

**REPORT 10/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS DATED OCTOBER 8, 2012, ON COMPLIANCE OF THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF SPECIES OF WILD FAUNA AND FLORA BY REGULATING TRADE THEREIN (RECAST) [COM (2012) 403 FINAL] [2012/0196 (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 Protection of Species of Wild Fauna and Flora by Regulating Trade Therein (Recast Text) has been adopted by the European Commission and conveyed to the national parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline October 15, 2012.

**C.** The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on September 11, 2012, to examine the said European legislative initiative, appointing to that end as Rapporteur MP Mr. Juan Moscoso del Prado Hernández, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

**D.** The Regional Parliament of Extremadura and the Regional Parliament of Castilla y León have conveyed their reports. The first considers that the European legislative initiative examined complies with the subsidiarity principle.

However, the reasoned opinion conveyed by the regional Parliament of Castilla y León states that this legislative initiative does not comply with the subsidiarity principle, since it considers that the proposal goes beyond or does not fully comply with the principle of subsidiarity as laid down in Article 5 of the Treaty on the European Union. It deems that it affects directly the competences of the Spanish State and of the Autonomous Regions in this domain, and its adoption, rather than producing clear benefits for them or a better achievement of the goals at Union level, would entail precisely the opposite, due to the fact that the proposed regulation is not fully and consistently in accordance with European legislation, which is to be generally implemented in the Spanish State and the Autonomous Region of Castilla and León.

E. The Joint Committee for EU Affairs, in its meeting held on October 8, 2012, adopted the following

## REPORT

1.- Article 5 of the Treaty on the European Union indicates that “*the use of Union competences is governed by the principles of subsidiarity and proportionality*”, and adds that “*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.- This 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.*

Article 191 of the Treaty on the Functioning of the European Union deals with Union competences in environment policy.

Likewise, this Proposal for a Regulation deals with trade supervision in the European Union.

However, since it is a recast text proposal, the said recast is based on Articles 290 and 291 of the Treaty on the Functioning of the European Union, according to which the Union legislator may authorise the Commission to adopt “delegated acts” to supplement legislative acts (Article 290 (3) of the TFEU) or confer powers on the Commission to issue “implementing acts” of legally binding acts (Article 291 (4) of the TFEU).

3.-As laid down in the proposal for a Regulation:

A) The provisions of this Regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by this Regulation.

B) It is necessary to lay down objective criteria for the inclusion of species of wild fauna and flora in the Annexes to this Regulation.

C) The implementation of this Regulation necessitates the application of common conditions for the issue, use and presentation of documents relating to the authorisation of the introduction into the Union and the export or re-export from the Union of specimens of the species covered by this Regulation. It is necessary to lay down specific provisions relating to the transit of specimens through the 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 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein (Recast Text) complies with the subsidiarity principle laid down in the Treaty on the European Union in force.**