in addition to the salmonella tests conducted by the food business operators or, alternatively, to report the results of the self-checks to the Commission. This is excessive, and we would like to see greater restraint on the part of the EU in this field in the future.

46. Limit the use of substances problematic for the aquatic environment

The EU is supposed to encourage manufacturers to improve product stewardship. The EU Commission should improve regulation of the use of substances or substance groups that are problematic for the aquatic environment:

- numerous substances are discharged into the receiving water bodies along with the communal and commercial waste water;
- numerous substances or substance groups are known to be potentially harmful to the aquatic environment;
- waste water from manufacturing processes can be made safer for the environment by setting targeted minimum requirements (the EU has not been using the existing authorisation basis such as the EU Water Framework Directive, Article 16(6);
- we advocate limiting or avoiding the use of hazardous substances in products at the source; the requirements for evidence within the meaning of the REACH process should be examined for efficacy to this end;
- the removal of substances in sewage by additional cleaning steps in wastewater treatment plants (‚end-of-pipe' approach) is considered inefficient and does not conform to the ‚polluter pays' principle;
- substances problematic for the aquatic environment include nanoparticles, microplastics, metal ions, pharmaceutical substances and biocides.

Example: Microplastics in everyday products
Many body-care products contain microplastics which enter water bodies in sewage.

47. Requirements that must be met and the resulting control activities when EU (or EAFRD) funds are used

The numerous inspection authorities/inspection levels should be reduced, but without neglecting to ensure that the funds are being used properly:

- ensure a sufficient administrative apparatus on the part of the Member States by voluntary self-committment

- only random checks by another inspection authority
- introduction of a de minimis limit in order to allow for less intensive checks for transactions with low cost volumes.

The requirements of the European Commission with respect to the administrative and control system that must be followed as part of EAFRD co-financed rural land management and nature conservation projects are comprehensible from the perspective of the EU as the „financier". However, they seem to often be unreasonably bureaucratic, especially for costs of planned projects in the four to mid-five digit euro range.

Forgoing controls on individual levels or in certain ranges appears to be reasonable from a cost-benefit consideration, especially in view of the fact that the costs of the majority of land management projects (80-90%) are less than EUR 20,000. This could be achieved through the above proposals.

For example, it would suffice if the EU Commission or possibly the certification body working on its behalf put this administrative structure „under the microscope" and certified that it generally functioned. If one considers, for example, that there are already numerous requirements for administrative procedures in Germany/Bavaria, it might be possible to forgo the stipulation of certain control quotas or the need to have additional inspection/ audit services available.

Another option is that with an administrative structure which guarantees proper case processing with corresponding control through legal and functional supervision only one other inspection service (e.g. the certification body) would randomly check individual cases, and in doing so, conclude whether or not there is a need for improvement in enforcement or not.

In view of „better acceptance of the EU", it would also be possible to introduce a de minimis limit for the controls so that less intensive inspections could be carried out for transactions with low cost volumes.

48. No legislation on the minimum requirements for environmental inspections

The Commission should refrain from legislating on the minimum requirements for environmental inspections at the EU level.

In the area of environmental protection at the European level, provisions should only be introduced if they are important to ensure a uniform level of (minimum) European protection or for the functioning of a common European market. In this context, it comes down to creating living and economic conditions that are as equivalent as possible. Given that the economy is so internationally integrated and involves so much cross-border activity, it is essential to have a uniform substantive environmental law as a framework at the European level. Dumping caused by the existence of different national standards must be prevented.

On the other hand, procedural provisions at the European level are unnecessary. The specific administrative enforcement is the responsibility of the individual Member States and their legal systems.

How procedures and control systems are structured in detail can still better be determined at the national level. Against this background, the EU recommendation regarding minimum requirements for environmental inspections by the authorities of 4 April 2002 significantly interferes with the practical aspects of national administrative enforcement and thus in the area reserved to the Member States. This recommendation thus contradicts the principle of subsidiarity.

How the monitoring of environmental provisions is organised must be left to the individual Member States. Current German environmental law, with its monitoring requirements, meets the EU recommendation and other EU specifications.

An expansion of the recommendation to include environmental inspections should therefore be rejected. This applies especially for a transformation of the recommendation into an EU environmental inspection directive, which would then have to be formally implemented in national law. The corre-

sponding deliberations of the 7th Environment Action Programme of the EU should likewise be rejected. The fourth priority objective of this programme („maximise the benefits of the Union's environment legislation by improving implementation") calls for the environment law of the EU to be enforced at all administrative levels and to ensure the same conditions in the internal market. To this end, the programme envisages that the binding criteria for effective inspections and monitoring measures on the part of the Member States are to be expanded to the full environment law of the EU.

49. Creation of a right of self-determination of the regions regarding the cultivation of genetically modified crops

The new Commission should advocate for a right of self-determination of the regions regarding the cultivation of genetically modified crops:

Permits for the cultivation of genetically modified plants (GMCs) are issued by the European Commission. The cultivation of these permitted GMCs cannot be legally prevented by Bavaria if farmers want to cultivate the crops. To ensure that Bavaria remains free of genetically modified crops in the long term, the state government advocates a right of self-determination for GMC cultivation. To this end, the decision-making competencies must be transferred from the Commission to the Member States first.

The Commission already proposed an amendment of the EU Directive on the deliberate release into the environment of genetically modified organisms (2001/18/EC (Art. 26b)) in 2010. Member States should be able to forbid or prohibit GMC cultivation on their territory or parts thereof. The grounds for a cultivation ban must not be inconsistent with the assessment of environmental or health risks by the EFSA. The European Parliament approved the proposal in principle in July 2011. A blocking minority has prevented a political agreement from being reached thus far.

Currently, a promising compromise proposal offered by the Greek presidency is being debated intensely. Following political agreement in the Environment Council in June 2014 and a second reading with trialogue

negotiations (the Commission, the EP and the Council), the deliberations could achieve the goal sought by Bavaria by the end of 2014. At Bavaria's prompting, the Bundesrat, by a large majority, asked the federal government to abandon its position rejecting the proposal.

50. Repeal the EU Sewage Sludge Directive

To reduce red tape and strengthen subsidiarity, it is proposed that the Directive of 12 June 1996 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (86/278/EEC) (EU Sewage Sludge Directive) be repealed.

This 28-year-old Directive no longer has any effect, prevents new developments in the Member States and regions, and takes absolutely no account of the diversity of provisions and enforcement practices in the Member States. Furthermore, a sufficient legal framework should be created using EU fertiliser provisions, which should suffice for sewage sludge.

As the Directive also has no effect in terms of resource efficiency and this issue is taking on increasing importance in various papers by the European Commission, Europe-wide provisions concerning the sustainable use of phosphorous should be aimed for instead of an EU Sewage Sludge Directive.

51. Alignment of pollution and emission requirements (air pollution control / noise protection)

The new Commission intends to work more diligently towards a harmonisation of pollution and emission requirements:

The pollution and emission requirements in European law are not aligned: As the pollution depends directly on polluting emissions, increased harmonisation of emission and pollution legislation should be aimed for at the EU level. For example, compliance with NO2 pollution levels was required in 2010, but the strict exhaust standards Euro 6 (cars) and Euro VI (trucks)

will only be mandatory from 2013/2014 for road traffic, which is a major source of emissions. The tightening of emission levels therefore comes too late.

A significant improvement in the pollution situation as a result of the conversion of the vehicle fleet is only likely to come about at the end of this decade.

52. Reform of the system for greenhouse gas emissions trading

The Commission should promote a structural reform of the system for greenhouse gas emissions trading that would lead to a noticeable reduction of the certificates available on the market. In doing so, care should be taken to avoid an increase in electricity prices that is too sharp and an unreasonable burden on industry, which faces international competition, with the associated shift in production.

Emissions trading is experiencing a structural crisis due to an oversupply of certificates, which has various causes. Thus, in the third trading period (2013 to 2020) the price is well below a threshold at which concrete emission reduction measures pay off for companies subject to emissions trading. In order to respond to this problem, EUR 900 million in certificates were removed from the market at the beginning of the trading period in a one-off move, and these will only be auctioned off again in 2019 and 2020. The effect of this so-called backloading on the certificates is likely to be small.

A structural reform of the system that leads to a noticeable reduction of the certificates available on the market is therefore urgently needed for the fourth trading period. As rising certificate prices lead to an increase in electricity prices and a burden on industry, which faces international competition, with the risk of a shift in production, care should be taken to ensure that these undesired effects are avoided in the framework of an assessment of competitiveness.

In essence, this should be about making the system more stable against outside influences, such as economic and financial crises, and at the same time effectively reducing the certificate surplus after 2020. The market stability reserve proposed by the Commission is a suitable instrument for this purpose.

53. No legal provisions on adapting to climate change in the regions

The new Commission should refrain from carrying out its plans to introduce a legal instrument for adaptation to climate change in the regions and to create new reporting duties.

The Communication of the Commission of 18 April 2013, "An EU Strategy on adaptation to climate change", sets out a framework and mechanisms for implementation. The objective of the Strategy is to contribute to a more climate-resilient Europe. The focus is on enhancing the preparedness and capacity to respond to the impacts of climate change at the local, regional, national and EU levels.

This is to be done by developing a coherent approach, promoting adaptation measures in key vulnerable sectors and improving (policy) coordination between the EU Member States. In addition, respective measures in the Member States, regions and cities are to be given financial support through the European Structural and Investment Fund as well as the "Horizon 2020" and "LIFE" programmes.

In 2017 the Commission will report to the EU Parliament and the Council on the state of implementation of the adaptation strategy and propose its review if needed. The report will be based on information provided by Member States on national adaptation planning and strategies.

Granted, the EU is authorised to take action and adopt provisions in the environmental field. However, adaptation measures are to be implemented primarily on the local and regional level and generally fall under the competence of the individual states (e.g. flood protection).

In general, the EU Strategy is heading in the right direction. However, new reporting duties and legislative rules must be avoided. The EU reserves the right to consider proposing a legally binding instrument in the event of insufficient progress by referring to the coverage and quality of the national adaptation strategies. When the evaluation report announced for 2017 is submitted, it must therefore be ensured that no new reporting duties or legal instruments are introduced. Adaptation to the impact of climate change is primarily a regionally differentiated task and is therefore not suited to uniform EU solutions.

54. Strengthen international climate targets

In setting international climate targets, the new Commission should advocate a strong Europe with higher-level climate and energy targets with resolute recommendations for the Member States as well as ideas for their design.

Climate change does not stop at the border. Climate protection is a global responsibility. Pioneers in international climate policy are needed in view of an ambitious climate treaty with worldwide validity and the hesitant attitude of numerous individual states. Only an EU with a common approach to climate protection can take on this role. All EU Member States must agree on a uniform and ambitious climate target to make this possible.

In the Commission's Communication of 21 January 2014, "A policy framework for climate and energy in the period from 2020 to 2030", current developments as well as the urgent necessity to further reduce greenhouse gas emissions, as shown in particular in the most recent IPCC Assessment Report, must be taken into account.

- A greenhouse gas emission reduction of 40% in 2030 relative to 1990 is expressly welcomed. The proposed value represents a minimum in relation to the necessity of drastic long-term reductions in emissions needed by 2050. Europe must internationally assume a pioneer role in order to influence other industrial states positively.

- Concrete targets for renewable energies should be set for the individual Member States; otherwise there is a risk that burdens will be distributed unfairly.
- Targets for energy efficiency should be established. Measures for energy efficiency represent the central building block for an energy and climate policy that is successful in the long run.

55. Use the 2017 CAP midterm review as an opportunity for rural agriculture

- The Commission should not focus the planned midterm review (presumably in 2017) of the current 2014-2020 funding period of the Common Agricultural Policy (CAP) only on the evaluation of content. The midterm review must be used beyond this as an opportunity to scrutinise the numerous detailed provisions of CAP, especially the content of the Commission's "delegated acts", as well as the stipulations in the implementing acts and guidelines, in light of the experience that has been gained during implementation together with the Member States.
- The midterm review must also be used to develop cornerstones for the 2021 CAP and the Commission's future focuses . This applies in particular to the design of the funding instruments which should better meet the structural conditions of rural agriculture (structural premiums). An easing of the monitoring and inspection burden must also be included.

The detailed provisions (implementing acts, guidelines) adopted by the EU Commission do not lead to a lower, but rather a higher risk in connection with the allocation of costs and are often associated with a disproportionate amount of additional work and costs.

The goal of Bavarian agricultural policy is to maintain and further develop an agricultural system that is predominantly rural. There are currently around 111,000 family-owned farms which, among other things, are characterised by below-average land development in a German national comparison, along with less favourable local conditions and a higher work-

force contingent per cultivation unit. During the implementation of the 2014-2020 CAP, a structural area-based funding component that takes into account these higher operating costs of smaller farms (redistribution premium) went into effect for the first time. Building on this change of course, Bavaria has a great interest in providing even more financial support to rural agriculture starting with the next 2021 CAP funding period.

In addition, some of the burden must be lifted from these smaller farms by markedly reducing the bureaucratic EU control requirements. Increasing bureaucracy primarily burdens rural family farms and exacerbates structural change.

56. Practice-oriented implementation of the EU Agrarian Reform

- When carrying out inspections in the field of agricultural funding, the cost-benefit principle must be included in implementation and also be recognised by the EU inspection bodies.
- While a stricter standard (subsidy measures due to their large number (2013: around 125,000 subsidy cases in the field of agriculture) and a simpler allocation of requirements, the investment funding measures must be treated in a more differentiated manner, especially with regard to the selection of on-site inspections and handling of the system of sanctions under EU law. Therefore, it is absolutely imperative to differentiate between the administration and inspection systems for area-specific and investment-specific measures.
- Practice-oriented and legally secure interpretation of EU requirements by the EU inspection bodies must be ensured so that the paying agencies can continue to execute the programmes reliably, with a minimum of charging of costs and a reasonable administrative burden.
- With regard to the discussion about error rates, the error rate of 2% that is currently permitted should be raised in the field of EAFRD (investment measures) and the previous planned concept of a “tolerable error rate” implemented. The ECA, the Commission and the Member States should apply the same methods to calculate the error rates.

The new 2014-2020 funding period on the basis of the CAP reform began as per 1 January 2014, which means there will be some significant changes of the EU framework. A 15% increase in the administrative burden is anticipated in Bavaria due to a number of additional requirements.

In the implementation of the funding programmes, especially the EAFRD Fund (2nd CAP pillar), the EU institutions partly interpret the political requirements in an exaggerated manner and make their goals more stringent (e.g. delegated acts). In addition, legal provisionsare often interpreted very narrowly by the EU inspection bodies without taking into account the justified concerns and the interpretation by the Member States.

This approach can also be found in fields of funding where the Member States were explicitly given some leeway on the basis of applicable EU law. This harbours a significant risk with regard to the allocation of costs.

57. The new EU Eco-Regulation: Do not put the future of Bavaria's organic farmers at risk

- The draft regulation submitted by the Commission means a fundamental revision of the prior EU provisions for the organic industry, substantially intervenes in the existing system and is already leading to considerable uncertainty in the entire industry.
- Experts from the Member States must be included and essential provisions must clearly be stipulated in order to continue developing the legal framework for organic farming on the EU level. Delegated acts, as provided for in the draft, are not an appropriate instrument in this context.

With 6,600 organic farms and an organically farmed area of around 212,00 hectares, Bavaria takes first place in Germany. Almost one third of all German organic farms operate in Bavaria. The Commission introduced the draft of a new EU Eco regulation on 25 March 2014, shortly before the election of a new EP. The goal is to create a body of rules that is completely new in part concerning how organic foods are produced and processed, labelled and inspected in Europe. The new regulatory framework is sup-

posed to go into effect in 2017. The planned changes would massively impact Bavaria first and foremost, and would counteract the aim of the State Government to double organic production in Bavaria. This is what the draft would mean:

- excessive bureaucratisation of the rules
- a departure from the tried and tested fundamental principle of process orientation to product orientation in organic farming
- the abandonment of the generally tried and tested, two-step inspection process and replacement with more intensive inspections
- the unrealistic and undifferentiated elimination of exceptions
- the loss of planning security for organic farmers, processing and trade companies
- a further attempt by the Commission to transfer competences to itself through delegated acts.

58. Do not establish an EU unemployment insurance

The Commission should refrain from considering the establishment of an EU unemployment insurance plan.

The establishment of EU unemployment insurance would encroach on the core field of Member States' sovereignty and should therefore be rejected. The Commission has been considering this internally for some time, though. There is no concrete proposal yet, especially since a number of possibilities exist with regard to its design.

According to the current status of the Treaty, the competence and responsibility for social security systems lies with the Member States. The contributors in Germany would be at risk for extra costs caused by the introduction of EU unemployment insurance due to the clearly more advantageous labour market situation in Germany as compared to the other Member States. Higher contributions to a European unemployment insurance and the associated higher non-wage labour costs would jeopardise jobs in Germany.

EU unemployment insurance would also be problematic from a standpoint of regulatory policy. A redistribution in favour of Member States with less growth and lower rates of employment could occur, ultimately leading to a transfer union.

Finally, a common model for unemployment insurance would weaken the responsibility of the individual Member States to ensure that properly functioning labour markets are created through appropriate reforms.

59. Prevent the abuse of the right of free movement by former workers

There should be a prerequisite of having worked in Germany for at least two months for the continuation of the right of free movement as a former worker or self-employed person. The words, "provided he has engaged in employment for at least two months", should be added to Article 7(3)(c) of the Free Movement Directive (2004/38/EC of 29 April 2004) to accomplish this.

The immigration of people without any qualifications, and therefore without any opportunities on the German labour market, is increasingly causing problems for the social security systems and does not help the affected parties either. The freedom of movement for workers was created for the labour market, not for migration into social security systems. These types of developments would undermine solidarity.

The increasing claims of social assistance places a burden on the social security systems and municipalities. Therefore, it is important to prevent migration into social security systems from within the EU. The proposed modification on the European level is necessary to accomplish this.

Based on the current status of the law, there is a right to freedom of movement after working for only one day, even in the form of minor employment. The protective purpose of the freedom of movement for workers is to guarantee the cross-border freedom of occupational practice, and this aim conflicts with the rightful interest of Member States to protect themselves from migration into their social security systems. This justifies

limiting protection only to former workers or self-employed persons who have worked for a minimum of two months.

60. Tie the right of permanent residence to more stringent conditions

EU citizens who have claimed social assistance or comparable non-contributory monetary benefits during their stay, or who are not protected by corresponding health insurance in the host Member State or have not acquired sufficient accrued pension rights to anticipate not being dependent on social assistance or comparable non-contributory monetary benefits, should not be given a right of permanent residence.

Until now, a right of permanent residence was acquired after residing constantly and lawfully in a certain Member State for five years, so that no exclusion from benefits applies after this time.

For example, if a foreigner emigrates to another Member State a few years before reaching the age of retirement and immediately pursues gainful employment there, but has not accrued sufficient pension rights either in his home state or in the host state, it is not appropriate for him to obtain a right of permanent residence after five years and derive from this an unlimited claim to social assistance (basic benefits at old age and in case of reduced earning capacity).

61. Limit the scope of the principle of equal treatment

The right to equal treatment should not apply to EU citizens who have no right of residence. Host Member States should be able to specify standardised general exclusions from benefits:

It must be made clear that the right to equal treatment does not apply to EU citizens who have no right of residence. Foreigners without a right of residence or previous employment should not be put in a better position than job-seekers without previous employment. However, German social courts applying EU law have decided otherwise in some cases (State So-

cial Court (LSG) North Rhine-Westphalia, decision of 10 October 2013, case L 19 AS 129/13). A clarification is needed in EU law.

Exclusions from benefits must be expressly permitted in the Directive for social assistance "and comparable non-contributory monetary benefits". This clarifies that the scope extends to the German basic benefits for job-seekers and to social assistance (particularly basic benefits at old age and in case of reduced earning capacity).

The host Member State's applicable law for the above-mentioned facts and circumstances must be allowed to provide for standardised general exclusions from benefits and not be required to exercise discretion and consider each case individually.

62. Change the regulation to coordinate the systems of social security

In the Regulation on the coordination of social security systems (Regulation (EC) No 883/2004), it should be clarified that the benefit exclusions allowed in the Free Movement Directive also apply to the non-contributory monetary benefits comparable to social assistance.

The proposed change makes it clear that the scope of the benefit exclusions permitted in the Directive also covers the German basic benefits for job-seekers and the basic benefits at old age and in cases of reduced earning capacity. So far, benefit exclusions are expressly allowed for "social assistance" in the Free Movement Directive (2004/38/EC); this coexistence of the two provisions is likely to provoke different interpretations. The proposed change of the Regulation renders earlier court decisions obsolete and a decision by the supreme court unnecessary.

The Regulation requires citizens of the EU Member States to be treated equally. Therefore, some social courts consider the benefit exclusions provided for in German Social Code II and Social Code XII to be invalid with regard to EU citizens as partly violating the Regulation.

It should be made clear by amending Article 4 of the Regulation that the Regulation does not affect the exceptions to the equal treatment obligation provided for in the Free Movement Directive and that the scope of benefit exclusions allowed in the Free Movement Directive also covers non-contributory monetary benefits (comparable to social assistance). This will extend the scope of the benefit exclusions allowed under the Regulation to cover the German basic benefits for job-seekers and social assistance.

63. Amend the Professional Recognition Directive 2005/36/EC

The amendment of Directive 2005/36/EC is supposed to leave the decision of whether to allocate functions to a point of single contact up to the Member States.

The Professional Recognition Directive 2005/36/EC has been in force since 7 September 2005 and contains rules for the recognition of professional qualifications (only) for EU Member States. This was amended by Directive 2013/55/EU published on 28 December 2013 (Article 57 was amended and Article 57a-c was added, among other things). The Member States must implement these new requirements by 18 January 2016. The responsibilities of the point of single contact (PSC) pursuant to Article 6 of Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market are regulated. These amendments contradict the basic principle of the recognition process, namely that the authority responsible for recognising foreign educational degrees is the one stipulated according to German law. This raises an issue of practicability for Bavaria. The process is made particularly difficult by short processing periods. In Bavaria, 11 municipalities, the Chamber of Industry and Commerce, the chambers of trade and a few chambers of the "free" professions are the points of single contact. This places two administrative structures alongside one another for no objective reason; nor does the structure of the points of single contact always possess expertise. Therefore, it should be left to the Member States to decide whether they delegate recognition tasks to the points of single contact.

64. Withdraw the proposal on a women's quota in companies

The proposed Directive on a so-called "women's quota" in companies should be withdrawn:

The Commission's proposal of 14 November 2012 for a Directive of the European Parliament and the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012) 614) specifically provides for a minimum objective of a 40% presence of the under-represented sex among the executive directors of companies listed on stock exchanges by the year 2020 or by 2018 for public undertakings. The EU proposal was most recently discussed in the European Parliament, but there is not yet a majority in the Council for binding legislation.

In principle, the proposed Directive addresses an important socio-political issue. The objective of increasing the proportion of women is generally welcomed. However, the proposed Directive should be rejected overall because the EU has no legislative competence to carry out the proposed measure and the proposed Directive does not follow the principle of subsidiarity. Besides this, the German federal government relies on a graduated system in accordance with the Coalition Agreement for Germany:

Supervisory boards of exchange-quoted companies subject to full co-determination which are reappointed from 2016 onwards should have a gender quota of at least 30%. From 2015 onwards, exchange-quoted companies or those subject to co-determination will be obligated by law to set binding targets to increase the proportion of women on their supervisory boards, boards of management and the highest management echelons; the companies will be obligated to publish and report transparently on their situation.

65. No European standardisation of health care services

The Commission should not further pursue its plans to have standards for health care services developed by the European Committee for Standardisation (CEN):

The European Commission submitted its first annual Union work programme for European standardisation (COM(2013) 561 final) on 31 July 2013. It indicates the objectives and policies for European standards that the Commission intends to request from the European standardisation organisations (ESO). The Commission states that there is a need for action in the health care services sector. As regards standardisation, specific fields for ESO mandates might be foreseen. At this time, the European Committee for Standardisation is already working on several European standards for health care services, for example in the field of plastic surgery.

The German federal and state governments reject these efforts by the European Commission. The medical profession has also clearly voiced its objection to the standardisation of health care services. In accordance with the Treaty on the Functioning of the European Union, it lies in the responsibility of the Member States to determine the principles of the systems of social security and public health, and to create the framework for the organisation and provision of the services rendered within these systems, including determination of the applicable requirements along with quality and safety standards. There is a risk of national law and the leeway of self-regulation in the medical profession being circumvented without intervention from the competent institutions.

66. Promote the EU Strategy for the Alpine Region

The future Commission should continue to advocate the further development of the Strategy for the Alpine Region:

Along with the Strategy for the Danube Region, the Strategy for the Alpine Region is the core element of Bavarian macro-regional cooperation. By pooling diverse actors from various levels, the macro-regional strategies acquire an important coordinating and supporting function in the implementation of structural policy projects.

The Commission supports the states and regions in preparing the Strategy for the Alpine Region. Based on its competence for coordinating, monitoring, reporting about the progress, supporting the implementation and fur-

ther developing the Strategy for the Alpine Region, the Commission takes on a central role, particularly with regard to procedural issues. It must be ensured in the interest of the participating states and regions that the new Commission also meets this responsibility in the scope assigned to it.

67. The Commission should not withdraw from the coordination of macro-regional strategies

The European Commission must fully take on its responsibility in the context of existing and future macro-regional strategies in the future as well, particularly with regard to coordination and monitoring. Any attempt to shift competences and responsibilities to the affected regions and states must be rejected:

The European Commission submitted a Report on Governance of the Macro-Regional Strategies on 21 May 2014. In the Report, it makes concrete proposals for improving the governance of the two already existing macro-regional strategies (the Danube and Baltic Sea regions), but also for future macro-regional strategies (like the strategy for the Alpine Region currently being worked on).
The Report reveals the intention of the European Commission to increasingly withdraw from its present leadership role in handling macro-regional strategies. For instance, it demands that the countries and regions involved should take general strategic leadership at the ministerial level, for instance by being responsible for guiding and evaluating implementation. Another proposal suggests that a so-called "special representative" be nominated for each strategy, who is then to act as the main coordinator (similar to the coordinators for the trans-European transport network – TEN-T coordinators).

From a Bavarian standpoint, any withdrawal of the European Commission from its coordinating role within the macro-regional strategies should be rejected. Although, from a Bavarian viewpoint, there are reasons for improving the coordination and operational steering of the macro-regional strategies, this must not lead to a situation where the European Commission backs away from the responsibilities incumbent upon it and leaves the

affected regions and countries to deal with the financial and operational issues on their own.

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