



CORTES GENERALES

REPORT 1/2012 OF THE JOINT EU AFFAIRS COMMITTEE ON THE CONFORMITY WITH THE SUBSIDIARITY PRINCIPLE OF 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, annexed to the Lisbon Treaty of 2007 and in force since 1 December 2009, has established a procedure enabling the national parliaments to examine the compliance of EU legislative initiatives with the subsidiarity principle. This Protocol has been transposed into Spanish law by Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. The legal basis for this report consists of the new Articles 3(j), 5 and 6 of Law 8/1994.

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 approved by the European Commission and submitted to the national parliaments. The parliaments have eight weeks, until 6 March 2012, to examine the compliance of the proposal with the subsidiarity principle.

C. On 15 February the Bureau and the Spokespersons of the Joint EU Affairs Committee decided to examine the proposal, appointed Senator Eva Parera Escrichs as rapporteur, and requested the Government to draw up the report referred to in Article 3(j) of Law 8/1994.

D. A report was received from the Secretary of State for Relations with Parliament, together with written observations from the regional parliaments of the Basque Country, Aragon and Catalonia. None called into question the conformity of the proposal with the subsidiarity principle.

According to the report from the Secretary of State, the Government shares the view that solidarity and collective responsibility are key elements of asylum and immigration policy. This proposal will reinforce both in that it will reduce the administrative burden weighing on the asylum procedure, introduce more flexibility in dealing with emergencies and make it possible to provide funding to third countries to enable them to take an active part in the projects to serve our common interest. The report recommends

that the forced return of migrants be mentioned separately in the general part of the proposal, under the strategic objectives, and that both joint and national forced return operations be mentioned in the general part. Similarly, the report recommends setting aside a clearly differentiated budget for forced return operations and itemising the Fund's expenditure along the same lines as the Internal Security Fund's and that of the instrument for external borders and visas.

Resolution No 417/IX of the Catalan Parliament underlines that the proposal affects policy fields that in Spain have been devolved to the regional level. Therefore it recommends creating a mechanism enabling regional administrations to participate in the future Asylum and Migration Fund.

E. On 6 March 2012 the joint EU Affairs Committee approved the

REPORT

1. Article 5(1) of the Treaty on European Union lays down that 'the use of Union competences is governed by the principles of subsidiarity and proportionality'. Article 5(3) stipulates that 'Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and 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 proposal under scrutiny is based on Article 3(2) of the Treaty on the Functioning of the European Union (sic – translator's note), 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 for the Regulation is Title V TFEU, more specifically Articles 78(2) and 79(2) and (4). They form the legal basis for the EU's role in respect of asylum, immigration, management of migration flows, equal treatment of third-country nationals legally residing in the Member States, and the fight against illegal immigration and human trafficking, including cooperation with third countries.

4. The EU's objective in home affairs is to create an area without internal borders in which citizens can travel and work in the knowledge that their rights will be upheld and their safety guaranteed. The European Council has stated that this requires flexible and coherent financial resources, which in turn requires the establishment of a dedicated Fund.

5. The purpose of this proposal is to contribute to the development of a common EU asylum and migration policy, reinforce the area of freedom, security and justice based on the principles of solidarity and shared responsibilities between the Member States, and of cooperation with third countries. Specifically the Asylum and Migration Fund is to:

- support the Member States in their common effort to define, share and promote best practices and establish effective cooperation mechanisms intended to improve decision-making under the common European system;
- complement and reinforce the European Asylum Support Office established by Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010;
- support the Union and the Member States in their efforts to reinforce the Member States' capacity to develop, supervise and evaluate their asylum policies in line with their obligations under EU law;
- back the Member States in their efforts to offer international protection and long-term solutions to refugees and displaced persons eligible for resettlement by the UN Refugee Agency (UNHCR);
- lend support to the transfer of asylum-seekers and those granted asylum as part of burden-sharing arrangements between Member States.

6. It should be noted that, under Additional Provision 4 of Law 12/2009 of 30 October 2009, which governs the right to asylum and subsidiary protection, and in line with their powers in the fields of public health, education and social affairs, the regional governments are responsible for putting in place and coordinating with the Central Government services and programmes aimed specifically at asylum seekers.

7. While in conformity with the principle of subsidiarity because the objectives pursued are best achieved at Union level rather than by Member States individually, the proposal affects policy fields that are the exclusive domain of Member States' regional governments. It is therefore vital to stipulate that Member States' regional governments with relevant powers are to be admitted to the Asylum and Migration Fund for the policy domains that concern them.

CONCLUSION

In view of the foregoing the Joint EU Affairs Committee finds that the Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund is in line with the subsidiarity principle established by the Treaties of the European Union. However, the regional governments having relevant powers are to be given access to the future Asylum and Migration Fund.