

REPORT 16/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED NOVEMBER 6, 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE STATUTE AND FUNDING OF EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS [COM (2012) 499 FINAL] [2012/0237 (COD)].

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 on the statute and funding of European political parties and European political foundations, 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 November 15, 2012.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on October 8, 2012, to examine the said European legislative initiative, appointing to that end as rapporteur Deputy M. José Ignacio Sánchez Amor, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

D. The Government has conveyed its report. The report is based on the fact that truly transnational political parties at European level as well as their foundations are to play a key role to make the voice of European citizens heard. The initiative complies with the subsidiarity principle, since only an action adopted at European level can achieve such goal. Moreover, it underlines that the proposal does not entail any change of national political parties' regulations, that European parties shall observe the legislation of the country where they are based, and the events held in Member States shall comply with the relevant national legislations. However, it notes the need to study any eventual tax repercussion of the proposal for a regulation.

E. The Joint Committee for the European Union, in its meeting held on November 6, 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 subsidiarity analysis, is not a legal-competential judgement, nor an analysis of the convenience of the proposed provision. It is an analysis of the adequacy of the means with regards to the objectives and the scale of the intervention, so that it requires an analysis of the need, or at least the advisability, of the European provision to attain the pursued goals, and, at the same time, it must be proven that such goals could not be achieved with the same level of efficiency at state or sub-state level.

3. - In the case of the examined proposal for a regulation, the goal of this provision is to adapt the current rules, enshrined in Regulation (EC) n° 2004/2003, amended in 2007, to the new political realities, with a view to favouring the functioning of transnational parties and foundations with an actual European dimension. As the proposal itself lays down: *“European political parties – and their affiliated political foundations – have an important role to play in bridging the gap between national and EU politics, and they fulfill important communicative functions by supporting the interaction between all levels of the Union's multi-tier governance system. Greater and more effective involvement of European political parties and foundations can serve to promote citizens' understanding of the connection between the political processes at the national and European levels and is one way of generating transnational public debates across Europe and encouraging the emergence of a European public sphere.”* Furthermore, *“it is also an important contribution to increasing citizens' interest and voter turnout in European elections and to reinforcing the democratic legitimacy of the European Union.”* This proposal for a Regulation aims, therefore, *“to encourage and assist the European political parties and their affiliated political foundations by creating conditions that allow them to grow and pursue their endeavour to reach out to European citizens, to represent and express their views and opinions, and to provide a stronger link between European civil society and the European institutions, in particular the European Parliament.”* As well as this, the overarching objective is to increase the transparency and accountability of European political parties and foundations.

4.- The examined legislative proposal is based on Article 224 of the Treaty on the Functioning of the European Union, which lays down that: *“the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by*

means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding.” A provision similar to that laid down in Article 191(2) of the Treaty establishing the European Community, which enshrined the said prior provisions of 2003.

5.- To attain these goals, new rules have been added to the provisions laid down in the mentioned standards, stemming from a process in which all interested parties, both institutional and partisan, have been consulted. The essential element is the setting up of an actual European legal status for such entities, which would make their registration and subsequent obtention of an actual legal status possible. Such legal status would be based in Union law, not in the national ones, since the diversity of general legal national systems in force to date have not contributed to the performance and pursuance of the very specific tasks and goals of European political parties. The proposed regulation intends to find a balance between the relative easy procedure to register a European party or foundation and the guarantee of representativeness, seriousness or continuity of the grouping, bearing in mind that, although it does not create a right, the inclusion in the European register does entitle to receive funding from the European Budget. In order to limit access to public financing, we must assess the degree of representativeness, measured at European scale, that is, with regards to its presence in the European Parliament, in line with a request in this sense of the Chamber itself. The specific details of the new funding system are included in another proposal of amendment of the Financial Rules, which is considered in parallel to the analysis of this report. This report, however, analyses the donations per year and per donor with a view to promoting the self-funding capacity of political parties and foundations.

6.- In order to counterbalance, *“a comprehensive and transparent regulatory and control framework is established, encompassing all aspects linked to the activities and funding of European political parties and their affiliated political foundations, covering all of their financial operations, irrespective of the source of funding. This framework reinforces reporting and transparency obligations, it strengthens the accounting and control mechanisms, and it introduces a new regime of proportionate administrative and financial sanctions for breaches of the conditions of the Regulation, including breaches of the values on which the EU is founded.”*

7.- The subsidiarity analysis contained in the provision itself concludes that *“the EU level is the only one at which rules governing the statute and funding of European political parties and European political foundations can be laid down.”* Furthermore, *“in setting out possible reform measures, the Commission has been careful to reflect the principles contained in Declaration No 11 on Article 191 of the Treaty establishing the European Community annexed to the Final Act of the Treaty of Nice.”* Concerning the principle of proportionality, the proposal establishes that it complies with the principle of proportionality, because *“it aims to create a new European legal form for both types*

of entities, but they would in most aspects of their practical activities continue to operate on the basis of a legal form recognised in the legal order of the Member State in which they have their seat.”

8.- Bearing in mind that we are dealing with the amendment of a previous provision on the regulation of transnational and European scale entities and, to be more precise, the setting up of a uniform European legal statute for such parties and foundations, the proposed regulation complies with the principle of subsidiarity. It does not interfere with state regulations on related parties and foundations, nor does it condition them. Obviously, the register and eventual funding of European parties and foundations does not give rise to obligations, whether it be legal, related to funding or to the recognition of such entities for EU Member States. Even when it comes to campaigning for the European Parliament, the proposal indicates that *“the funding and limitation of election expenses for parties and candidates at such elections should be governed by the rules applicable in each Member State.”* Likewise, the funding of national parties, candidates or campaigns (and referenda) is prohibited. Moreover, when operating within a Member State, the European political party must be subject to the legislation of such country.

9.- Since the proposal deals with the establishment of an European legal statute for parties and foundations, and with the funding of such entities (and not of the related national ones) exclusively by the Union budget, it is likewise clear that the objectives cannot be achieved by national regulations, nor even if such measures are coordinated.

10.- Concerning the principle of proportionality, we share the analysis of the text itself, in the sense that in order to achieve the goals with the necessary legal certainty a provision at this level must be adopted, given the fact that it is related to the right of political participation of European nationals, and to its financial regulation. Since the regulation itself clearly indicates what is to be governed by state regulations, the legislative intervention of the Union cannot be considered disproportionate.

CONCLUSION

For the aforementioned reasons, the Joint Committee for EU Affairs considers that the Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations complies with the subsidiarity principle laid down in the Treaty on the European Union in force.