

REPORT 3/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED MARCH 13, 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 EUROPEAN BORDER SURVEILLANCE SYSTEM [COM (2011) 873 FINAL] [2011/0427 (COD)] {SEC (2011) 1536 FINAL} {SEC (2011) 1537 FINAL} {SEC (2011) 1538 FINAL}.

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 European Border Surveillance System (EUROSUR) 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 19, 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 MP Mr. Roberto Soravilla Fernández, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

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

The report drafted by the Secretary of State for Relations with the Spanish Parliament notes that, if the proposal comes into force, it will entail a significant progress in the efficient management of EU borders, improving the knowledge of State Members and Frontex of the land and maritimal external borders. I will enhance its reaction capability when preventing irregular migration and cross-border crime. Nevertheless, it should be noticed that, before its approval, the Regulation has to include a more precise description of certain aspects in order to avoid overlaps regarding cross-border crime and risk analysis. A harmonisation of the data-treatment imposed by this Regulation to FRONTEX with the rules of procedure of this agency has to be undertaken. And finally,

a mechanism has to be put in place to avoid that the division of border sections according to impact risk levels hampers the deployment of operations of FRONTEX where the level is not maximum.

E. The Joint Committee for EU Affairs, in its meeting held on March 13, 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 the general principles enshrined in Article 77, paragraph 2, d) of the Treaty on the Functioning of the European Union: *“For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning: d) any measure necessary for the gradual establishment of an integrated management system for external borders;”*

3.- The aim of the legislative proposal is the development of the provisions of the Schengen acquis and the gradual establishment of an integrated management system for external borders. The Schengen acquis and its operational scope do not include the United Kingdom and Ireland, but is applicable to four associated countries: Norway, Iceland, Switzerland and Liechtenstein.

4.- The purpose of the proposal is to improve the international awareness and reaction capacity of the Member States and of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) in order to prevent irregular migration and cross-border crime, and avoid casualties at sea. To that end, a common framework has been set up with clear responsibilities for the National Coordination Centres for Border Surveillance, which would allow to exchange sensitive information classified up to the level of RESTREINT UE/EU RESTRICTED.

5.- The situational pictures will as a general rule involve the exchange of information on incidents and depersonalised objects, and only between neighbouring Member States, under the conditions set by the horizontal EU legal framework on data protection. It has been proved that the question of personal data has been carefully assessed.

6.- Furthermore, FRONTEX shall implement this service with the support of relevant European space programmes, including the operational Global Monitoring for Environment and Security (GMES) and will cooperate with the EU Satellite Centre of Torrejón de Ardoz (Madrid), the European Fisheries Control Agency and the European Police Office (EUROPOL) in order to exchange information on cross-border crime.

7.- It is envisaged that the European Border Surveillance System (EUROSUR) will be operational in the second semester of 2013, not merely as a system to regulate the collection, storage or exchange of data, but as a mechanism to interlink the systems at international level through the national coordination centres of the Member States, and the regional networks with neighbouring third countries.

8. - Regarding its budgetary implication, EUROSUR will be mainly implemented by the Agency FRONTEX and the Member States with a shared management, on the basis of the 2008 EUROSUR roadmap.

With regard to setting up the national coordination centres, Member States will be supported by the External Borders Fund in 2012-2013 and the instrument for financial support for external borders and visa as part of the planned Internal Security Fund in 2014-2020.

9.- Furthermore, the Regulation states that EUROSUR shall submit a report on the functioning of EUROSUR on 1 October 2015 and every two years thereafter. The Commission shall provide an overall evaluation of EUROSUR to the European Parliament and the Council on 1 October 2016 and every four years thereafter.

10.- It seems clear that the proposed Regulation is a step forward in border management regarding both the humanitarian dimension, protecting the lives of immigrants and avoiding illegal trafficking, as well as the cross-border crime dealing with persons, drugs, etc.

The proposed Regulation, whilst comprising the land and maritime borders, serves the interests of Spain due to its geographical location, and it is clear that its objectives cannot be attained by the Member States acting alone.

11. - Two elements have to be underlined: the decentralized approach through the National Border Surveillance Coordination Centres, and the fact that, among all options

assessed, the chosen one does not require the Member States to restructure their national administrations in order to create national coordination centres (the “Guardia Civil” corps, in the case of Spain), although the added value of the proposal stems mainly of the common application of the surveillance tools.

12. - For all these reasons, the Joint Committee for EU Affairs ascertains the compliance of the proposal with the principles of subsidiarity and proportionality.

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 European Border Surveillance System (EUROSUR) complies with the principle of subsidiarity established in the EU Treaties in force.