

## Antrag

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**Subsidiarität - Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates über Maßnahmen zur Gewährleistung einer hohen gemeinsamen Netz- und Informationssicherheit in der Union - KOM(2013) 48 endg. (BR-Drs. 92/13)**

Der Landtag wolle beschließen:

Die Staatsregierung wird aufgefordert, bei den Beratungen des Bundesrats zum „Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates über Maßnahmen zur Gewährleistung einer hohen gemeinsamen Netz- und Informationssicherheit in der Union“ (BR-Drs. 92/13) auf Subsidiaritätsbedenken hinzuweisen.

Sie wird ferner aufgefordert, darauf hinzuwirken, dass diese Bedenken Eingang in den Beschluss des Bundesrats finden.

### Reason:

The proposal for a directive based on Article 114 TFEU raises issues both in terms of legal competences and of subsidiarity.

A measure may only be based on the internal market competence enshrined in Article 114 TFEU if, in objective terms, it contributes to

an improved functioning of the internal market by dismantling obstacles to trade or eliminating distortions of competition. Given that the proposal for a directive also covers all public administration information systems in the Member States, these conditions are not met.

For example, the employee portals used by public authorities and their staff exclusively for internal legal dealings do not have sufficient internal market relevance. Just as internal electronic implementation of civil service law may not be subject to a Directive based on Article 114 TFEU, neither may a wider range of public administrative activities. This is why the Court of Justice of the European Union has, for instance, exempted tuition in institutions that are part of the public education system and funded wholly or chiefly by the public purse, as well as the activities of state-funded universities, from the scope of application of legislation on the freedom of movement of goods and the freedom to provide services, and therefore also from the internal market competence of Article 114 TFEU. Nor may the planned harmonisation measures be based on Article 114 TFEU in respect of tax administration, social welfare and youth services, administration of justice and the administrations of the Bundestag, the Bundesrat, the state parliaments and the national and state courts of auditors. A lack of an internal market dimension or more specific EU legislation also makes internal market competence doubtful with respect to the following legal areas: the right of assembly, immigration, civilian service, spatial and land-use planning, as well as road transport, the environment, waste and atomic energy. The Directive seems to lack provisions exempting administrative areas with particular significance for security, such as the military, the police, the penal system, news services, etc. In these instances, too, internal market relevance remains highly questionable.

Moreover, Article 6 and following of the proposal for a directive also violate the subsidiarity principle. These provisions set out a centralised "single-authority model" for the Member States to be nationally implemented regardless of the distribution of administrative responsibilities and of existing administrative bodies. A specific model of implementation laid down for the Member States under EU law will not achieve the intended aims of the measure more effectively. The Directive takes insufficient account of the different administrative systems in the Member States, which include federal administrative traditions and constitutional provisions, such as those of the Federal Republic of Germany (see Article 83 and following of the German Basic Law). In order to ensure compatibility of the proposal with the subsidiarity principle, Articles 6 and 7 would need to be recast to accommodate a federal system, for instance along the lines of Article 28 of the Data Protection Directive (95/46/EC) and Article 46 of the proposed General Data Protection Regulation.