

**7 June 2013****Decision****of the Bundesrat**

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**Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation And Training (EUROPOL) and repealing Council Decisions 2009/371/JHA and 2005/681/JHA****COM(2013) 173 final; Council document 8229/13**

At its 910th sitting on 7 June 2013, the Bundesrat adopted the following opinion under Article 12(b) TEU:

1. Raising an objection on grounds of subsidiarity, as provided for in Article 12(b) TEU, also encompasses the issue of the EU's competence (see the Bundesrat's opinions of 9 November 2007, Bundesrat document No 390/07 (Decision) point 5, 26 March 2010, Bundesrat document No 43/10 (Decision), point 2, and 16 December 2011, Bundesrat document 646/11 (Decision)). The principle of subsidiarity concerns the exercise of competence. The subsidiarity principle is also infringed if the Union possesses no competence or if the EU's competence is exceeded. An assessment of subsidiarity must therefore begin by considering the question of the legal basis.
2. The proposed regulation is not covered by the legal basis indicated (Article 87(2)(b) TFEU), in so far as it concerns tasks related to training of law enforcement officials. Article 87(2)(b) TFEU states that the Union will establish police cooperation involving all Member States' competent authorities and, acting in accordance with the ordinary legislative procedure, may establish measures concerning support for the training of staff and cooperation on the exchange of staff, on equipment and on research into crime-detection. However, its legislative power does not cover schemes that go beyond 'providing support' for training.

3. The principles of conferral, subsidiarity and proportionality under Article 5 TEU must then be taken into account. According to the principle of conferral laid down in Article 5(2) TEU, the EU may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. The proposed regulation is also contrary to the principle of subsidiarity in the narrow sense of the term, as enshrined in Article 5(3) TEU, in that it contains rules governing training at purely national level. In this respect, there is no identifiable added value in the proposed uniform Europe-wide provision. On the contrary, Member States are quite capable of regulating training at purely national level themselves and this is sufficiently regulated in German law. By exceeding the competences with regard to regulating training, the form and content of the proposed regulation exceed what is necessary to achieve the objectives of the Treaties in accordance with Article 5(4) TEU.
4. The proposed regulation involves merging the current European Police College (CEPOL) with the EU agency Europol. However, this proposal will transfer and broaden CEPOL's current powers. The grounds cited for broadening its powers do not fulfil the provisions of Article 5 of Protocol No 2 to the Treaty of Lisbon, which the Commission is supposed to observe and to which it is bound under Article 51 TEU.