



ASSEMBLEIA DA REPÚBLICA

EUROPEAN AFFAIRS COMMITTEE

Written Opinion

COM(2011) 522

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL on administrative cooperation through the
Internal Market Information System ('the IMI Regulation')



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PART I – INTRODUCTORY NOTE

In accordance with the terms of Articles 6 and 7 of Law 43/2006 of 25 August, on monitoring, assessment and pronouncement by the Assembleia da República within the scope of the construction of the European Union, and in accordance with the procedures for the scrutiny of European draft acts approved on 20 January 2010, the European Affairs Committee received the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on administrative cooperation through the Internal Market Information System ('the IMI Regulation') [COM(2011) 522].

In view of its subject, the above draft act was referred to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, which analysed the draft act and approved the Report annexed to this Written Opinion, of which it forms an integral part.

PART II – PERSONAL VIEW OF THE MP DRAWING UP THE WRITTEN OPINION

The rapporteur endorses the report and opinion of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees. Her only reservation relates to 'delegated acts' within the scope of this draft act.

Having regard to the pronouncement of the Portuguese Parliament on 'delegated acts' in reply to a questionnaire from COSAC, the rapporteur considers that the personal data mentioned in Annexes I and II (namely those relating to cross-border healthcare) of the Proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the IMI do not meet the criterion of 'strictly necessary' stated in the reply by the Portuguese Parliament to the above mentioned questionnaire.

Several national Parliaments have raised this issue or demonstrated reservations about observance of the principle of subsidiarity. This has been the view of the Bundesrat, which has been critical of the transfer of powers by means of 'delegated acts'.



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PART III – OPINION

In the light of the above, the European Affairs Committee is of the opinion that:

1. This draft act does not breach the principle of subsidiarity in that the proposed objective will be more effectively achieved through action at EU level.
2. The European Affairs Committee endorses the opinion previously expressed by the Portuguese Parliament that 'The Assembleia da República considers that proposals for legislative acts containing delegation of power to the Commission to adopt non-legislative acts should be limited to what is strictly necessary. In many cases, proposals for legislative acts could themselves include the measures that it is planned to implement by means of delegated acts.'¹
3. As regards the issues raised in the recitals, the European Affairs Committee will continue to monitor the legislative process related to this draft act, in particular through the exchange of information with the Government.

São Bento Palace, 25 October 2011

Opinion drawn up by MP – Ana Drago

Chairman of the Committee – Paulo Mota Pinto

¹ In Reply by the European Affairs Committee to the Questionnaire for the 16th Bi-annual Report of COSAC on procedures and practices relevant to parliamentary scrutiny.



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PART IV – ANNEX

Report and opinion of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees



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**COMMITTEE ON CONSTITUTIONAL AFFAIRS,
RIGHTS, FREEDOMS AND GUARANTEES**

REPORT

COM(2011) 522

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

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PART I

RECITALS

I.1 – Object

Under the terms of the Constitution of the Portuguese Republic – Articles 161(n), 163(f), 164(p) and 197(1)(i) – and of Law 43/2006 of 25 August, the Assembleia da República has responsibility for monitoring, assessment and pronouncement on Portugal's participation in the construction of the European Union.

In accordance with the above provisions and, specifically, with the provisions of Article 7(1) of Law 43/2006 of 25 August, the **European Affairs Committee** referred the Proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System (*'the IMI Regulation'*) [COM(2011) 522] to the **Committee on Constitutional Affairs, Rights, Freedoms and Guarantees**.

It is therefore the responsibility of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees to analyse **COM(2011) 522 - Proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation')** – having regard to the terms of Protocol (No 2) on the application of the **principles of subsidiarity and proportionality** annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

I.2 – Grounds for and context of the proposal

The European Commission designed and developed the Internal Market Information System (IMI), with a view to executing its missions, as a generic, customisable



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administrative cooperation platform which has been offered as a free service to Member States since 2008.

IMI is currently used for the exchange of information pursuant to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the **recognition of professional qualifications** (*the Professional Qualifications Directive*) and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on **services in the internal market** (*the Services Directive*).

It covers more than 6 000 registered authorities in the 27 EU Member States and three EEA countries.

In 2010, some 2 000 requests for information were exchanged through IMI.

However, the absence of a single legal instrument adopted by the European Parliament and the Council as the basis for its operation has come to be recognised as an obstacle to the expansion of IMI.

In addition to this consideration, the proposal also contemplates the possible extension of IMI to other sectors *with a view to creating a genuine face-to-face electronic network for European administrations*, as one of the keys to promoting better governance of the single market.

Lastly, it is important to note that cooperation through IMI involves citizens' personal data, which calls for special vigilance and guarantees.

To these ends COM(2011) 522 sets out the text of a Regulation that could serve as the single legal instrument, embodying all the provisions on IMI and its eventual extension, providing guarantees of transparency and strengthening legal certainty.



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I.3 – Objectives

According to the explanatory memorandum, the objectives of COM(2011) 522 are to:

- a) Establish a sound legal framework for IMI and a set of common rules to ensure that it functions efficiently;
- b) Provide a comprehensive data protection framework by setting out the rules for the processing of personal data in IMI;
- c) Facilitate the possible future expansion of IMI to new areas of EU law;
- d) Clarify the roles of the different actors involved in IMI.

I.4 – Analysis of the proposal

I.4.1 Legal basis

The legal basis of this proposal is **Article 114** of the Treaty on the Functioning of the European Union, which states:

‘... The European Parliament and the Council shall (...) adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.’

The present draft act consists of the establishment of a **Regulation** intended to rectify the absence of a single legal instrument and legal basis which to date has relied solely on Directives.

As stated in the proposal, *‘it is essential to establish a set of common rules for the functioning of IMI. This could not be achieved in a directive which, by its very nature, is only binding as to the result to be achieved, but leaves to the national authorities the choice of form and methods. Yet, in the case of the present proposal, it is necessary to precisely define the form and methods of administrative cooperation through IMI.’*



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Accordingly, a **Regulation** is the appropriate instrument.

I.4.2 Principle of Subsidiarity and Principle of Proportionality

In accordance with the terms of Article 5(3) TEU, 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.

From examination of the content of COM(2011) 522 together with Article 114 TFEU, both the material scope as defined therein and the formal procedures stipulated have been respected.

This is a draft act whose object is the functioning of the entire internal market of the EU and for that reason is a matter whose objectives can be better achieved at Union level.

The **principle of subsidiarity is therefore respected** by the proposal, all the more so considering the safeguards provided for in Article 114, in particular the possibility of Member States maintaining national provisions subject to certain conditions.

Accordingly, in view of the foregoing, it must also be acknowledged that this the appropriate means to achieve the proposed objectives and that this proposal does not go further than is necessary to achieve them, and therefore **respects the principle of proportionality**.



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PART II

CONCLUSIONS

The **Committee on Constitutional Affairs, Rights, Freedoms and Guarantees** of the Assembleia da República,

- a) Notes **COM(2011) 522** - Proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation');
- b) This Parliamentary Committee has assessed, analysed and discussed its content, as described in this Report, and considers in particular that the principle of subsidiarity and the principle of proportionality are respected;
- c) This Report is now referred to the **European Affairs Committee (EAC)** of the Assembleia da República for all due purposes.

São Bento Palace, 6 October 2011

MP acting as Rapporteur – Luís Pita Ameixa

Chairman of the Committee – Fernando Negrão