



SPANISH PARLIAMENT

REPORT 21/2017 OF THE JOINT COMMITTEE ON THE EUROPEAN UNION, DATED 28 SEPTEMBER 2017, ON THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY IN THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE, AND AMENDING REGULATION (EC) No 1987/2006 AND COUNCIL DECISION 2007/533/JHA AND REPEALING REGULATION (EU) No 1077/2011 [COM (2017) 352 FINAL] [2017/0145 (COD)]

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the 2007 Lisbon Treaty, which has been in force since 1 December 2009, introduced a control procedure whereby national parliaments check whether draft EU legislation complies with the principle of subsidiarity. This Protocol was implemented in Spain by means of Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. More specifically, the new Articles 3(j), 5 and 6 of Law 8/1994 form the legal basis for this report.

B. The Proposal for a Regulation of the European Parliament and of the Council on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 was approved by the European Commission and sent to the national parliaments, which have eight weeks in which to conduct the subsidiarity check. This period expires on 23 October 2017.

C. On 12 September 2017 the Bureau and the spokespersons of the Joint Committee on the European Union decided to examine the above proposal, appointed Senator José Montilla Aguilera as rapporteur, and asked the Government for the report provided for in Article 3(j) of Law 8/1994.

D. This report has now been received from the Government and concludes that the proposal respects the principle of subsidiarity. A report was also received from the Basque Parliament concluding that the proposal respects the principle of subsidiarity, along with letters from the Parliaments of Catalonia, La Rioja, Cantabria and Galicia stating that they have acknowledged or filed the documents, or will not be issuing a reasoned opinion.

E. At its meeting on 18 October 2017, the Joint Committee on the European Union approved the following

REPORT

1. Article 5.1 of the Treaty on European Union states that *‘the use of Union competences is governed by the principles of subsidiarity and proportionality’*. In accordance with Article 5(3) of the Treaty, *‘under the principle of subsidiarity [...] 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 legislative proposal under examination is based on Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) of the Treaty on the Functioning of the European Union, which read as follows:

‘Article 74

The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article 76, and after consulting the European Parliament.’

‘Article 77

(...)

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

(a) the common policy on visas and other short-stay residence permits;

(b) the checks to which persons crossing external borders are subject;’

‘Article 78

(...)

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(...)

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;’

‘Article 79

(...)

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(...)

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;'

'Article 82

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

(...)

(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.'

'Article 85

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:

(a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;

(b) the coordination of investigations and prosecutions referred to in point (a);

(c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.'

'Article 87

(...)

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;'

'Article 88

(...)

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;

(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.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.'

3.

3.1 The Regulation establishing the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice ('eu-LISA') was adopted in 2011 [Regulation (EU) No 1077/2011] and amended in 2015 by Regulation (EU) No 603/2013. eu-LISA is currently responsible for the operational management at central level of the second generation Schengen Information System (SIS-II), the Visa Information System (VIS) and Eurodac.

It may also be entrusted with the development and management of other large-scale IT systems in the area of freedom, security and justice if provided for by the relevant legislative instruments.

3.2 eu-LISA took up its core tasks on 1 December 2012. It has operated the VIS since then and been responsible for SIS-II since May 2013 and for Eurodac since June 2013.

3.3 The aim of the present proposal is i) to revise the Regulation establishing the Agency in order to adapt it to the recommendations of the external evaluation report on eu-LISA, ii) to implement the recommendations for amendments proposed by the Agency's Management Board, and iii) to introduce the changes necessary in order to entrust eu-LISA with the tasks referred to in the final report of the high-level expert group on information systems and interoperability of 11 May 2017 and the Commission's seventh progress report towards an effective and genuine Security Union of 16 May 2017. It also aims to address the changes required by the adoption of the ECRIS-TCN proposal.

3.4 The Commission is seeking in this proposal to contribute to more effective and secure management of the borders and greater security. It aims to combat and prevent crime by enhancing the role and responsibilities of eu-LISA with regard to existing and possible new large-scale IT systems on cooperation and information exchange in the area of freedom, security and justice, at the same time providing greater support to the Member States and to the Commission.

The proposal also includes amendments to the legislative instruments governing the development, establishment, operation and use of the systems managed by eu-LISA and

proposals for entrusting future systems to eu-LISA.

The proposal is consistent with existing provisions in the same policy sector and consistent with other EU policies, such as the internal security policy, the Common European Asylum System, the management of the external borders and data security and protection.

Important aspects for Spain will be the strengthening of the capabilities and legal framework of the eu-LISA Agency and its contribution to improving the control of illegal immigration and combating terrorism and serious cross-border crime.

3.5 Confirming the Agency's status as a dedicated structure for the management of large-scale IT systems in the area of freedom, security and justice and extending its mandate and tasks to the extent proposed is considered proportionate to the legitimate interests of users. It will also facilitate effective, secure and continuous data exchange between the Member States.

3.6 The choice of the regulation as the legislative instrument is considered appropriate, given that the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice was created by a regulation.

3.7 The proposal respects the principle of subsidiarity, as the objective of the proposed action is to confirm the conferral on eu-LISA of the operational management of the central SIS, central VIS and national interfaces, central Eurodac, their communication infrastructures and other systems, and to entrust it with additional new tasks. These tasks cannot be carried out by the Member States individually and can be better achieved at Union level, in accordance with the subsidiarity principle laid down in Article 5 of the Treaty on European Union.

CONCLUSION

For the reasons set out above, the Joint Committee on the European Union finds that the proposal for a Regulation of the European Parliament and of the Council on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 complies with the principle of subsidiarity laid down in the current Treaty on European Union.