

**REPORT 6/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED MAY 21, 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE COUNCIL ON THE EXERCISE OF THE RIGHT TO TAKE COLLECTIVE ACTION WITHIN THE CONTEXT OF FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES (TEXT WITH EEA RELEVANCE) [COM (2012) 130 FINAL] [2012/0064 (APP)] {SWD (2012) 63} {SWD (2012) 64}.**

## **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 Council on the exercise of the right to take collective action within the context of freedom of establishment and the freedom to provide services has been approved by the European Commission and conveyed to the national Parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline May 22, 2012.

**C.** The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on April 17, 2012, to examine the said European legislative initiative, appointing to that end as rapporteur MP Mr. Ramón Jáuregui Atondo, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

**D.** The Joint Committee for EU Affairs, in its meeting held on May 8, rejected the report presented by the said rapporteur.

**E.** The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed, on May 17, 2012, to appoint as new rapporteur MP Ms. Paloma García Gálvez.

**F.** So far written reports have been received from the Government and from the Regional Parliaments of Aragón, the Basque Country and Castilla y León, in which they considered the European legislative initiative examined to be in compliance with the subsidiarity principle.

G. The Joint Committee for EU Affairs, in its meeting held on May 21, 2012, adopted the following

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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 352 of the Treaty on the Functioning of the European Union, establishing that:

*“If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.”*

3. According to the proposal for a regulation of the Council, in its judgements in the Viking Line and Laval case, the Court of Justice for the first time recognised that the right to take collective action, including the right to strike, forms an integral part of EU law the observance of which the Court ensures. Moreover, it equally acknowledged that the right to take collective action for the protection of workers constitutes a legitimate interest, which, in principle, justifies restrictions on the fundamental freedoms guaranteed by the Treaty. The protection of workers is thus one of the overriding reasons of public interest recognised by the Court.

4. According to Article 152 of the TFEU, the Union recognizes, promotes and reinforces the role of the social partners at its level and it shall facilitate dialogue between the social partners, respecting their autonomy and taking into account the diversity of national systems.

5. Article 153, section 5, of the TFEU, excluded the right to strike from the matters that can be regulated in the European Union through minimum rules established by Directives. However, the judgements of the Court of Justice clearly indicate that even if Article 153 is not applied to the right to strike, measures concerning labor disputes within the scope of EU law are not excluded.

6. Taking into account the conclusions of the Council: “14. Considers that proper application and implementation of the Posting of Workers Directive can contribute to a better protection of posted workers’ rights and ensure more clarity regarding the rights and obligations of service providing businesses as well as national authorities and can help to prevent circumvention of the applicable rules; moreover considers that more clarity in the exercise of freedom of establishment and the freedom to provide services alongside fundamental social rights is necessary”.

7. The Joint Committee for EU Affairs shares the Government’s view in the sense that the content of the proposal does not affect the exercise of fundamental rights as recognised in the Member States, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States in accordance with national law and practices. Nor does it affect the right to negotiate, conclude and enforce collective agreements.

In the same line, the proposal recognises the role and importance of existing alternative dispute-settlement mechanisms, such as mediation, conciliation and/or arbitration, and clarifies the role to be played by national courts to assess the facts and interpret the national legislation, without prejudice to the role and competences of the Court of Justice. Moreover, the proposal includes an alert mechanism which provides for the exchange of information between the Member States and the European Commission whenever in the territory of any of them take place serious acts or circumstances affecting the effective exercise of the freedom of establishment or the freedom to provide services which could cause grave disruption to the proper functioning of the internal market and/or which may create serious social unrest.

8. Finally, respect for the subsidiarity principle is further ensured by recognition of the role of national courts in establishing the facts and ascertaining whether actions pursue objectives that constitute a legitimate interest, are suitable for attaining these objectives, and do not go beyond what is necessary to attain them.

## **CONCLUSION**

**For the aforementioned reasons, the Joint Committee for EU Affairs considers that the Proposal for a Regulation of the Council on the exercise of the right to take collective action within the context of freedom of establishment and the freedom to provide services complies with the subsidiarity principle laid down in the Treaty on the European Union in force.**

**Given that the goal of the present proposal in the sense of clarifying the general principles and applicable rules at EU level with respect to the exercise of the fundamental right to take collective action within the context of the freedom to provide services and the freedom of establishment, including the need to reconcile them in practice in cross-border situations, cannot be attained by Member States on their own, it is necessary for the EU to take action.**