

REPORT 1/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED MARCH 6, 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE ASYLUM AND MIGRATION FUND [COM (2011) 751 FINAL] [2011/0366 (COD)]

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 report.

B. The Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund [COM (2011) 751 final] [2011/0366 (COD)], has been adopted by the European Commission and conveyed to the national Parliaments, which have a deadline of eight weeks to verify the subsidiarity check of the initiative, being the deadline March 6, 2012.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on February 15, 2012, to examine the said European legislative initiative, appointing to that end as rapporteur Senator Ms. Eva Parera Escrichs, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

D. A report by the State Secretariat for the Relations with the Parliament has been received, as well as reports from the Regional Parliaments of the Basque Country, Aragón and Catalonia, in which they considered the European legislative initiative examined to be in compliance with the subsidiarity principle.

The report conveyed by the State Secretariat for the Relations with the Parliament underlines that the Government shares the view that solidarity and shared responsibility are essential in asylum and migration matters. This proposal reinforces both principles, since it simplifies bureaucratic procedures currently in force in asylum matters; allows greater flexibility when facing emergency situations and the possibility to channel to third States the necessary funding for their active involvement in the projects with a view to achieving common benefits. The report suggests that enforced return be reflected independently in the general text, in the paragraph devoted to strategic goals

and that the initiative, when dealing with enforced return and within the general text, makes reference not only to joint operations but also to national contributions. It is likewise recommended that enforced return be allocated a clearly differentiated budget and that the items included in this Fund be broken down, just as it is done with funds related to Internal Security, external border instruments and visas.

Resolution 417/IX by the Parliament of Catalonia stresses that the proposal examined by the report affects matters which, in the case of Spain, fall within the competence of Autonomous Regions, according to the national provisions ruling the distribution of competences. For this reason, it recommends the implementation of channels for the participation of the Regional Administration in the Asylum and Migration Fund.

E. The Joint Committee for EU Affairs, in its meeting held on March 6, 2012, adopted the following

REPORT

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 Article 3, paragraph 2, of the Treaty on the Functioning of the European Union, which lays down that: *“The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”*

3.- The legal basis of the Regulation is to be found in Title V of the Treaty on the Functioning of the European Union, more precisely in Article 78, paragraph 2, and Article 79, paragraphs 2 and 4. These articles represent the EU legal basis in the field of policies related to asylum, immigration, migratory flows management, equal treatment of third country nationals with legal residence in the Member States and fight against illegal immigration and human beings trafficking, including cooperation with third countries.

4.- The goal of the European Union with regards to internal affairs is to create an area without internal frontiers, in which persons can freely move or work, knowing that their rights will be respected and their security guaranteed. The European Council has established that for these policies to be enforced flexible and coherent financial resources are necessary, thus the need to set up a specific Fund.

5.- This proposal aims to contribute to developing a common Union policy in asylum and migration matters, as well as reinforcing the area of freedom, security and justice according to the principles of solidarity and distribution of responsibilities among Member States and of cooperation with third countries. More precisely, the Asylum and Migration Fund should:

- Offer adequate support to joint efforts by Member States to identify, share and promote best practices and establish effective cooperation structures in order to enhance the quality of decision-making in the framework of the Common European Asylum System.
- Complement and reinforce the activities undertaken by the European Asylum Support Office (EASO) established by Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010.
- Support the efforts by the Union and the Member States relating to the enhancement of Member States' capacity to develop monitor and evaluate their asylum policies in the light of their obligations under existing Union legislation.
- Support the efforts made by Member States to provide international protection and a durable solution in their territories to refugees and displaced persons identified as eligible for resettlement by the United Nations High Commissioner for Refugees (UNHCR)
- Provide support to burden-sharing operations consisting of the transfer of applicants for and beneficiaries of international protection from one Member State to another.

6.- It is to be noted that Act 12/2009, of October 30, ruling the right to asylum and subsidiary protection, in its Additional Fourth Provision, establishes that Autonomous Regions, according to their competences in the health, education and social fields, shall manage the programmes and services specifically addressed to asylum seekers, in cooperation with the State's General Administration.

7.- The proposal for a Regulation, despite its compliance with the subsidiarity principle, given that the objectives aimed can be better achieved at Union level, instead of the singular intervention of Member States, affects matters which fall within the exclusive competence of the regional governments of the Member States. For this reason, it is essential to clearly lay down that the regional governments of the Member States

competent in this realm will be entitled to access the future Asylum and Migration Fund, in their relevant share.

CONCLUSION

For these reasons, the Joint Committee for EU Affairs considers that the Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund complies with the principle of subsidiarity established in the EU Treaties in force. However, regional administrations competent in this matter should be entitled to access the future Asylum and Migration Fund.