

Decision of the Bundesrat

Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for law enforcement training (CEPOL), repealing and replacing Council Decision 2005/681/JHA

COM(2014) 465 final; Council doc. 12013/14

At its 926th meeting on 10 October 2014, pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG), the Bundesrat adopted the following opinion:

1. The Bundesrat applauds the aim of the proposal for a Regulation establishing a European Union Agency for law enforcement training (Cepol), i.e. to improve training for law enforcement officers with a view to combating cross-border crime.
2. Member States' police forces are constantly facing new challenges in combating crime across borders and maintaining public order and public safety. As a result of this situation, police training needs are steadily changing. The Bundesrat therefore supports the Commission's efforts to extend the educational role of Cepol and to adapt this role to the changes that have occurred since the current legal framework was adopted in 2005.
3. The Bundesrat very much welcomes the Commission's intention not to merge Cepol with Europol (the European Police Office) as originally planned, but to keep it as a separate agency. That decision gives due heed to the special importance of law enforcement training at a European level. It also takes account of the Bundesrat's views in this regard as expressed in its opinion of 3 May 2013 (BR-Drucksache 248/13 (Beschluss)) on the Commission communication concerning a Law-Enforcement Training Scheme and its opinion of 7 June 2013 (BR-Drucksache 346/13 (Beschluss)) on the proposal for a Regulation on Europol.

4. The current proposal for a Regulation refers in several places (including in Article 3 setting out Cefpol's aims) to the 'Law Enforcement Training Scheme', thereby giving the impression of an agreed framework for action in this regard. But in actual fact the corresponding Commission communication of 27 March 2013 was not discussed in detail at a European level in the relevant forums nor adopted in an appropriate procedure. Indeed, the Bundesrat expressed grave concerns against key components of that Commission communication - see the abovementioned opinion of 3 May 2013. The Bundesrat therefore asks that the references to a Law Enforcement Training Scheme be removed.
5. When the Commission presented its communication on a European law enforcement training scheme, the Bundesrat pointed out the EU's limited mandate in the field of police training as per Article 87(2)(b) TFEU - see the abovementioned opinion of 3 May 2013. The Bundesrat even raised an objection to the content of the Commission's proposal for a Regulation on Europol, on the grounds of subsidiarity - see opinion of 7 June 2013 (BR-Drucksache 346/13 (Beschluss)).

The Bundesrat welcomes the fact that the Commission has largely taken on board its concerns in the current proposal for a Regulation on Cefpol. However, the proposal still contains content on the subject of the Cefpol mandate that the Bundesrat considers to be not fully compatible with the overarching European legal framework - e.g. 'devise specific common curricula' (Article 3(1)(d)), 'train trainers' (Article 3(1)(f)) and 'develop and regularly update learning tools and methodologies' (Article 3(2)). The Bundesrat therefore requests that the passages in question be amended.

6. Article 3(1)(c) of the proposal for a Regulation refers almost in passing to the possibility of carrying out training on specific thematic areas where 'training at Union level can add value'. In the Bundesrat's view, this should be Cefpol's general operating principle, since it reflects the EU training mandate contained in Article 87(2)(b) in conjunction with Article 87(1) TFEU and also clarifies the actual aim and added value of Cefpol's activities. The Bundesrat therefore requests that wording such as the above, expressing Cefpol's overarching framework, be included in the Regulation.
7. As already stated, Cefpol should continue in the future to act only where training at EU level offers added value over national training measures. Where the profession of prosecutor is concerned, EU measures can offer the necessary added value only insofar as they relate directly to judicial cooperation in criminal matters. All the objectives set out in Article 3 of the proposal for a Regulation and all the tasks listed in Article 4 should therefore clearly indicate this relevance to cross-border cooperation in the fight against crime.

8. While Cefpol already had its own legal personality and an assigned seat, it operated as a network of Member States' national training institutes (Article 2-4 of the Cefpol decision of 20 September 2005). Although the design and implementation of individual training measures would continue to be primarily the responsibility of the Member States, the current proposal for a Regulation on Cefpol entails a clear dilution of this network approach whereby Cefpol itself would no longer be part of the network. Rather, the agency's task would be solely to 'bring together the network of training institutes of the Member States for law enforcement officers' (Article 3(3) of the proposal) and fulfil its future educational role 'in cooperation with the network of training Institutes of the Member States' (Article 3(4)). These plans give rise to concern, as they would result in a fundamental weakening of the national members of the network, clearly shifting competences to Cefpol and to a European level. The Bundesrat therefore considers it imperative that the network be kept in its current form.
9. The Bundesrat considers that in the future development of training in the fight against crime at European level, measures developed at EU level must remain voluntary - the content of and participation in such training must not be binding on the Member States and national training bodies must not be excluded from setting up their own courses or developing their own teaching materials.
10. In the Bundesrat's view, contrary to the Commission's classification of the original version of the proposal, the document should come under the early warning mechanism for subsidiarity scrutiny.
11. The Bundesrat is sending this opinion directly to the Commission.