



EUROPEAN COMMISSION

Brussels, 28.11.2013
C(2013) 8276 final

Dear President,

The Commission would like to thank the Bundesrat for its two Opinions concerning the proposal for a Regulation on the European Union Agency for Law Enforcement Cooperation and Training {COM(2013) 173 final}.

The Commission takes note of the objections raised in the Reasoned Opinion on grounds of subsidiarity and would like to provide the following responses.

Compliance with Article 87(2)(b) Treaty on the Functioning of the European Union (TFEU)

The Reasoned Opinion of the Bundesrat considers the provisions concerning the training of law enforcement officers contained in the proposal as not consistent with Article 87(2)(b) TFEU. The said Article states that "the European Parliament and the Council, 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".

The proposed Regulation aims to establish an entity responsible for law enforcement cooperation and training at European Union level. The mandate given by Article 87(2)(b) TFEU is expressed in Chapter III of the proposal. In particular, Article 9 describes the role of the Europol Academy, and Article 10 its tasks in relation to training. The notion of "support for the training of staff" in Article 87(2)(b) is given specific meaning by the creation of an EU agency charged with developing, delivering and coordinating training for law enforcement officers at the European Union level. In particular, all the legal obligations in the Chapter III of the proposal are imposed on the Europol Academy as the EU agency responsible for law enforcement training; in line with the "supporting" competence conferred by Article 87(2)(b) TFEU, there are no legal obligations imposed on Member States.

The tasks of the Europol Academy, building on those of CEPOL, reflect the call of the European Council in the Stockholm Programme "to step up training on EU-related issues

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and make it systematically accessible for all law enforcement professionals". The European Law Enforcement Training Scheme (LETS) aims at increasing the knowledge of the law enforcement cooperation instruments developed over time by the EU as well as at equipping all law enforcement officials with the skills needed to tackle transnational crime, when cooperating with third countries as well as when taking part in civilian missions.

The increase in recent years of CEPOL's activities such as training courses, common curricula and the exchange programme proves that support, development, delivering and coordination at EU level of existing instruments are essential elements in order to attain a coherent approach in training and thereby to enhance operational cooperation. By means of the tasks listed in Article 10 of the proposal, the Commission aims at translating into legislation such needs while building on current practice.

Council Decision 2005/681/JHA is the current legal basis for the European Police College (CEPOL) and defines actions it may undertake to help train the senior police officers of the Member States. The changes now proposed by the Commission would build on and improve existing practices. An important specific proposed change is the involvement of all officers at strategic level and not only senior police officers.

Principles of limited conferral, subsidiarity and proportionality (Article 5 TEU).

The Reasoned Opinion of the Bundesrat also raises concerns in relation to the compliance of some parts of the proposal with the concepts of limited conferral, subsidiarity and proportionality, as enshrined in Article 5 of the Treaty on the European Union.

The Commission notes that the aim of the proposal is neither to regulate in domestic domains nor to go beyond the conferred mandate. On the contrary, the scope is to benefit from the added value of cooperation at European level.

As described in the LETS Communication, some gaps exist in training standards among Member States; for this reason, the measures which would be implemented through the Law Enforcement Training Scheme – and hence through the Europol Academy – are foreseen to ensure synergies between EU and domestic level action.

The proposal does not prejudice Member States in their internal action. The envisaged measures are limited to training on EU-related issues or where training at EU level can add value.

The Opinion of the Bundesrat raises four further issues in addition to matters relating to training.

First, the Opinion states that Article 3 of the proposal would extend the scope of Europol's competence.

The Commission would like to point out that, when drafting the Article, the intention was to align Europol's mandate to the requirements of the Treaty. This is the reason why the text of Article 3(1) is aligned with that of Article 88(1) of the Treaty on the Functioning of European Union.

According to the Opinion, Europol should only have competence where two or more Member States are affected in a way that, in view of the scale, importance and consequences of the offences, calls for common action by the Member States.

The Commission takes note of this interpretation and agrees on the fact that two or more Member States normally need to be affected for Europol to be competent. However, for what concerns terrorism and forms of crime which affect a common interest covered by a Union policy, the Commission's interpretation of Article 88(1) TFEU is that Europol can support and strengthen actions of Member States even in cases that do not affect two or more Member States.

Secondly, the Opinion notes that Article 6 of the proposal would allow Europol to ask Member States to initiate criminal proceedings and lays down a deadline for Member States to give their reasons for not complying with a request. The Opinion notes that there was previously no such deadline and states that the Bundesrat rejects its imposition.

The Commission observes that the proposal does not deviate in the substance from the current Europol Council Decision in that it concerns a request, and certainly not an instruction. Member States are not obliged to open an investigation, nor indeed to provide reasons if this would jeopardise essential national security interests, or on-going investigations. A deadline is important to make clear where things stand between Europol and Member States, and to allow Europol to plan and use its resources effectively.

Thirdly, the Opinion states that Article 7 of the proposal provides that every Member State is to establish or designate a National Unit to be the liaison body between Europol and the competent authorities in Member States as well as with training institutes for law enforcement officers. Member States are also to appoint an official as the head of the National Unit. The Opinion notes that hitherto the German liaison body for Europol was the Bundeskriminalamt and the central contact for CEPOL was the Deutsche Hochschule der Polizei. The Opinion states that if Europol and CEPOL are merged, this cannot be allowed to lead to any confusion of the respective competences of the national and Länder authorities.

The Commission takes note of and acknowledges the need for Germany to respect its internal division of competences when Germany deals with law enforcement cooperation at EU level.

Fourthly, the Opinion states that hitherto the Länder have exercised their rights vis-à-vis Europol through the involvement of an 'expert' appointed by the Bundesrat to represent their interests on the Europol Management Board. The Bundesrat considers that representation of the Länder must be adequately guaranteed and that an appointed representative of the Länder must be allowed to attend meetings of the Management Board as an 'expert'.

The Commission draws attention to Article 17(5) of the proposal which, as the Opinion points out, specifies when advisers or experts may attend meetings of the Management Board. It states that experts may assist members of the Management Board, subject to the provisions of its Rules of Procedure. The Management Board will adopt its Rules of procedures and within those limits each Member State will decide who will accompany its representative.

The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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Vice-President*