

REASONED OPINION 4/2013 OF THE JOINT COMMITTEE FOR EU AFFAIRS, DATED JUNE 18, 2013, ON THE NON COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE 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] [2013/0091 (COD)] {SWD (2013) 98 FINAL} {SWD (2013) 99 FINAL} {SWD (2013) 100 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are the legal basis for this reasoned opinion.

B. The 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, has been adopted by the European Commission and conveyed to national Parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline June 25, 2013.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on May 7, 2013, to examine the said European legislative initiative, appointing to that end Senator Mr. Juan Ramón Represa Fernández, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

D. The Government has conveyed a report. This report indicates that the Regulation, in its current drafting, does not fully comply with the principle of subsidiarity since it envisages the absorption of the Agency CEPOL by EUROPOL. More precisely, it states that such merging could result in the existence of European regulation on specific aspects of police training in Member States whose convenience is far from proven. Concerning the principle of proportionality, it indicates that out of a first reading of the proposal by the Commission it could be inferred that with this proposal it goes beyond what is strictly necessary to guarantee Europol's role of support, reinforcement and cooperation instrument for Member States' law enforcement agencies. The Parliament of the Basque Country has likewise conveyed its report indicating that the initiative complies with the subsidiarity principle.

E. The Joint Committee for EU Affairs, in its meeting held on June 18, 2013, adopted the following:

REASONED OPINION

1.- Article 5.1 of the Treaty on the European Union indicates that *“the use of Union competences is governed by the principles of subsidiarity and proportionality”*. According to Article 5.3 of the same Treaty, *“under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”*.

2.- The examined legislative proposal is based on articles 88 and 87 (2) b of the Treaty on the Functioning of the European Union.

“Article 88

1. 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 a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol’s structure, operation, field of action and tasks. These tasks may include:

(a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;

(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States’ competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The

application of coercive measures shall be the exclusive responsibility of the competent national authorities.”

“Article 87

2 (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;

3.- The Proposal for a Regulation of the European Parliament and of the Council on the Europol aims to become the legal framework for the merging of the European Police Office (Europol) and the European Police College (CEPOL) into a single agency of the European Union which would continue to be named Europol as Police Agency of the European Union for law enforcement cooperation and training.

This Proposal for a Regulation repeals Council Decision 2009/371/JHA, of April 6, 2009, setting up the European Police Office (Europol) and Council Decision 2005/681/JHA, of September 20, 2005, setting up the European Police College (CEPOL).

The examined Proposal aims to:

- a) Align Europol with the requirements of the Treaty of Lisbon by setting up the legislative framework of Europol in the regulation and by introducing a mechanism for control of Europol’s activities by the European Parliament, together with national Parliaments.
- b) Meet the goals of the Stockholm Programme by making Europol “a hub for information exchange between the law enforcement authorities of the Member States” and establishing European training schemes and exchange programmes for all relevant law enforcement professionals at national and EU level.
- c) Grant Europol new responsibilities so that it may provide a more comprehensive support for law enforcement authorities in the Member States. This includes Europol taking over the current tasks of CEPOL in the area of training of law enforcement officers and developing a Law Enforcement Training Scheme.
- d) Ensure a robust data protection regime for Europol.
- e) To improve the governance of Europol by seeking increased efficiency and aligning it with the principles laid down in the Common Approach on EU decentralised agencies.

4.- The European Police Office (Europol) is the Agency of the European Union in the field of primarily police cooperation set up by Council Decision 2009/371/JHA, whose role is to provide support to national law enforcement services' action and their mutual cooperation in the prevention of and fight against serious crime and terrorism.

Article 88 of the Treaty on the Functioning of the European Union stipulates that Europol shall be governed by a regulation to be adopted by the ordinary legislative procedure. It also requires to establish procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

The European Police College (CEPOL) was established as an EU agency in 2005 by Council Decision 2005/681/JHA and is in charge of activities related to cooperation in the training of law enforcement officers. Its purpose is to facilitate cooperation between national police forces by organising training activities with a European policing dimension.

The Stockholm Programme called on Europol to become a hub for information exchange between the law enforcement authorities of the Member States and a platform for law enforcement services, and called for the establishment of European training schemes and exchange programmes for all relevant law enforcement professionals at national and EU level, with CEPOL playing a key role.

As it has been mentioned before, the Commission proposes the merging of Europol and CEPOL into a new Agency (-Europol-, situated at the current headquarters of this Agency at The Hague) with the aim of reducing expenses and creating important synergies between operational and training activities.

According to the Explanatory Memorandum of the Proposal for a Regulation on this matter, the proposal is in line with the requirements of the Lisbon Treaty, the expectations of the Stockholm Programme, the priorities set out in the Internal Security Strategy in Action, and the Common Approach to EU decentralised agencies.

5.- Over the last decade, the EU has seen an increase in serious and organised crime as well as more diverse patterns in crime. In the "Communication from the Commission to the European Parliament and to the Council" dated November 2010, on the EU Internal Security Strategy in Action, setting five steps towards a more secure Europe, it mentions that it is clear that in general most Europeans are able to go about their daily lives in relative safety. At the same time, our societies are facing serious security threats that are growing in number and in the way they are committed. Many of today's security challenges are cross-border and cross-sectorial in nature. Citizens are worried by the fact that no single Member State is able to respond to these threats on its own, for this reason it would be advisable to have more action at EU level against organised crime and terrorism. The "Communication from the Commission to the European Parliament

and to the Council” therefore proposes how we can work together to be more effective in fighting and preventing serious and organised crime, terrorism and cybercrime , in strengthening the management of our external borders and in building resilience to natural and man-made disasters

According to Europol “serious and organised crime is an increasingly dynamic and complex phenomenon, and remains a significant threat to the safety and prosperity of the EU”. The study also notes that the effects of globalisation in society and business have also facilitated the emergence of significant new variations in criminal activity, in which criminal networks exploit legislative loopholes, the internet, and conditions associated with the economic crisis to generate illicit profits at low risk. Serious crime offences therefore cause increasingly severe harm to victims, inflict economic damage on a large scale and undermine the sense of security without which persons cannot exercise their freedom and individual rights effectively. Crimes like trafficking in human beings, in illicit drugs, and in firearms, financial crimes like corruption, fraud and money laundering, illegal discharges of waste and cybercrime not only pose a threat to personal and economic safety of people living in Europe, they also generate vast criminal profits which strengthen the power of criminal networks and deprive public authorities of much needed revenues. Terrorism remains a major threat to the EU’s security, as societies in Europe are still vulnerable to terrorist attacks. Crime is one of the five main concerns of EU citizens. In this context, EU agencies are needed to effectively and efficiently support law enforcement cooperation, information sharing and training.

6.- As regards our country, and bearing in mind the report conveyed by the Government of Spain, the Proposal is assessed positively in general terms, and is welcomed since it complies with the mandate of the Treaty on the Functioning of the European Union according to which Europol shall be governed by a Regulation and moreover, parliamentary scrutiny of the Agency’s activities and responsibilities must be guaranteed, as laid down by the aforementioned article 88 of the TFEU.

However, the full development of the current competences of Europol, so far not fully satisfactory, should be reinforced; before increasing its capacities or competences the performance of the current ones should be improved. Although it is recognised that there is a need to increase and improve the cooperation of Member States with Europol, providing more relevant information with greater quality from a police perspective, it is not considered necessary to reinforce the obligations of Member States through sanctioning or similar mechanisms, but to promote needed improvements, and guarantee the prevalence of Member States in the governance of the Agency.

Concerning the merging of Europol and CEPOL, which in principle would be an absorption of the latter by the first, the Government of Spain, like most Member States, does not see the benefits that such merging would entail, and moreover, police training

activities would be affected by a foreseeable change in the allocation of resources from the training activities to the operational ones.

7.- As it has been mentioned before, a report has been received by the Government of Spain in the sense that the Proposal for a Regulation under consideration does not fully respect the principle of subsidiarity, mainly because it envisages the merging of CEPOL into EUROPOL. More precisely, such merging could result in the EU regulating specific aspects of Member States' police training, whose convenience is far from proven.

Concerning the principle of proportionality, it is to be noted that, bearing in mind article 88 of the TFEU mentioned in paragraph 2 of this reasoned opinion, establishing the functions of Europol, it could be considered that the Proposal of the Commission goes beyond what is strictly necessary to guarantee Europol's role of support, strengthening and cooperation instrument for Member States' police services.

Several aspects should be considered:

- a) The pursued absorption of Cepol by Europol, which is not envisaged in article 88 of the TFEU.
- b) The establishment of reinforced obligations for Member States concerning the exchange of information with the Agency or the need to open investigations suggested by Europol, could compromise the essential aspect of relations between Member States' police agencies and Europol, namely mutual trust obtained thanks to many years of work, and flood the Agency itself with scarce value information that will only increase the burden of work and put at risk its current efficiency.
- c) The loss of specific weight of Member States in the management bodies and mechanisms of the new Agency.
- d) The inter-agencies and with third parties information exchange, which would also have an impact on the existing trust between Member States police agencies and Europol.

Finally, we would like to note that several EU Member States are concerned by the fact that this too ambitious legislative proposal of the Commission, intends to establish an European Agency, Europol, as a true operational agent, as a new added actor in European security, when the only operational actors are – and should continue to be in the future – police services of Member States.

CONCLUSION

For the aforementioned reasons, the Joint Committee for EU Affairs, considers that the 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, does not comply with the principle of subsidiarity laid down in the Treaty on the European Union in force.

This reasoned opinion shall be conveyed to the European Parliament, to the Council and to the European Commission, within the framework of political dialogue between national parliaments and the EU institutions.