



EUROPEAN COMMISSION

*Brussels, 26.9.2013  
C(2013) 5723 final*

*Dear President,*

*The Commission would like to thank the Congreso de los Diputados and the Senado for their Reasoned Opinion concerning the proposal for a Regulation on the European Union Agency for Law Enforcement Cooperation and Training {COM(2013) 173 final}.*

*The Reasoned Opinion of the Spanish Parliament states that the draft Regulation does not respect the subsidiarity and proportionality principles enshrined in Article 5 of the Treaty on the European Union.*

*The Commission would like to reply as follows to the points raised by the Congreso de los Diputados and the Senado*

*The principle of conferral*

*The concern raised by the Congreso de los Diputados and the Senado in relation to the proposed merger between CEPOL and Europol relates to the risk that this process could result in a takeover where the EU would regulate certain aspects of police training in the Member States. This would go, according to the Reasoned Opinion, further than the conferred mandate to Europol, stated in Article 88 of the Treaty on the Functioning of the European Union.*

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

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*Article 88(1) TFEU states that "Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by an Union policy. This should be read together with Article 87(2)(b) TFEU, which stipulates 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".*

*Chapter III of the proposal for a Regulation sets out the ways in which such support should be provided by Europol.*

*In particular, Article 9 describes the role of the Europol Academy, and Article 10 its tasks in relation to training. The notion of "support", mentioned in both Articles 87(2)(b) and 88(1) TFEU, 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.*

*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 and make it systematically accessible for all law enforcement professional". The European Law Enforcement Training Scheme (LETS) aims to increase 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 prevent and combat serious crime affecting two or more Member States.*

*By means of the provisions on training contained in the proposal, the Commission aims at translating into legislation such needs, while building on current practice.*

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

*The Commission considers that the principle of conferral is hence respected.*

#### *The enhanced obligations*

*The Congreso de los Diputados and the Senado raised concerns on the fact that the imposition of further obligations on Member States to exchange information or to initiate investigations proposed by Europol could jeopardise the mutual trust between them.*

*The Commission observes that no additional obligations have been inserted in the proposal for a Regulation. On the contrary, one of the aims of the proposal is to clarify obligations and responsibilities already existing in the current legislation.*

*The primacy of the Member States is not hampered and, also in those cases where exceptions are not explicit, national interests of the Member states are predominant and protected by Article 72 of the Treaty on the Functioning of the European Union.*

*This is reflected in the exemptions provided by Article 6 (2), concerning the initiation of criminal investigations. In this regard, the Commission notes that Member States are not obliged to give a positive reply to Europol's request to initiate an investigation. Moreover, they are not obliged to give reasons for a refusal, if giving them would jeopardise essential security interests or on-going investigations.*

*The provision is intended to clarify the procedures and to provide more certainty both for the Member States and for Europol. It concerns a request, certainly not a direction or instruction, to Member States.*

*Concerning the exchange of information, the Commission underlines the fact that Europol depends and will continue to depend predominantly on Member States when it comes to collection of data on serious crime. The strengthening of the obligation to provide relevant data aims at preventing the risk of insufficient information sharing, which would have an impact on Europol's effectiveness and, as a consequence, on law enforcement officials' activities in the Member States.*

*Mutual trust remains the cornerstone of cross-border cooperation and information exchange in the EU. No legal requirement could in fact work efficiently in practice without this key element. By means of the provision proposed in the Regulations, the Commission continues to build on the concept of mutual trust, that is and remains the cornerstone of cooperation among Member States.*

*The Congreso de los Diputados and the Senado are of the opinion that the provisions on the exchange of information could result in a greater amount of low-grade information, which would, as a consequence, jeopardise Europol's efficacy. The Commission would like to make reference to the EU Policy Cycle on organized crime.*

*The EU Policy Cycle on organized crime reflects an approach endorsed at EU level and aims at defining the priorities of the Union in the fight against the serious crime. The Commission's proposal builds on these (non-exhaustive) priorities to define those areas where data should more specifically be submitted by the Member States. This in turn contributes towards the Europol data collection becoming increasingly targeted.*

*Far from causing an excessive workload, an increased flow of good-quality information would allow Europol to work more efficiently.*

#### *The proposed governance system*

*The Congreso de los Diputados and the Senado raise a concern on the possibility that, as it is designed in the Regulation, the governance system could entail a loss of the Member States' specific influence over the agency's management bodies and systems.*

*The Commission notes that the proposed governance architecture finds its rationale in the Common Approach on EU Decentralised Agencies, which has been endorsed by the Council, the Commission and the European Parliament in 2011.*

*No changes have been introduced in respect to the agreed Common Approach, and the Commission has not identified any specific reason to deviate from it.*

*The proposed Regulation provides for Europol to move away from its set-up based on the former third-pillar, in line with Article 88 TFEU. While changes are proposed to the ways in which Member States exercise their powers, they will continue to be able to influence the activity of the agency through their representatives on the Management Board. The proposed Regulation provides the Management Board with a set of new tools intended to allow an effective control of the workings of the agency. One example is the direct influence that the Management Board can exercise when appointing the Executive Director.*

*The exchange of information between Europol and third parties*

*The Reasoned Opinion of the Congreso de los Diputados and the Senado also concerns the implication that the exchange of information between agencies and third parties could have on the trust relations between the Member States' police forces and Europol.*

*Firstly, the Commission reiterates that the owner principle is the cornerstone of the information system of Europol. By means of this instrument and the attribution of handling codes, the data provider is enabled to keep the full ownership over the information provided. In no case can information be transmitted to a third party without the consent of the provider.*

*The mutual trust between national police forces and Europol is not jeopardised. As said above, the Commission continues to build on this concept as the core of cooperation and of the system of information exchange among Member States as well as between Member States and Europol.*

*Finally, the Congreso de los Diputados and the Senado raised a concern on the "excessive level of ambition shown by the Commission". The Commission notes in this regard that Europol is an agency whose purpose is to serve and assist Member States, and in no way does the proposal go beyond that.*

*The Commission hopes that these clarifications address the concerns raised by the Congreso de los Diputados and the Senado and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*