

**REASONED OPINION 1/2013 OF THE JOINT COMMITTEE FOR EU AFFAIRS,  
DATED JANUARY 29, 2013, ON THE COMPLIANCE WITH THE PRINCIPLE  
OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE  
EUROPEAN PARLIAMENT AND OF THE COUCIL AMENDING CERTAIN  
LEGISLATIVE ACTS IN THE DOMAIN OF AGRICULTURAL AND FISHERY  
STATISTICS [COM/2012/0724 final – 2012/0343 (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 amending certain legislative acts in the domain of agricultural and fishery statistics has been adopted by the European Commission and conveyed to national parliaments, which have a timeframe of eight weeks to verify the subsidiarity check of the initiative, being the deadline January 31st, 2013.

**C.** The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on December, 18th, 2012, to examine the said European legislative initiative, appointing to that end as rapporteur MP Mr. Angel Pintado Barbanoj, 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 Government and from the Regional Parliament of Extremadura. The Government's report indicates that this proposal confers the European Commission enforcement powers for Union acts which go beyond those enshrined in the Treaty on the Functioning of the European Union (TFEU). The report questions the Commission's empowerment to enforce legislative acts, since the said empowerment has no fixed deadline and thus entitles the Commission to conduct the legislative development of essential elements of legislative acts, something which article 290 of the TFEU clearly does not allow. Likewise, the Government's report questions the fact that the Standing Committee for Agricultural Statistics' functions will be considerable diminished as a result of the new legislative framework and that would entail that in the future agricultural and fishery statistics shall not be informed by a specialised body with great expertise in this domain.

**E.** The report by the regional Parliament of Extremadura, in turn, concludes that the initiative complies with the subsidiarity principle since these statistics represent an accurate and diligent tool to know the reality of matters subject to its measuring, and thus, the amendment of the procedure with a view to improving the European statistical system will entail a better understanding of this European reality.

**F.** The Joint Committee for EU Affairs, in its meeting held on January 29, 2013, adopted the following

### **REASONED OPINION**

**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 Article 338 (1) of the Treaty on the Functioning of the European Union, which states:

*“Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Union.”*

**3.** - The aim of this proposal is to modify nine legislative acts in the domain of agricultural and fishery statistics suppressing the provisions related to the regulatory procedure with scrutiny and replace them with the authorisation for the Commission to adopt implementing rules through the delegation procedure:

The list of instruments to be aligned is:

(1) Council Directive 96/16/EC of 19 March 1996 on statistical surveys of milk and milk products;

(2) Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community;

- (3) Regulation (EC) No 1921/2006 of the European Parliament and of the Council of 18 December 2006 on the submission of statistical data on landings of fishery products in Member States and repealing Council Regulation (EEC) No 1382/91;
- (4) Regulation (EC) No 762/2008 of the European Parliament and of the Council of 9 July 2008 on the submission by Member States of statistics on aquaculture and repealing Council Regulation (EC) No 788/96;
- (5) Regulation (EC) No 1165/2008 of the European Parliament and of the Council of 19 November 2008 concerning livestock and meat statistics and repealing Council Directives 93/23/EEC, 93/24/EEC and 93/25/EEC;
- (6) Regulation (EC) No 216/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic (recast);
- (7) Regulation (EC) No 217/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of catch and activity statistics by Member States fishing in the north-west Atlantic (recast);
- (8) Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (recast);
- (9) Regulation (EC) No 543/2009 of the European Parliament and of the Council of 18 June 2009 concerning crop statistics and repealing Council Regulations (EEC) No 837/90 and (EEC) No 959/93[11].

**4.-** In order to assess if this proposal complies with the subsidiarity principle laid down by the Treaty on the European Union, we must bear in mind Article 290 (1) of the Treaty on the Functioning of the European Union, which establishes the requirements applicable to legislative acts delegating to the Commission the power to adopt legislative provisions. According to this article:

*A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.*

*The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.*

**5.-** According to this, we can infer that the delegation must not be applied to essential elements of a legislative act, and that it must explicitly define the objectives, content, scope and duration of the delegation of power.

**6.** - The examined proposal does not comply with two of the aforementioned requirements. On the one hand, it allows delegation in the development of clearly essential elements of legislative acts. In general terms, it entitles the Commission to, by delegation, update methodologies, definitions, and lists of variables in statistics, decisive questions with regards to which the Commission should not have such broad decision powers.

**7.** - In this sense, we could mention as an example of how the Commission has exceeded the empowerment to adopt acts the adaptation of transmission tables as set out in the Annex of the Regulation (EC) 543/2009 of the European Parliament and of the Council, dated June 18, 2009, concerning crop statistics and repealing Council Regulations (EEC) No 837/90 and (EEC) No 959/93. The main goal of Regulation 543/2009 is clearly to fix the procedures and transmission deadlines to the Commission of the data included in the Annex, and thus, the unilateral amendment by the Commission could severely damage the interests of Member States.

**8.** - The second violation of Article 290 (1) of the TFEU is to be found in the non fixation of deadlines for the exercise of the powers delegated to the Commission by virtue of this Proposal. Although there is the possibility to repeal such delegation, there is no fixed period of time during which the Commission would be empowered to exercise its powers. In practical terms, this entails a sort of “delegalisation” of part of the content of the provisions modified by this proposal, since the Commission is authorized *sine die* to perform its delegated acts in the absence of an express repealing act of the European Parliament or of the Council.

**9.-** For the aforementioned reasons, we can conclude that the Proposal for a Regulation of the European Parliament and of the Council amending certain legislative acts in the domain of agricultural and fishery statistics violates Article 290 of the TFEU in detriment of the powers granted so far to the European Parliament and the Member States. In practical terms, such violation entails that if this Regulation is enforced in its present drafting, many of the powers that it is intended to delegate to the Commission shall be exercised disregarding the specific interests of some sectors of the agricultural or fishing realm.

**10.** - This situation in itself represents a violation of the subsidiarity principle, since it has not been proven that the goals pursued by this Directive (a better management of agricultural and fishery statistics) cannot be attained through regulation with scrutiny. Preventing States and the Parliament from having a greater influence represents an impoverishment of the decision making process without a greater effectiveness in the implementation of legislative acts. Thus, this proposal must be modified in order to adapt its content to the provisions laid down in article 290 of the Treaty on the Functioning of the European Union.

## 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 amending certain legislative acts in the domain of agricultural and fishery statistics does not comply with the subsidiarity principle established in the Treaty on the European Union in force.**

**For this proposal to comply with the Treaties, the delegations to the European Commission for the implementation of legislative acts of the Union should be adjusted. More specifically, we recommend the exercise of delegated powers to be restricted to non essential elements of legislative acts to be implemented and the said delegations should necessarily be exercised within a fixed deadline.**