

REASONED OPINION 3/2012 OF THE JOINT COMMITTEE FOR EU AFFAIRS, DATED 27 MARCH 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVES 2000/60/CE AND 2008/105/CE AS REGARDS PRIORITY SUBSTANCES IN THE FIELD OF WATER POLICY [COM (2011) 876 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 Directive of the European Parliament and of the Council amending Directives 2000/60/CE and 2008/105/CE as regards priority substances in the field of water policy [COM (2011) 876 final] 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 28, 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. Gerardo Camps Devesa, 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 Parliaments of the Basque Country, Castilla y León and Extremadura, in which they considered the European legislative initiative to be in compliance with the subsidiarity principle.

E. The report by the Government presents a positive assessment of the proposal, noting that its implementation will entail improvements in water quality in the area of the Union, although it considers it necessary to study in greater detail the inclusion of metabolites in the priority substances' list.

The Regional Parliament of Castilla y León underlines in its report the importance of the Directive, given that the chemical pollution of surface water represents a threat to the aquatic environment with effects such as acute and chronic toxicity to aquatic organisms, accumulation in the ecosystem and loss of habitats and biodiversity, as well as a threat to human health. The Regional Parliament of Extremadura notes the existence of economies of scale in the field of research on polluting substances, as well as in the enforcement of restrictions, as a proof of the compliance with the principle of subsidiarity of the proposed Directive.

F. The Joint Committee for EU Affairs, in its meeting held on March 27, 2012, 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 192.1 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 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.”. The said Article 191 establishes that the preservation, protection and improvement of the quality of the environment, as well as the prudent and rational utilisation of natural resources are objectives of the European Union with regards to its policy on the environment.

3.- The protection of the environment is a competence shared by the European Union and the Member States, according to Article 4.2.e) of the Treaty on the Functioning of the European Union. Therefore, and in accordance with Article 5 of the Treaty on the European Union, the compliance with the principles of subsidiarity and proportionality by the proposal subject to this reasoned opinion has to be verified.

4. – The purpose of the proposed Directive is to update the list of the priority substances in the field of water policy, which, if the Directive is finally implemented, would entail an improvement of the water quality in the EU area. Since this Directive aims to complete the legal framework for the protection of the surface water against pollution, the proposal is considered positive, despite some reservations which will be mentioned further on.

5. As stated in the explanatory memorandum of the proposal for the Directive, water pollution has a very important transboundary character. 60% of the EU territory lies in shared river basins. Given that the economies of all State Members of the EU use substances that present a significant hazard for the environmental quality of aquatic areas of the Union, it seems obvious that the aim of fully protecting water resources requires the intervention of the EU institutions. Therefore, the proposal for the Directive assessed in the present opinion can be considered to fully comply with the principle of subsidiarity enshrined in article 5 of the Treaty on the European Union.

6. - Furthermore, the proposal under discussion is limited to the identification of priority substances and to establishing environmental quality standards at EU level. No additional EU measures are proposed, beyond those already available, and so, additional

pollution control measures are left to the Member States. Therefore, the proposal is in compliance with the principle of proportionality enshrined in the provisions of article 5 of the Treaty on the European Union.

7.- Without prejudice to this positive assessment, the Committee notes the need to mention some reservations regarding the proposal. The need to include each and all new substances in the list of priority substances should be duly justified, as well as the approval of new environmental quality standards regarding the new substances, or the ones already included where modifications are made. Otherwise, those in charge of implementing this Directive would be deprived of a valuable means in order to interpret it and attain its intended purposes.

In line with this, this Committee considers that it may not be appropriate to include drugs and their metabolites among the priority substances listed in the proposed Directive. It would be advisable to previously compile the necessary data to justify this decision, and therefore it is preferable to include these substances in the so called watch list, as a previous step to their listing as priority substances.

CONCLUSION

For these reasons, the Joint Committee for EU Affairs considers that the Proposal for a Directive of the European Parliament and of the Council amending Directive 2000/60/CE and 2008/105/CE as regards priority substances in the field of water policy does comply with the principle of subsidiarity established in the Treaty on the European Union in force. Nevertheless, in the framework of the political dialogue for the adoption of new regulations by the EU institutions, this Joint Committee recommends an in-depth study of the inclusion of drugs and their metabolites in the list of priority substances, advocating for their provisional inclusion in the so called watch list.