



## CEPOL Position Paper

### European Commission Package on the creation of a European Agency for Law Enforcement Cooperation and Training<sup>1</sup>

#### 1. Executive Summary

Detailed analysis of the Commission documents has identified serious issues, inconsistencies and omissions that render the proposal unsupportable. First and foremost, the legal viability is not established. The financial benefits described are not substantiated and the costs of the proposal are inadequately quantified. The proposed governance would seem to be more costly and not in accordance with the requirement to streamline the governance of agencies. Key operational factors such as the likely loss of expertise and Member State engagement are not considered. The use of outdated information and the consequent disregard of more recent data and performance indicators do not provide a sound basis for consideration of the proposal.

Member States agree to initiatives aimed at improving the cost efficiency and effectiveness of EU agencies. However, the package on the reform of Europol, de facto leading to the disappearance of CEPOL as an independent agency, is decisively rejected by the massive majority of the Governing Board.

Member States' opinions seem to converge on these three fundamental issues:

- ⊗ A merger between CEPOL and Europol will weaken the support given to Member States for both operational law enforcement activities and for training activities
- ⊗ A merger between CEPOL and Europol may not result in any cost savings as originally intended by the Commission, but may be at best "budget-neutral" in terms of human resources, and may even lead to higher expenditure when considered in its complexity;
- ⊗ The proposed "package" lacks transparency and often objectivity, both of which are key principles of EU decision making.

A review of the Commission initiative shows it to be over-simplistic. The often vague content of the provisions of the draft Regulation and their weak argumentation make the document un-convincing, to the extent that many of the provisions therein may only amount to declarations of good intents not underpinned by solid, factual reasoning.

Furthermore, the proposal does not comply with previous assessments and policy statements put forward by the Commission in recent times.

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<sup>1</sup> COM 2013(2013)713 Final "Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol); SWD(2013) 99 final commission staff working document "executive summary of the impact assessment on merging the European Police College (Cepol) and the European Police Office (Europol) and implementing a European police training scheme for law enforcement officials"



In particular, the following inconsistencies should be noted:

- **The stated aims and assumptions of the Commission underpinning the draft Regulation are not coherent with the proposed measures**, and some aims/assumptions are not addressed altogether: training coordination is only partially addressed; the qualification framework in line with the European Higher Education Area launched by the Bologna process are not specifically dealt with; and there are no indications as to what concrete measures should be undertaken to enhance the quality of courses. Note that the satisfaction rate is currently at 93% which has been praised by the Commission itself.
- **The results of a study financed by COM and carried out by an independent consulting firm (GHK Consulting) have been ignored.** The study suggests that a merger could lead to the downscaling of training activities, ultimately jeopardising successful implementation of the Law Enforcement Training Scheme (LETS).<sup>2</sup>
- **There is no substantive reasoning given for the change in the COM position that CEPOL remain an independent agency to the current proposal to merge with Europol.** In June 2012, COM presented a paper to the Council Standing Committee on Operational Cooperation on Internal Security (COSI) stating that a merger with Europol risked 'diluting training under the politically more eye catching pressures of operational law enforcement.'<sup>3</sup> The change in COM position has not been substantiated.
- **The legal viability of the proposal is also worth questioning**, given that the new mandate of Europol described in the draft regulation may be seen as exceeding the spirit of art.87 and 88 of the Treaty on the Functioning of the European Union (TFEU).
- **The data presented is often outdated** and there is a tendency to show CEPOL in a negative light, in spite of the many measures successfully undertaken by the agency to streamline governance and achieve sound financial management. Those efforts and their outcomes are largely appreciated by all institutional stakeholders including the Commission itself- and most importantly, they have been expressly recognised by the European Parliament as the supreme budgetary authority in its recent budgetary discharge procedure related to the year 2011.

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<sup>2</sup> GHK Study on the amendment of the Council Decision 2005/681/JHA setting up CEPOL activity:  
[http://ec.europa.eu/dgs/home-affairs/pdf/policies/police\\_cooperation/cepol\\_final\\_report\\_100512.pdf](http://ec.europa.eu/dgs/home-affairs/pdf/policies/police_cooperation/cepol_final_report_100512.pdf)

<sup>3</sup> Council doc. 11506/12 COSI 47 ENFOPOL 195



- **In referring to the ‘Common Approach’ COM overlooks the steps already taken by CEPOL to adhere to the principles of this approach.** Namely, CEPOL has improved its governance, significantly reducing governance costs; enhanced its efficiency, reasonably lowering the unit price of training activities; improved its accountability, as evidenced through audits and discharges; and improved coherence with EU policy initiatives and close cooperation and coordination with other JHA agencies to avoid a duplication of tasks related to training activities.
- **New governance arrangements in the draft regulation would generate more cumbersome processes** to the likely detriment of training quality, ownership and “buy-in” by the Member States, rather than streamlining decision making and improving efficiency.
- **There is a serious risk that law enforcement training will be under-represented in the new Europol Management Board.** The designation of members of the new Europol Management Board competent to decide on training issues as ‘alternate members’ seems to suggest a junior standing for the latter, when compared to the ‘full members’ who should come from a law enforcement cooperation background. These provisions may prove impractical if not impossible to implement for a variety of practical and functional reasons, as they violate Member States’ prerogatives to nominate Board members as they deem fit, and may result in the training constituency being largely unrepresented in the new agency. **Furthermore, Member States may be forced to undertake internal restructuring** to co-locate the current Europol National Units (ENUs) and CEPOL National Contact Points (NCPs), which currently operate across different departments within the law enforcement services, national training institutes or within the relevant Ministries. CEPOL NCPs and ENUs have starkly different and well segregated tasks.
- **The draft proposal over-estimates the budgetary advantages of the merger option,** insofar as it fails to present a transparent financial analysis; on the other hand the “hidden” costs of the merger operation appear to have been largely underestimated in both the impact assessment and the draft regulation; this under-estimation covers both the costs associated with removing/disbanding CEPOL, its staff and resources, as well as those costs associated with governance and relocation costs.
- **There is no clarity on how COM reached its conclusions on staffing.** The proposal does not specify how the Commission reached the conclusion that 14 existing CEPOL posts could be abolished, does not identify which posts, and does not provide a clear indication as to whether the current Europol staffing figures would allow for taking over the administrative tasks of CEPOL- a concept indicating that the Commission either thinks Europol is currently overstaffed, or that Europol staff are not utilised to full



potential. In parallel, the proposal does not identify why 12 posts are deemed sufficient to implement the new tasks derived by the European Law Enforcement Training Scheme. Furthermore, the proposal is poor with regard to transitional provisions for existing CEPOL staff who may be subjected to redundancy; the effect of transition are also underestimated, and may result in the disruption of training for an extended period of time until new recruitments are finalised.

The Regulation is unbalanced when dealing with the division of labour and resources between the Europol Academy- supposedly, delivering all training provided by the new agency- and the Cybercrime Centre, which has been given additional human resources specifically for training purposes, thus yet again contradicting the initial stated aim of the Commission to seek economies, synergies and avoid overlaps.

- **The proposal does not guarantee adequate funding for law enforcement training beyond three years following the adoption of the regulation.** From a budgetary point of view, while Europol's budget shall increase from approximately EUR 99 million to approximately EUR 108 million between 2015 and 2020, Article 76 of the draft Regulation reserves a minimum of EUR 8 million for training purposes, only for the three years following the adoption of the Regulation. Hence, there is no guarantee that European training will receive an adequate financial subsidy thereafter, in spite of the many calls to enhance the European dimension of law enforcement training across the EU.
- **Lastly, with this proposal the key feature of CEPOL – reliance on a network of national training institutes for development and delivery of sustainable, educationally sound European law enforcement training - would de facto disappear** under the new legal framework, thereby “crippling” a well-functioning system. Most importantly, the contribution of the national training institutes which currently supply free of charge expertise to CEPOL would be put into question. The proposal appears to ignore this fundamental question, as well as its budgetary impact: training expertise currently supplied by the Member States at very low or no cost basis would have to be somehow procured elsewhere, at a cost far from marginal.

## 2. Detailed Analysis of the merger package

### 2.1 Impact Assessment presented by the European Commission

#### 2.1.1 Data Sources

Overall, COM appears selective in its use of data.



The Impact Assessment refers extensively to the five year evaluation of CEPOL, a study commissioned by CEPOL in 2010 and covering the first five years of activity of the Agency as a body of the EU. Between 2010 and 2012 many changes have been implemented across all levels of CEPOL activities, and all shortcomings raised in the five year evaluation have been addressed by the Governing Board. This has been recognised by the Commission itself, as well as the COSI and the European Parliament<sup>4</sup>.

The data utilised by COM appear to rely excessively on the weaknesses identified in the five year evaluation, while the data and conclusions contained in the GHK Report are not accurately reported or highlighted.

In 2011, COM commissioned GHK to undertake an extensive study on the amendment on the CEPOL regulation. Some notable findings of the study, in particular the financial data for a differentiated merger scenario, are ignored.

Furthermore, the future role of CEPOL was only marginally touched upon in the context of the ETS Workshops carried out in 2011, not definitely “discussed” consultatively, as COM claims in the document. Other important aspects out of the ETS workshops were not represented, e.g. that finally Member States in the ETS Workshops expressed a strict preference for the implementation of the ETS by an independent CEPOL.

### 2.1.2 Incorrect Data

Under p.3.1.1 (2) COM states that:

*‘CEPOL organises courses and develops common curricula on the EU dimension of policing, both in the national academies and at CEPOL itself, and disseminates best practice and research findings. CEPOL training is delivered by national experts, rather than CEPOL staff. Each year there are around 2 000 participants in CEPOL on-site training and about 100 to 200 participants in exchange programmes and (since 2011) e-learning activities.’*

These figures are incorrect. According to COM, in 2011, 2,200 police officers benefited from CEPOL activities while the real figure is 4,206<sup>5</sup>. Since 2011, the number of officers trained through CEPOL activities has risen further – totalling 6,019 participants. In 2012, CEPOL organised 82 residential courses attended by 2,098 participants from all Member States and Third Countries. Also in 2012, CEPOL implemented 30 online seminars (webinars) with a participation of 1,667 attendees; participants to e-Learning modules totalled 1961; and the

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<sup>4</sup> A7-0064/2013 Report on discharge in respect of the implementation of the budget of the European Police College for the financial year 2011 (C7-0262/2012 - 2012/2199(DEC), sub-points 16 and 17 of point M

<sup>5</sup> CEPOL Annual Report 2011 ‘Strengthening Police Cooperation Through Learning’, [http://www.cepola.europa.eu/fileadmin/website/Publications/AR\\_2011/index.html](http://www.cepola.europa.eu/fileadmin/website/Publications/AR_2011/index.html)



number of participants to the European Police Exchange Programme financed entirely by CEPOL was 293.

Under 3.2.1 COM refers to the fact that *'by 2009 only 1.6% of senior police officers in the EU had access to CEPOL training, while by 2010 only 13 to 15 EU MS were able to send officers to receive CEPOL training'*.

In fact, in 2010 all 27 EU MS sent officers to training and in addition to that, participants from 8 non-EU countries took part. The number 13 to 15 refers instead to the average number of participating Member States per course.

### 2.1.3 Lacking analysis of Policy Coherence

#### 2.1.3.A: Sector Policy

Under p.3.1.2 COM fails to recognise the efforts successfully undertaken by CEPOL to align fully its training portfolio with EU Internal Security priorities, for example with the EU Policy Cycle on Serious and Organised International Crime. In fact, CEPOL was tasked by the Council to provide training on the Policy Cycle<sup>6</sup> and CEPOL's investment has been acknowledged by COSI<sup>7</sup>. The agency is an active participant to the EMPACT work across all priority areas. This has led to the implementation of 26 policy cycle related residential and e-learning activities in 2012, with 30 planned in 2013. In addition these activities are supported by the European Police Exchange Programme, where staff exchanges are organised in all Policy Cycle priority areas. Hence, once again COM does not recognise not only the efforts but the actual results of the Agency in fully addressing the European dimension when setting up law enforcement training and exchange programmes. Particularly with regard to the European Police Exchange Programme, it must be noted that CEPOL implements it fully out of its own resources, with no additional EU subsidy which was originally foreseen in the Council conclusion and has managed to constantly increase the number of participants to the Programme.

#### 2.1.3.B: Governance Policy

The COM assessment refers to the Common Approach on EU Agencies, (a non- legislative document), which states that *'merging agencies should be considered in cases where their respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure'*.

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<sup>6</sup> 15358/10 COSI 69 ENFOPOL 298 approved at 3043<sup>rd</sup> meeting of Justice and Home Affairs Council

<sup>7</sup> 16315/12/COSI 116/ENFOPOL 376



However, COM documents do not substantiate the preconditions of the Common Approach as they apply to CEPOL.

First of all, the tasks of CEPOL and Europol are by no means overlapping. Rather, in the past two years a sustainable and cost effective coordination has been reached by the two agencies, with Europol training portfolio almost completely handed over to CEPOL. COM also does not properly substantiate the question of 'efficiency when inserted in a bigger structure', and makes reference to hypothetical reshuffling of resources which would admittedly result in no cost savings in terms of human resources (COM admits that when defining its own proposal as 'budget-neutral').

CEPOL maintains that the results of its cooperation with Europol are currently excellent, not least due to the clear segregation of tasks currently existing between the two agencies, one based on a network of operational law enforcement bodies, the other on a network of training institutes. It's those two distinct but interdependent and communicating pillars that make European law enforcement training most effective. In the merger scenario, the role of the network of Member States training institutes disappears, de facto "crippling" a well-functioning system.

In contrast, it appears that COM has overlooked very visible existing overlaps with other EU Agencies, while insisting on presumed overlaps with Europol. Frontex, too, has an extensive training portfolio with overlapping activities with CEPOL (developing Bachelor and Master courses). Frontex has approximately 17 FTE's dedicated to training activities, but its potential target group is just above one third of that of CEPOL. If COM wanted to coherently address efficiency and overlaps, this should have been taken into account

#### 2.1.4 Weaknesses in Problem Definition

Under 3.2.1 COM refers to the fact that *'by 2009 only 1.6% of senior police officers in the EU had access to CEPOL training,...'*

The data referred to here is four years old. In fact, CEPOL has constantly and successfully been addressing how best to enlarge its training base, as evidenced by the use of new technology and corresponding increase in participant numbers.

COM further states that the low rate of attendance may be due to the *'lack of formal qualification awarded after attendance'*. This is inaccurate. Member States have identified financial constraints as the main reason for low subscription to courses. Since CEPOL has



decided to fully finance flights for course attendance, subscription to courses has increased dramatically: in 2013 a 78% overbooking rate has been observed for CEPOL residential activities.

However, even if the lack of formal qualification was a factor in low attendance, the draft Regulation does not address the issue of formal qualifications under the European Qualification Framework but simply resorts to generic statements. It is therefore unclear what problem COM intends to tackle and how, given that also in the LETS Communication, certification and qualification are only marginally addressed. Essentially, the Commission proposal does not follow through on this critical objective.

COM then examines the issue of coordination among agencies to state that:

*'Insufficient coordination between CEPOL, Member States and other agencies: Despite cooperation agreements between justice and home affairs agencies, there is a lack of systematic coordination on training in line with the recent EU strategic objectives. Training programmes are insufficiently focused and joined-up: 27 % of national academies reported overlaps between CEPOL training activities and training delivered nationally. Agency business plans are rarely aligned and duplication is common. There are also logistical overlaps, e.g. training provided by different agencies on the same dates.'*

It is unclear how COM came to the above statement. Coordination between JHA Agencies exists and is well developed; examples include the optimal cooperation with Europol in the delivery of Policy Cycle initiatives, activities related to other serious and organised crime as well as investigation techniques; with eu-LISA and the Commission in the provision of SIS/SCHENGEN/SIRENE training, and many others; in particular, this statement contradicts the GHK study financed and endorsed by COM, which states the very opposite:

*'The results of the evaluation showed that cooperation between the agencies takes place on a regular basis and that remarkable improvements have been witnessed recently with regards to the operational level cooperation.'*

Cooperation between JHA Agencies is underpinned by the Interagency Scorecard and Annual Reports presented and endorsed by COSI; furthermore, COM is fully associated and represented at all levels of JHA Agencies' coordination (JHA Contact Group and Heads of Agencies meetings).

As far as the 27% reported overlap is concerned, it must be emphasized that Internal Security is a field in which EU competence is not exclusive and in which the ultimate



responsibility lies with the Member States themselves. In this context, a 27% overlap is not a figure which should be in any way alarming or a cause of concern.

As far as agency governance is concerned, under 3.2.2 COM states that:

*'CEPOL's governance and structure inhibit its ability to be fully effective as an instrument of EU policy.'*

The shortcomings highlighted in the five year evaluation report have been, by 2012, fully addressed by the Governing Board. In particular, governance costs have decreased dramatically; Governing Board meetings have been reduced from four to two per year; Committees were abolished in 2011; working groups were reformed in 2012 and are now operationally focused with clear deliverables and action plans underpinning their work. The size of the Governing Board itself is in line with the practice followed in other agencies including Europol. As a matter of fact, only one delegate and one expert are reimbursed by CEPOL, while Europol reimburses up to three individuals.

The budget of one meeting of the CEPOL Governing Board averages around EUR 45 K, while that of Europol is estimated at EUR 160 K, not least due to the fact that CEPOL board meetings are conducted in English with no interpretation.

All of the above is very far apart from COM's statement on alleged 'disproportionate costs'.

It is also rather unclear what COM intends by saying that 'the Board has no representative of the EU interest as the Commission is a non-voting observer', unless the COM intends to present itself as the sole legitimate representative of the collective EU interest. It is also rather disingenuous to suggest that the opinion of COM is ignored. CEPOL welcomes its presence at both Governing Board meetings and meetings of its National Contact Points as well as agreed to provide voting mandate in the future.

In terms of postponement of courses, this practice was abandoned by CEPOL in 2010; since this date no course (and related budget) has been postponed or carried over to the next financial year.

#### 2.1.5 Inconsistency in the formulation of Policy Objectives

Under Specific Objective 1 (4.2), COM states that the legislative proposal aims at ensuring, among other objectives, better quality training. While quality can of course always be improved, the GHK Report, as well as the five year evaluation, never called into question the quality of CEPOL activities. On the contrary, quality of training has been acknowledged



as constantly high scoring over 90% of customer satisfaction. As seen earlier, the draft regulation does not address the issue of training quality other than by generic statements. Hence, this declared aim of the Commission in its impact assessment is not consistent with the actual substance of the draft regulation.

The same inconsistency can be identified with regard to Specific objective 2 'Establish a clear framework for training police in accordance with EU training needs, in line with the Common Approach to EU agencies', insofar as the draft regulation does not coherently address training overlaps with other Agencies; furthermore the impact assessment refers to police only, while the draft regulation focuses on Law Enforcement officers.

#### 2.1.6 Incoherence in formulating the Policy Options

In its impact assessment, COM examines in detail the option of a full merger and presents a merger as a recommended option. This was not the preferred option as recently as June 2012. At that time, the preferred option was to strengthen and streamline CEPOL. However, this option – resulting from an a study financed by and conducted on behalf of the Commission by an independent consultancy (GHK Consulting) – is given only four lines in the impact assessment accompanying the draft regulation. Yet in June 2012, the European Commission endorsed the report by GHK Consulting, and presented a document to the Council Standing Committee on Operational Cooperation on Internal Security (COSI) stating the following (ref. Council doc. 11506/12 COSI 47 ENFOPOL 195) in relation to the option of merging, albeit partially, the two agencies:

*'the approximate cost saving of a partial merger could bring approximately 1,2 M€ annual saving, but at Commission services' level, this is not preferred option, since that this option presents the following drawbacks: (i) making an "independent" agency dependent on the Human Resources department of another independent agency will not work, (ii) it will be a rather complex situation (move people, recruit people, the stresses of a fusion, the complexity of the relationship between the two agencies). Furthermore, in terms of full merger there could be some cost-savings but it can create new problems because these structures have different organizations and expertise. The risk of downscaling learning activities triggered by the predominant focus on operational matters. EU instruments and agencies are not used well enough for lack of knowledge. At Commission services' level, this is not the preferred option since we consider that a total fusion with Europol runs the risk of diluting training under the politically more eye catching pressures of operational law enforcement.'*

Further to that COM stated as follows (abstract from the GHK Report):

*'The overall harm resulting from the implementation of this option is estimated to amount to 35,863,778 euro over the period 2012-2020; For the same reasons, there is a risk that, with the total merger between CEPOL and Europol, the ETS will not be implemented.'*



The rather sudden change of mind by COM is indeed puzzling, especially when considering that no new elements were surveyed or assessed since the issuance of the GHK report.

Nevertheless, COM objectively assesses (Option 4b, paragraph 3) the difficulties that a merger would cause for the Member States as well as the CEPOL staff. It cannot be ignored however that transitional provisions for the staff are not satisfactorily addressed in the draft regulation.

### **3. Draft Regulation establishing EUROPOL**

#### **3.1 Content of the Proposal**

The Draft Regulation states:

*'Merging Europol and CEPOL into a single agency...would create important synergies and efficiency gains. Combining the operational police cooperation know-how of Europol with the training and education expertise of CEPOL would strengthen the links and create synergies between the two fields. Contacts between the operational and the training staff working within a single agency would help identify training needs, thus increasing the relevance and focus of EU training, to the benefit of EU police cooperation overall. Duplication of support functions in the two agencies would be avoided, and resulting savings could be redeployed and invested in core operational and training functions. This is particularly important in an economic context, where national and EU resources are scarce and where resources to strengthen EU law enforcement training might not otherwise be available.'*

Synergies between CEPOL and Europol are already at their strongest point ever, especially with regard to Policy Cycle issues, where one-third of CEPOL's overall training portfolio is aligned with SOCTA priorities. Activities are jointly designed and implemented. The paragraph suggests that contacts between operational staff of Europol and training staff of CEPOL would result in better identification of training needs, but fails to specify why and how. Actually, CEPOL's aim is not to train Europol staff but to train Member States' law enforcement officials; training needs of the latter group are best identified within the current setup of CEPOL, which is centred on the direct expertise of national training institutes in the Member States who are best placed to assess training needs of national officials.

Duplication of support functions does not exist at the moment, as each Agency administers its workload independently. Europol relies on CEPOL to deliver its externally projected training activities. It is therefore difficult to identify what duplication of support functions the Commission is referring to in the proposal. Rather, what is suggested in the Regulation is predicated on Europol's capacity to take over, without additional resources, the current administrative workload of CEPOL. This has not been substantiated by any study.



CEPOL maintains that results of cooperation with Europol are currently excellent not least due to the clear segregation of tasks currently existing between the two agencies, one based on a network of operational law enforcement bodies, the other on a network of training institutes. It's those two distinct but interdependent and communicating pillars that make European law enforcement training most effective. In the merger scenario, the role of the network of Member States training institutes disappears, de facto "crippling" a well-functioning system.

### **3.2 Results of Consultations with the interested parties and impact assessments**

The Draft Regulation states:

*'According to the Commission's established methodology, each policy option was assessed, with the help of an inter-service steering group, against its impact on security, on the costs (including on the budget of the EU institutions) and impact on fundamental rights.*

*The analysis of the overall impact led to the development of the preferred policy option which is incorporated in the present proposal... In the context of the Commission presenting a Law Enforcement Training Scheme, for the implementation of which additional resources will be needed, the Commission examined different options including strengthening and streamlining CEPOL as a separate agency and merging, partially or fully, the functions of CEPOL and Europol into a new Europol agency.'*

This approach is not entirely factual in its constituent elements.

The Commission recognises itself that Europol's impact assessment focused on (1) increasing provision of information to Europol by Member States; and (2) setting a data processing environment that allows Europol to fully assist Member States in preventing and combating serious crime and terrorism. The impact assessment on Europol never addressed the question of incorporating CEPOL.

On the other hand, CEPOL's impact assessment had the two policy objectives of (1) ensuring better quality, more joined-up and more consistent training for a wider range of law enforcement officers in cross-border crime issues and (2) establishing a framework to achieve this in line with the Common Approach on EU decentralised agencies.

Notoriously, the result of CEPOL's impact assessment contained in the independent study conducted in 2012 reaches very different conclusions, and the European Commission itself stated in its 11506/12 to the Committee for Operational Cooperation on Internal Security that the option preferred by the Commission services, on the basis of the very same GHK study they refer to, was to keep CEPOL as an independent agency and develop it further. The document provided by the Commission even states that:



*'according to the GHK study, there will also be 286 Million Euro of benefits. Indeed, this policy option is expected to generate very important benefits in terms of efficiency gains in policing (as a result from more appropriate knowledge and skills) and assets available for seizure. Therefore the implementation costs are outweighed by the benefits triggered by the legislative actions foreseen.'*

It is indeed questionable how the GHK report could have led to two radically different preferred policy options by the Commission, formulated a few months apart from one another- especially since no new element was surveyed, assessed or evaluated after the publication of the report.

CEPOL maintains that the negative assessment of policy option 3.2 in the GHK Report (full merger with Europol), endorsed by the European Commission in 2012, remains valid. The GHK report (page 111) states *inter alia* the following:

*'The risk of having budget cuts regarding learning activities is higher... The tendency to perceive learning as a secondary activity will lead, in the long term, to a downscaling of the training activities... might reduce the effectiveness of CEPOL's activities, their quality and reach. Moreover, the learning activities might be disrupted... it would be more difficult to establish cooperation with training institutions at EU and national level, resulting in less effective cooperation All the elements described above are expected to inhibit the possible implementation of the ETS.. Such negative risks will be higher under this policy option'.*

### **3.3 Legal Elements of the Proposal**

The vast majority of the Member States represented within the CEPOL Governing Board agree on highlighting the stark differences in the rationales and mandates of CEPOL and Europol, stressing the nature of Europol as a body tasked primarily with operational cooperation on serious and international organised crime. Member States rightly identify the much wider remit of CEPOL in serving the training interests of European law enforcement services across a much greater sphere of policing related issues, such as Human Rights, Exchange Programmes, Public Order, Civilian Crisis Management, Leadership and Management and many others which have a much more tenuous link with serious and international organised crime - even when this term is understood within the context of the United Nations Convention on Transnational Organised Crime.<sup>8</sup>

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<sup>8</sup> The Convention does not provide a definition, but spells out the features of an Organised Criminal Group as group of three or more persons that was not randomly formed; existing for a period of



This position is underpinned by a sound legal foundation.

In fact, the Commission quotes, as the legal foundations of the draft proposal, art. Article 88 and Article 87(2)(b) of the Treaty on the Functioning of the European Union.

However, an attentive reading of both articles in their entirety may lead to the conclusions that the legislator did not foresee the expansion of Europol's remit to the extent foreseen by the Commission proposal, and actually intended to keep those spheres as separate. This is evidenced by both the spirit and the letter of the law in the chapter dedicated to Police Cooperation.

Art. 87 states in fact that:

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:
  - (a) the collection, storage, processing, analysis and exchange of relevant information;
  - (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
  - (c) common investigative techniques in relation to the detection of serious forms of organised crime.

While art. 88 states that:

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;

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time; acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration; in order to obtain, directly or indirectly, a financial or other material benefit.



(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.

It can be argued that the way both articles are formulated denotes the intention of the legislator not to include training in the mandate of Europol, as the provisions of art.88 (2) sub (a) and (b) mirror in fact those of article 87 sub (a) and (c), leaving out those issues related to training of staff, on equipment and on research into crime detection.

This interpretation is supported by the reading of the Final Report of working group X "freedom, security and justice" of the European Convention<sup>9</sup> which states:

### III. Development of Union bodies (Europol, Eurojust)

(...)This provision would contain a legal base giving the legislator a greater margin to develop Europol's tasks and powers.

However, this legal base should not be open-ended. It would rather indicate the direction of possible developments and pose basic limits to such developments, which have not been contested within the Group. Thus, the provision could state Europol's central role within the framework of European police co-operation, define its general scope of action (i.e. serious crime affecting two or more Member States), indicate that Europol's tasks and powers shall be defined by the legislator and that they may (to the extent defined in the legislation) include powers relating to intelligence, coordination and carrying out of investigations, as well as to participation in operational actions to be carried out jointly with Member States services or in joint teams.

It is therefore questionable whether the current proposal remains within the tracks provided for by the legislator, or whether it is an artificial attempt to inflate Europol's competencies to spheres which were not originally foreseen by the EU's supreme legislative basis. The legal references cited above seem to anchor Europol firmly into the domain of operational police cooperation and criminal intelligence.

It can be well argued that- as the Commission itself states in its proposal- the new regulation endorses a dual mandate for Europol, training being intended as the additional one. It can be argued that the attribution of such an additional mandate goes beyond the competencies of that body as envisaged in the TFEU.

The draft Regulation further states:

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<sup>9</sup> <http://european-convention.eu.int/pdf/reg/en/02/cv00/cv00426.en02.pdf>



*‘(Explanatory Memorandum)*

*In order to reflect the dual mandate of the new Agency – operational support and training for law enforcement – the full members of the Management Board are appointed on the basis of their knowledge of law enforcement cooperation, whereas alternate members are appointed on the basis of their knowledge of training for law enforcement officers. The alternate members will act as full members whenever training is discussed or decided. To streamline the decision making process, the Management Board may also decide to establish an Executive Board.*

*(art. 13)*

*Each member of the Management Board shall be represented by an alternate member who shall be appointed on the basis of his/her experience in the management of public and private sector organisations and knowledge of national policy on training for law enforcement officers. The alternate member shall act as a member on any issues related to training of law enforcement officers. The alternate member shall represent the member in his/her absence.*

*The member shall represent the alternate on any issues related to training of law enforcement officers in his/her absence.*

*(art. 20)*

*The Scientific Committee for Training shall be an independent advisory body guaranteeing and guiding the scientific quality of Europol’s work on training. The Scientific Committee for Training shall be composed of 11 persons of the highest academic or professional standing in the subjects covered by Chapter III of this Regulation.*

*The Management Board shall appoint the members following a transparent call for applications and selection procedure to be published in the Official Journal of the European Union. The members of the Management Board shall not be members of the Scientific Committee for Training. The members of the Scientific Committee for Training shall be independent. They shall neither seek nor take instructions from any government, nor from any other body.’*

The designation of alternate members of the new Management Board specifically for training issues seems to suggest a ‘junior’ standing for those when compared to the ‘full members’ who should come from a law enforcement cooperation background. Furthermore, it violates the prerogative of Member States to designate whomever they wish as member of the Management Board and even imposes an “assessment of knowledge”- whatever that implies- as a prerequisite for appointment.



The provision may prove impractical if not impossible to implement as it may pose problems for national authorities for a variety of practical and functional reasons especially in those countries with a differentiated law enforcement structure.

According to the current Europol Management Board Rules of Procedure (r.o.p) and in line with art. 13 of the draft Regulation, the task of the alternate members is to *represent* full members (i.e. replace). In reality, this would mean that the training constituency would not be systematically represented at the Management Board but only in the case of absence of the full member. The provision is therefore not convincing, as training issues would not be systematically discussed by persons (to follow the approach of the Commission) who are 'qualified' to discuss such matters and the presence of training experts at Board meetings would be left more or less to sheer chance.

The establishment of a Scientific Committee, while innovative and hopefully useful to maintain and foster scientific integrity, does not address the issue of fair representation of Member States' law enforcement training constituencies. In fact, this would be a body of independent experts composed of only 11 individuals meeting four times per year. Presumably, those individuals would need to be paid for their services. The Commission does not seem to have factored this in. The fees paid by the European Centre for the Monitoring of Drugs and Drugs Addiction amounts to EUR 450 per day per expert in their Scientific Committee, plus travel reimbursement and daily allowances.<sup>10</sup>

The competencies, composition and costs of an added layer of governance - the Executive Board - shall also be factored in. Furthermore, the Executive Board would only be composed of an even more limited number of experts (five in total including the Chairman of the Europol Management Board, the Commission representative to that body, and three other members of the Board); hence, the training component would not be given specific, dedicated attention in this body either.

The Commission proposal then eludes or simply overlooks the operational and financial consequences of the proposed governance structure, and fails to address the specificities of training to a satisfactory degree. The key feature of CEPOL – reliance on a network of national training institutes - would de facto disappear under the new legal instrument, likely leading to increased costs for hiring expertise which is currently provided at no cost by the Member States within the CEPOL framework.

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<sup>10</sup> Figures retrieved from the EMCDDA website on 1 April 2013 ([http://www.emcdda.europa.eu/attachements.cfm/att\\_80849\\_EN\\_Rules\\_of\\_Procedure\\_Scientific\\_Committee.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_80849_EN_Rules_of_Procedure_Scientific_Committee.pdf)).



The current draft Regulation does not address improved governance, but rather encourages cumbersome and expensive governance; furthermore, it complicates national coordination mechanisms. The establishment of another level of governance- an Executive Board- adds one more governance level and increases costs.

On top of the above, Member States will be forced to establish an additional national organisational layer of coordination for a coherent approach. Member States will need to establish a new structure of national units capable of addressing both operational and training issues. In this context, it needs to be taken into account that for good reasons in the Member States investigative operations and education and training are kept separated, in some cases even under different ministries. Even in the case of training institutes being part of a national police or law enforcement service, they are never featured as part of an investigative or intelligence department.

#### **4 Budgetary Implications**

The draft Regulation states:

*'The full merger of CEPOL and Europol will lead to synergies and efficiency gains. The savings achieved are assessed at the level of €17.2 million over the period 2015-2020 and 14 full time staff equivalent (FTE). An additional 12 FTE will be needed to implement the new tasks related to training of law enforcement officials, i.e. the activities needed to implement the European Law Enforcement Training Scheme proposed in parallel with this Regulation. The human resources for the new training activities will be obtained as a result of the merger of CEPOL into Europol, which will result in savings amounting to 14 posts, representing €10.1m over the period 2015-2020.*

*By discontinuing 14 posts, CEPOL should comply with the request to cut staff by 5% and to contribute to the redeployment pool. In addition, an estimated €7.1m will be saved as a result of lower costs of building, equipment and management board expenses over the same period.*

*The relocation of around 40 staff from CEPOL's current site in Bramshill, UK, to the Europol site in The Hague, the Netherlands, is expected to result in limited one-off costs, estimated at €30 000. However, the UK has announced its intention to close the Bramshill site, CEPOL will therefore in any event have to be relocated. An additional 3 FTE will be needed for increased information processing requirements. However, approximately two thirds of these costs will be offset by the savings resulting from the merger of CEPOL: two (2) FTE will be secured from the remaining 2 posts out of the 14 saved as a result of the CEPOL merger.'*

Analysing the argumentation in the documents in full it becomes evidenced that this is not substantiated and fully developed. It is also unfortunately the one which is likely to be overlooked by decision makers because of the potential lack of knowledge regarding factual



financial and human resources data, and the one which may catch the most attention. The argument of potential savings will be in the current climate always welcome.

According to the approach proposed here, CEPOL should give up 14 FTE; 12 of which would be given back to the new agency as core business posts, and two would actually reinforce the information processing function. By this, the Commission states, CEPOL would comply with the imposed 5% cut in staff.

In real terms, there would be no savings whatsoever as the approach taken by the Commission is simply that of an accounting exercise- redeployment of posts does not equate saving the payment of salaries; admittedly, it would be budget neutral. CEPOL has 38 established posts (Temporary and Contract Agents). Of these, 10 are allocated to support functions within the Corporate Services Department, including ICT. At first sight it is unclear from where the Commission intends to take additional 4 posts to be abolished. It is therefore presumed that the Commission operated a “blind cut” based on 50% of the Temporary Agent posts currently allocated to CEPOL (amounting to 28), as featured in the GHK assessment of option 3.1 (full merger with Europol). In this case the staff reduction imposed on CEPOL would not be 5%, but ten times higher; it would be higher even when calculated on a total staff of 14 Temporary Agents.

To complete the picture, the paradox is that 2 of those anticipated 14 redundant posts would be allocated to reinforcing the operational tasks of Europol (“information processing requirements”). Hence, an agency counting 38 staff members (28 Temporary Agents and 10 Contract Agents) shall give up posts to another agency currently having 595 posts (Europol establishment plan 2013).

As far as the costs of relocation of the staff, which the Commission estimates at EUR 30,000, it is once again unclear how this figure was calculated. This estimate is woefully low considering that it should include removal/relocation of office equipment, staff and their personal effects. Costs related to termination of contracts do not seem to have been considered. While these will not come from an agency budget, they will be borne by the COM budget and should not be under-estimated. In short, this figure is unrealistic.

Lastly on this point, the draft Regulation does not address the question of transitional measures for the staff of CEPOL other than the generic provision that contracts shall be honoured. There are no specific provisions on succession of contracts, nor provision for transitioning CEPOL administrative staff to new “operational” posts within the Europol Academy, or providing “safe passage” to other EU bodies as it had been done in the past (in the case, for example, of the European Agency for Reconstruction).



The calculation of estimated “savings” related to the costs of buildings and management board expenses is equally opaque. Although, in the event of a merger, there will be savings on Title 2 expenditure (administrative expenses including buildings and maintenance), it must also be noted that it is unclear whether and how the current Headquarters in The Hague will have the capacity to host 653.5 staff members by 2015 as detailed in the annexes of the draft regulation. It is likely that additional premises will need to be secured, also incurring expenditure.

As analysed above, it is at least disputable whether the new logistic and governance arrangements might actually result in savings, taking into account the costs associated with a “reinforced” Europol Management Board, those associated with the establishment of an Executive Board and Scientific Committee, as well as the costs related to the necessary works and purchases needed to accommodate the CEPOL staff and equipment transferring in. From the figures examined so far, it would rather look the opposite.

Finally, the Regulation is not clear on the division of labour and resources between the Europol Academy - supposedly, delivering all training provided by Europol- and the Cybercrime Centre, which has been given human resources for training purposes as well (see Annex 1 to the Europol draft Regulation).