

Decision
of the Bundesrat

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 decisions 2009/371/JHA and 2005/681/JHA**COM (2013) 173 final; Council document 8229/13**

In its 910th session on 7th June 2013, the Bundesrat adopted the following Resolution pursuant to Article 12, Letter b, TEU.

1. The subsidiarity objection pursuant to Article 12, Letter b, TEU also encompasses the question of EU competence – see the Bundesrat Opinions of 9th November 2007, Point 5 of BR-Official Document 390/07 (Decision), of 26th March 2010, Point 2 of BR-Official Document 43/10 (Decision) and of 16th December 2011, BR-Official Document 646/11 (Decision). The subsidiarity principle is a principle pertaining to the exercise of competences. There may also be violation of the subsidiarity principle in cases in which the European Union does not hold competence or if measures adopted extend beyond the scope of the European Union's competences. Consequently the question of the legal basis is the first issue to be resolved in the course of subsidiarity scrutiny.
2. The proposal for a Regulation, in as much as it concerns tasks in connection with training of law enforcement officers, is not covered by the legal basis indicated, namely Article 87, Sub-section 2, Letter b, TFEU. Article 87, Sub-section 2, Letter b, TFEU stipulates that the European Union shall develop police cooperation involving all the Member States' competent authorities and may, acting in accordance with the ordinary legislative procedure, adopt measures on support for the training of staff, and cooperation on the exchange

of staff, on equipment and on research into crime detection. This authorisation to adopt provisions does not however encompass measures that extend beyond “support” in the field of training.

3. The principles of conferral, subsidiarity and proportionality pursuant to Article 5 TEU must be taken into account. Pursuant to the principle of conferral as stipulated in Article 5, Sub-section 2, TEU, the EU may only take action within the limits of the competences transferred to it by the Member States in the Treaties to attain the goals enumerated therein. The proposal for a Regulation also constitutes a violation of the subsidiarity principle, as enshrined in Article 5, Sub-section 3, TEU, in the stricter sense of the term, in as much as the proposal comprises provisions on training in a purely national context. In this respect it is not possible to identify the added value of the envisaged harmonisation of provisions across Europe. On the contrary, the Member States are in a position to adopt adequate provisions governing purely national training, indeed this is already governed by adequate provisions in German law. By including provisions that extend beyond the scope of EU competences in respect of training, the content and form of the proposal for a Regulation exceeds what is necessary to achieve the objectives of the Treaties, and does not respect the provisions on proportionality pursuant to Article 5, Sub-section 4, TEU.
4. The proposal for a Regulation envisages that the existing European Police Academy (CEPOL) shall be merged with the existing EU agency Europol. Through this proposal however Europol would take over and build on tasks formerly carried out by CEPOL. The substantiations provided in connection with these extended powers do not comply with the requirements to be taken into account by the Commission as stipulated in Article 5 of Protocol 2 to the Lisbon Treaty, which are binding for the Commission pursuant to Article 51, TEU.