

January 2007

**Annex to the report
on subsidiarity and proportionality check
2/2006 coordinated by COSAC:
National Parliaments'
replies to the questionnaire**

Prepared by the COSAC Secretariat and presented to:

The Chairpersons of the Conference of Community
and European Affairs Committees
of Parliaments of the European Union

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Berlin



**ANSWERS TO THE QUESTIONNAIRE OF THE COSAC SECRETARIAT
CONCERNING THE EXERCISE ON THE CONTROL OF THE
SUBSIDIARITY AND PROPORTIONALITY PRINCIPLES WITH RESPECT
TO THE COMMISSION PROPOSAL FOR A DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING
DIRECTIVE 97/67/EC CONCERNING THE FULL ACCOMPLISHMENT OF
THE INTERNAL MARKET OF COMMUNITY POSTAL SERVICES
(COM (2006)594)**

The COSAC chairpersons agreed on 20 February 2006 that national parliaments upon completion of the examination of the commission proposal would draw up a short report summarising how they had set about the subsidiarity and proportionality check project and any lessons learnt. The Presidency has asked for the following points to be covered in the reports from national parliaments:

Procedures:

1. Which committees were involved in examining the Commission proposal and what role did each committee play?
2. Was your plenary involved?
3. Were any other administrative services of your parliament involved in the process?
4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?
5. Did your government provide any information as part of the scrutiny process?
6. Did your national parliament consult regional parliaments with legislative powers?
7. Were any other external actors involved in the examination?
8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?
9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Findings:

10. Did you find any breach on the subsidiarity principle?
11. Did you find any breach on the proportionality principle?
12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)
13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?
14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?
15. Did you encounter any specific difficulties during the examination?
16. Any other comments?

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Austria

Subsidiarity and proportionality check of the proposal for a directive concerning the full accomplishment of the internal market of Community postal services (COM (2006)594)

Report

The EU-Committee of the Austrian Federal Council carried out the subsidiarity and proportionality check of the abovementioned proposal in its session of 12 December 2006. The following conclusions can be drawn:

Procedures:

1. Which committees were involved in examining the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services and what role did each committee play?

The check was carried out by the EU-Committee of the Federal Council.

2. Was your plenary involved?

No.

3. Were any other administrative services of your parliament involved in the process?

The EU- and International Service provided an expertise on the Commission proposal.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

- On 3 November 2006 the EU- and International Service of the Parliamentary Administration sent out a written expertise on the proposal to the Presidents of the National Council and the Federal Council.

- On 1 December 2006 the subsidiarity and proportionality check of the proposal was put on the agenda of the EU-Committee of the Federal Council for its session of 12 December 2006. The Federal Government provided an information dossier which was distributed along with the internal expertise to all members of the committee.

- On 12 December 2006 a session of the EU-Committee of the Federal Council was held. A representative of the Federal Ministry of Transport, Innovation and Technology presented the government's position on the proposed directive. The committee acquainted itself with opinions and comments of the Vice Director General of "Österreichische Post AG" and a discussion ensued with vivid participation of the committee members. The committee adopted a statement on the conformity of the directive proposal with the principles of subsidiarity and proportionality.

5. Did your government provide any information as part of the scrutiny process?

The Federal Government provided an information dossier. Furthermore, a representative of the Federal Ministry of transport, innovation and technology took part in the session and provided the members with additional information.

6. Did your national parliament consult regional parliaments with legislative powers?

As the political decisions with regard to the details of the new scrutiny system have not been taken yet, such consultations have not taken place.

7. Were any other external actors involved in the examination?

The session of the EU-committee of the Federal Council was attended by a government official, as well as by an official from "Österreichische Post AG".

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

This time the check was carried out only by the EU-committee of the Federal Council, so the question of coordination did not arise.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

The political decisions with regard to the details of the new scrutiny system have not been taken yet. It is probable that it will be the EU-affairs committees of both chambers of the Austrian parliament which will deal with and decide on directly transmitted documents and prepare an eventual statement which might be communicated to the Commission by the President or the committee chairperson. From a technical point of view, a new category of documents has been established in the EU-database of the Austrian Parliament, which has been used for the first time for the checking procedure.

Findings:

10. Did you find any breach on the subsidiarity principle?

The EU-Committee of the Federal Council holds that the proposed directive on postal services does not breach the subsidiarity principle (see enclosed statement).

11. Did you find any breach on the proportionality principle?

The EU-Committee of the Federal Council holds that the proposed directive on postal services does not breach the proportionality principle (see enclosed statement).

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

13. / 14. Did you find the Commission's justification with regard to the subsidiarity/proportionality principle satisfactory?

No special observations were made with regard to the Commission's justification.

15. Did you encounter any specific difficulties during the examination?

No.

Subsidiarity and proportionality check of the proposal for a directive concerning the full accomplishment of the internal market of Community postal services (COM (2006)594)

Statement by the EU-Committee of the Federal Council

1. The EU-Committee of the Federal Council held a debate on the Commission proposal for a directive concerning the full accomplishment of the internal market of Community postal services in its session of 12 December 2006.
2. The EU-Committee of the Federal Council holds that the Commission proposal complies with the principles of subsidiarity and proportionality according to Art 5 of the EC-Treaty and to Protocol No 30 annexed to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.
3. The EU-Committee of the Federal Council reserves the right to assess the content and to issue an opinion regarding the domestic effects of the abovementioned directive proposal.

Belgium: Chambre des représentants



COMITE D'AVIS CHARGE DES QUESTIONS EUROPEENNES

CONTROLE DE SUBSIDIARITE ET DE PROPORTIONNALITE DE LA PROPOSITION DE REGLEMENT DE LA COMMISSION SUR LA PROPOSITION POUR L'ACHEVEMENT DU MARCHE INTERIEUR DES SERVICES POSTAUX

Réponses au questionnaire

Procédures:

- 1. Quels sont les comités qui ont participé à l'examen de la proposition de la Commission de Règlement relatif à la loi applicable et de la compétence en matière de divorce et quel était le rôle de chaque comité ?***

La Commission de l'Infrastructure, des Communications et des Entreprises publiques.

- 2. Votre assemblée plénière y a-t-elle participé ?***

Non

Les autorités de la Chambre des représentants (Conférence des Présidents) ont décidé que, au cours de la phase expérimentale, l'avis de subsidiarité soit formulé au niveau d'une commission parlementaire.

3. . Y avait-il d'autres services administratifs de votre parlement qui ont aussi participé à ce processus ?

Le Secrétariat du Comité d'avis chargé des Questions européennes était impliqué dans le suivi de la procédure et l'information du fonctionnaire de la commission compétente (initiation IPEX).

4. Pouvez-vous décrire la procédure utilisée durant l'examen, par rapport aux comités et autres participants, ainsi que la chronologie de leur participation ?

▪ Procédure interne :

a) Renvoi du document de la commission à la commission parlementaire compétente par la Conférence des Présidents.

b) Examen du document par la commission.

➤ Audition des experts.

➤ Formulation d'un avis.

c) Envoi de l'avis adopté à la Commission européenne par le Secrétariat du Comité d'avis chargé des Questions européennes.

▪ Procédure externe

(Communication avec les autres Assemblées de Belgique)

Voir schéma en annexe (I).

5. Votre gouvernement a-t-il fourni quelque information que ce soit dans le cadre de la procédure de contrôle ?

Oui.

Le Secrétaire d'Etat compétent pour les entreprises publiques a été entendu.

6. Votre gouvernement national a-t-il consulté les parlements régionaux détenant des pouvoirs législatifs ?

Les parlements régionaux n'ont pas de compétence en cette matière.

7. Y avait-il d'autres participants à l'examen ?

Les instances suivantes ont également été entendues :

- Un représentant de la Commission européenne (DG Marché intérieur et Services).
- Un représentant de « Price waterhouse Coopers » (auteurs de l'étude faite pour la Commission européenne).
- La CEO de La Poste.
- Les représentants syndicaux de La Poste.
- Un représentant du secteur des sociétés de courrier express.
- Des représentants de la société civile (des classes moyennes, etc...).

8. Dans le cas d'un système bicaméral, avez-vous coordonné votre examen avec l'autre chambre parlementaire ?

Il y a une coopération pour ce qui concerne l'information. Il a été décidé, dans un accord de coopération entre les Assemblées de Belgique, que chaque Assemblée définisse son avis de subsidiarité de façon autonome.

9 La procédure utilisée pour ce projet était-elle conforme à la procédure que votre Parlement prévoit d'utiliser après l'entrée en vigueur du Traité Constitutionnel ?

En grandes lignes.

Beaucoup d'initiatives ont encore été laissées à la Commission parlementaire même.

Lorsque la procédure sera consolidée, l'on prévoit qu'un pré-avis soit préparé par une cellule d'analyse qui procède à une analyse d'impact (entre autres contrôle de subsidiarité), ce qui permet d'avoir une procédure harmonisée dans les différentes commissions.

Constats:

10. Avez-vous trouvé que le principe de subsidiarité a été violé ?

La proposition de directive n'appelle pas d'observations au regard du principe de subsidiarité dans la mesure, notamment, où chaque pays conserve la faculté d'organiser son propre service postal.

11. Avez-vous trouvé que le principe de proportionnalité a été violé ?

La commission de l'Infrastructure, des Communications et des Entreprises publiques :

- émet des réserves en l'absence d'éléments suffisants permettant d'évaluer la pertinence et tous les effets des mesures proposées et de s'assurer d'une part que ces mesures sont non pas simplement utiles mais avant tout nécessaires pour atteindre l'ensemble des objectifs poursuivis ;
- demande à la Commission européenne de démontrer plus particulièrement que cette suppression peut s'effectuer sans dommage à la date du 1^{er} janvier 2009 dans les Etats qui ont réservé un secteur d'activités.

12 L'avis que vous avez émis sur la non-conformité était-il raisonné ? (Si oui, joignez-en une copie à votre rapport lorsque vous l'envoyez au secrétariat de la COSAC)

Voir annexe II

13 Pensez-vous que la justification de la Commission en ce qui concerne le principe de subsidiarité soit satisfaisant ?

Voir la réponse à la question 10.

14 Pensez-vous que la justification de la Commission en ce qui concerne le principe de proportionnalité soit satisfaisant ?

Voir les critiques dans la réponse à la question 11.

15 Avez-vous rencontré des difficultés spécifiques lors de votre examen ?

Atteindre un délai raisonnable (6 semaines) reste problématique, eu égard à l'ordre du jour, parfois fort chargé, des commissions permanentes. Ainsi, la commission permanente a été saisie, dans le courant du mois de décembre 2006, de l'examen du budget et des mesures d'exécution, ce qui alourdissait considérablement la charge de travail. La création d'une cellule d'analyse au sein du Comité d'avis chargé des Questions européennes, au niveau administratif s'avère donc nécessaire.

16 Autres commentaires ?

Des analyses de subsidiarité (s.s.) et d'impact (s.l.) qui permettent de juger du niveau adéquat d'une mesure ou d'une politique à mener, exigent une méthodologie encore plus avancée. (développement des critères d'évaluation, etc...).

Cette omission s'observe aussi dans les tests de subsidiarité effectués par les autres parlements.

<p>CHAMBRE DES REPRÉSENTANTS DE BELGIQUE</p> <p>9 janvier 2007</p> <p>Avis sur la subsidiarité concernant la troisième directive postale européenne</p> <p>TEXTE ADOPTÉ PAR LA COMMISSION DE L'INFRASTRUCTURE, DES COMMUNICATIONS ET DES ENTREPRISES PUBLIQUES</p> <p>Document précédent : Doc 51 2808/ (2006/2007) : 001 : Rapport.</p>	<p>BELGISCHE KAMER VAN VOLKSVERTEGENWOORDIGERS</p> <p>9 januari 2007</p> <p>Subsidiariteitsadvies aangaande de derde Europese postrichtlijn</p> <p>TEKST AANGENOMEN DOOR DE COMMISSIE VOOR DE INFRASTRUCTUUR, HET VERKEER EN DE OVERHEIDSBEDRIJVEN</p> <p>Voorgaand document : Doc 51 2808/ (2006/2007) : 001 : Verslag.</p>
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<p>«La commission de l'Infrastructure, des Communications et des Entreprises publiques:</p> <ul style="list-style-type: none"> • en ce qui concerne la subsidiarité: considère que la proposition de directive n'appelle pas d'observation au regard du principe de subsidiarité, dans la mesure, notamment, où chaque pays conserve la faculté d'organiser son propre service postal; • en ce qui concerne la proportionnalité: <ul style="list-style-type: none"> - émet des réserves en l'absence d'éléments suffisants permettant d'évaluer la pertinence et tous les effets des mesures proposées et de s'assurer d'une part que ces mesures sont non pas simplement utiles mais avant tout nécessaires et d'autre part qu'elles n'excèdent pas ce qui est nécessaire pour atteindre l'ensemble des objectifs poursuivis ; - demande à la Commission européenne de démontrer plus particulièrement que cette suppression peut s'effectuer sans dommage à la date du 1er janvier 2009 dans les Etats qui ont réservé un secteur d'activités; il est en particulier demandé à la Commission européenne: • d'analyser les effets que la suppression du domaine réservé aura sur les opérateurs postaux assurant le service universel et, par voie de conséquence, sur le service universel lui-même; • de justifier que des exemples de libéralisation du secteur postal avancés pour démontrer les mesures proposées sont suffisamment probants et suffisamment évalués par rapport à l'ensemble des objectifs poursuivis, alors que les conditions géographiques, démographiques mais aussi historiques 	<p>«De Commissie voor de Infrastructuur, het Verkeer en de Overheidsbedrijven:</p> <ul style="list-style-type: none"> • wat de subsidiariteit betreft: is van mening dat het voorstel van richtlijn geen aanleiding geeft tot opmerkingen met betrekking tot het subsidiariteitsprincipe, aangezien ieder land de mogelijkheid behoudt om zijn eigen postdienst te organiseren; • wat de proportionaliteit betreft: <ul style="list-style-type: none"> - maakt voorbehoud bij gebrek aan voldoende gegevens aan de hand waarvan de deugdelijkheid en alle gevolgen van de voorgestelde maatregelen kunnen worden beoordeeld en men zich ervan kan vergewissen, enerzijds, dat die maatregelen niet alleen zonder meer nuttig maar allereerst noodzakelijk zijn en, anderzijds, dat ze niet verder gaan dan wat noodzakelijk is om alle doelstellingen te halen; - vraagt de Europese Commissie meer bepaald aan te tonen dat die afschaffing zonder nadeel kan plaatsvinden op 1 januari 2009 in de Staten die een activiteitssector hebben voorbehouden; in het bijzonder wordt de Europese Commissie gevraagd om: <ul style="list-style-type: none"> • het effect te analyseren dat de afschaffing van de gereserveerde zone zal hebben op de postale operatoren die de universele dienstverlening verzekeren en het effect dat deze afschaffing bijgevolg zal hebben op de universele dienstverlening zelf; • aan te tonen dat de voorbeelden van liberalisering van de postsector die ter demonstratie van de voorgestelde maatregelen worden aangehaald overtuigend genoeg zijn en voldoende zijn geëvalueerd in het licht van alle te bereiken doelstellingen, terwijl de geografische, demografische maar ook
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<p>propres à chaque pays, ainsi que les interprétations différentes données à la définition du service universel font varier le coût et les conditions de mise en oeuvre de ce service d'un Etat à l'autre ;</p> <p>• d'évaluer:</p> <p>1° si les méthodes de financement alternatives en vue d'assurer le service universel sont suffisantes, attendu que le système du domaine réservé implique une forme garantie de financement;</p> <p>2° s'il y a une possibilité de créer un cadre juridique adéquat afin de permettre l'application de ces modes de financement alternatifs;</p> <p>3° en ce qui concerne le mode de financement alternatif «adjudication concurrentielle», comment concilier le fait que plusieurs opérateurs postaux soient actifs sur le territoire et le «coût d'interconnexion qui en découle » avec le service universel, tout particulièrement avec l'exigence de délivrer le courrier au plus tard le lendemain de son enlèvement;</p> <p>4° en ce qui concerne le mode de financement alternatif «aide publique», quelle place occupe ce mode de financement par rapport aux règles européennes existantes en matière d'aide publique, notamment la réglementation basée sur l'article 86 du Traité;</p> <p>5° en ce qui concerne le mode de financement alternatif «aide publique», quelle place occupe ce mode de financement par rapport aux règles européennes existantes en matière de finances publiques, tout particulièrement le «Pacte de stabilité et de croissance» qui impose aux gouvernements de</p>	<p>historische omstandigheden eigen aan elk land, alsook de uiteenlopende interpretaties die worden gegeven aan de definitie van universele dienst de kosten en de voorwaarden van tenuitvoerlegging van die dienst doen variëren van de ene Staat tot de andere;</p> <p>• te evalueren:</p> <p>1° of de alternatieve financieringsmethodes om de universele dienstverlening te verzekeren voldoende zijn, gelet op het feit dat het systeem van de gereserveerde zone een gegarandeerde vorm van financiering inhoudt;</p> <p>2° of er een mogelijkheid is om een sluitend juridisch kader te creëren om in de toepassing van deze alternatieve financieringsmethodes te voorzien;</p> <p>3° met betrekking tot de alternatieve financieringswijze «competitieve aanbesteding», hoe het feit dat meerdere postoperatoren actief zijn op het grondgebied, en de daarbij horende «interconnectiekost», te rijmen valt met de universele dienstverlening, in het bijzonder de vereiste om de post maximaal de dag na ophaling op de bestemming te leveren;</p> <p>4° met betrekking tot de alternatieve financieringswijze «staatssteun», hoe deze financieringswijze zich verhoudt tot de bestaande Europese regels betreffende de staatssteun, met name de regelgeving gebaseerd op artikel 86 van het Verdrag;</p> <p>5° met betrekking tot de alternatieve financieringswijze «staatssteun», hoe deze financieringswijze zich verhoudt tot de bestaande Europese regels betreffende de publieke financiën, in het bijzonder het «Groei- en Stabieleitpact», dat de regeringen oplegt op middellange termijn te streven</p>
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<p>tendre à moyen terme à l'équilibre budgétaire;</p> <p>6° en ce qui concerne le mode de financement alternatif «fonds de compensation» et «aide publique», comment calculer obligatoirement le coût du service universel afin de respecter la réglementation européenne;</p> <p>7° comment relier cette proposition aux autres articles du Traité européen, notamment à l'article 86, § 2, relatif à une concurrence loyale, à l'article 95, § 3, qui demande à la Commission de tenir compte, dans ses propositions, d'un niveau élevé de protection des consommateurs, et tout particulièrement à l'article 153 relatif à la protection des consommateurs.»C</p>	<p>naar een begroting in evenwicht;</p> <p>6° met betrekking tot de alternatieve financieringswijze «compensatiefonds» en «staatssteun», hoe de kostprijs van de universele dienstverlening berekend moet worden om te voldoen aan de Europese regelgeving;</p> <p>7° hoe dit voorstel in lijn kan worden gebracht met de overige artikelen van het Europees Verdrag, met name het artikel 86, § 2, betreffende de eerlijke mededinging, het artikel 95, § 3, dat de Commissie vraagt in haar voorstellen rekening te houden met een hoge graad van consumentenbescherming en in het bijzonder artikel 153 betreffende de consumentenbescherming.».</p>
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Bruxelles, 19 janvier 2007



EXAMEN DE LA SUBSIDIARITÉ

Proposition de directive du Parlement européen et du Conseil modifiant la Directive 97/67/CE en ce qui concerne l'achèvement du marché interne des services postaux de la Communauté COM(2006)594

CONCLUSIONS

La commission des Finances et des Affaires économiques :

en ce qui concerne la subsidiarité :

considère que la proposition de directive n'appelle pas d'observation au regard du principe de subsidiarité, dans la mesure, notamment, où chaque pays conserve la faculté d'organiser son propre service postal;

en ce qui concerne la proportionnalité :

demande par contre à la Commission européenne, avant d'adopter la proposition de directive modifiant la directive 97/67/CE, d'apporter des réponses aux réserves exprimées au regard du principe de proportionnalité.

En particulier, il est demandé à la Commission européenne :

- d'analyser les effets que la suppression du domaine réservé concernant les correspondances d'un poids inférieur à 50 grammes pourrait avoir sur la fragilisation des opérateurs postaux assurant le service universel;
- d'évaluer si les autres modes de financement mentionnés dans la proposition de directive permettent de garantir un service universel de qualité.

Ces conclusions ont été confirmées par le Sénat de Belgique en séance plénière.

Rapport troisième test: l'achèvement du marché intérieur des services postaux.

Procédures:

1. Quels sont les comités qui ont participé à l'examen de la proposition de Règlement de la Commission pour l'achèvement du marché intérieur des services postaux et quel était le rôle de chaque comité ? *La commission des Finances et des Affaires économiques, ainsi que la délégation du Sénat au comité d'avis fédéral chargé des questions européennes.*
2. Votre assemblée plénière y a-t-elle participé ? *Oui*
3. Y avait-il d'autres services administratifs de votre parlement qui ont aussi participé à ce processus ? *Le service juridique en ce qui concerne la compétence du Sénat, le service des Commissions, le service de la séance pour le vote sur l'avis de la commission en assemblée plénière, le service de traduction.*
4. Pouvez-vous décrire la procédure utilisée durant l'examen, par rapport aux comités et autres participants, ainsi que la chronologie de leur participation ? *Voir tableau en annexe*
5. Votre gouvernement a-t-il fourni quelque information que ce soit dans le cadre de la procédure de contrôle ? *Oui, le secrétaire d'état compétent pour les entreprises publiques a été entendu en commission des Finances et des Affaires économiques.*
6. Votre gouvernement national a-t-il consulté les parlements régionaux détenant des pouvoirs législatifs ? *Non, ces parlements n'ont pas de compétence en la matière.*
7. Y avait-il d'autres participants à l'examen ? *La commission des Finances et des affaires économiques a également entendu Monsieur Johnny Thijs, CEO de La Poste.*
8. Dans le cas d'un système bicaméral, avez-vous coordonné votre examen avec l'autre chambre parlementaire ? *Non*
9. La procédure utilisée pour ce projet était-elle conforme à la procédure que votre parlement prévoit d'utiliser après l'entrée en vigueur du Traité Constitutionnel ? *Oui*

Constats:

10. Avez-vous trouvé que le principe de subsidiarité a été violé ? *Non*
11. Avez-vous trouvé que le principe de proportionnalité a été violé ? *Oui*

“ en ce qui concerne la proportionnalité:

demande par contre à la Commission européenne, avant d'adopter la proposition de directive modifiant la directive 97/67/CE, d'apporter des réponses aux réserves exprimées au regard du principe de proportionnalité. En particulier, il est demandé à la Commission européenne:

- *d'analyser les effets que la suppression du domaine réservé concernant les correspondances d'un poids inférieur à 50 grammes pourrait avoir sur la fragilisation des opérateurs postaux assurant le service universel;*

• *d'évaluer si les autres modes de financement mentionnés dans la proposition de directive permettent de garantir un service universel de qualité.*”

12. L'avis que vous avez émis sur la non-conformité était-il raisonné ? *Oui, voir en annexe*

13. Pensez-vous que la justification de la Commission en ce qui concerne le principe de subsidiarité soit satisfaisant ? *Oui, mais il est évident que les justifications faites par la Commission s'appliquent à l'Europe. Nos parlementaires doivent encore évaluer si ces justifications peuvent également être valable pour la Belgique.*

14. Pensez-vous que la justification de la Commission en ce qui concerne le principe de subsidiarité soit satisfaisant ? voir questions 14

15. Avez-vous rencontré des difficultés spécifiques lors de votre examen ? *Non*

16. Autres commentaires ? *Le sénat reste ouvert à tout test supplémentaire organisé par la COSAC.*

La Procédure de Subsidiarité



Concerne : Suivi parlementaire du processus décisionnel européen.

Proposition de traitement concret des avis de subsidiarité de l'UE.

L'accord de coopération (19.12.2005) entre les Chambres législatives fédérales, les parlements des Communautés et des Régions portant sur l'exécution du Protocole relatif à l'application des principes de subsidiarité et de proportionnalité, joint au Traité établissant une Constitution pour l'Europe contient une disposition transitoire stipulant que, dans l'attente de la mise en œuvre du Traité, les parlements prennent les mesures nécessaires afin d'organiser le contrôle du respect du principe de subsidiarité (ainsi que l'échange d'informations y relatif).

Cette disposition transitoire vaut également pour la mise en œuvre des conclusions du Sommet européen des 15 et 16 juin 2006 (points 36 et 37) en vertu desquelles un dialogue est instauré entre les parlements nationaux et la Commission européenne (voir annexe).

Cependant, ce dialogue transcende l'examen de la subsidiarité et de la proportionnalité ainsi que les procédures formelles prévues dans le Protocole initial relatif à la subsidiarité joint au projet de Constitution européenne. La Commission européenne invite les parlements nationaux à formuler leurs observations relatives non seulement aux nouvelles « initiatives législatives européennes » mais aussi aux documents de consultation.

Le délai de six semaines initialement prévu dans le Protocole relatif à la subsidiarité en devient dès lors moins contraignant. Il est néanmoins stratégiquement important afin de pouvoir exercer quelque influence, de formuler l'avis endéans un délai raisonnable et, à tout le moins, dès la première lecture dans le cadre du processus législatif européen.

Etapas de la procédure de subsidiarité (Accord de coopération)	Modalités pratiques
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21

<p>- Répartition des compétences</p> <p>Les assemblées s'informent mutuellement qu'elles estiment qu'un projet de réglementation européenne ressortit de leurs compétences.</p> <p>- Formulation du point de vue</p> <p>Chaque assemblée formule, conformément à son règlement, un avis motivé en matière de subsidiarité.</p> <p>- Attribution des voix</p> <p>- Communication des avis à la Commission européenne (et, le cas échéant, aux autres institutions européennes) aux assemblées et aux gouvernements.</p>	<p>- La répartition des compétences (et le fait qu'une assemblée se déclare compétente) résultera</p> <ul style="list-style-type: none"> ▪ des informations de la base de données EURTRANSBEL (en développant la partie proactive) du SPF – Affaires étrangères ▪ des réunions des Eurocoordinateurs (SPF – Affaires extérieures) auxquelles participe le Secrétariat de la Conférence des présidents des 7 Assemblées (C7A). <p>La communication de la répartition des compétences se fait via la base de données IPEX (peut être consultée par toutes les assemblées intéressées) (login et password = ipexguest)</p> <p>Les gouvernements respectifs sont également informés via ce canal.</p> <p>Les assemblées des Communautés et des Régions communiquent leur revendication de compétence au correspondant IPEX du Sénat, qui impute cette information dans la base de données IPEX</p> <p>- Dans certaines assemblées (par ex. : France, Danemark, Finlande, Italie, Suède, Royaume-Uni), l'avis est formulé au niveau d'une commission ; dans d'autres (entre autres, le Sénat belge, les Pays-Bas), l'avis de la commission est adopté en séance plénière.</p> <p>- n'est pas d'application à ce stade.</p> <p>- Le secrétariat de la C7A communique les avis au « point d'information » de la Commission européenne par courriel¹.</p> <p>La Chambre et le Sénat introduisent, l'un et l'autre, leurs propres avis de subsidiarité dans la base de données IPEX via leur correspondant IPEX.</p> <p>Le Sénat introduit les avis de subsidiarité des Assemblées des Régions et des Communautés dans la base de données IPEX (via le correspondant IPEX du Sénat).</p> <p>Chaque assemblée communique l'avis de subsidiarité à son propre gouvernement.</p>
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¹ Cette communication doit être conforme à la déclaration 49 du Royaume de Belgique relative aux parlements nationaux, jointe au Traité établissant une Constitution pour l'Europe et peut être libellée comme suit : « avis motivé relatif au principe de subsidiarité et de proportionnalité, émis par le système parlementaire belge ». « Dans ce cadre, les assemblées qui suivent, ont émis un avis :

Annexe 1

Conclusions du Sommet européen – 15/16 juin 2006-10-09 10633/06 14

36. Eu égard à l'importance des principes de subsidiarité et de proportionnalité, le Conseil européen se réjouit de l'initiative de la présidence autrichienne visant à organiser à Sankt Pölten, les 18 et 19 avril 2006, dans le prolongement de la conférence qui avait eu lieu l'an dernier à La Haye, une conférence sur la subsidiarité. Les idées développées au cours de ces deux conférences méritent une étude plus approfondie ; les futures présidences sont encouragées à poursuivre le travail.

37. Le Conseil européen fait observer que les processus législatifs européen et nationaux sont interdépendants. Il se réjouit dès lors que la Commission ait promis de mettre directement à la disposition des parlements nationaux toutes les nouvelles propositions et tous les nouveaux documents de consultation, en leur demandant de réagir le plus rapidement possible en vue d'une meilleure définition de la politique. La Commission est invitée à examiner soigneusement les observations formulées par les parlements nationaux, surtout par rapport aux principes de subsidiarité et de proportionnalité. Les parlements nationaux sont invités à collaborer plus étroitement dans le cadre du contrôle de subsidiarité au sein de la Conférence des organes spécialisés dans les affaires européennes (COSAC).

a.
b.
c. ... »

La procédure de contrôle de subsidiarité au Sénat de Belgique

Proposition de directive du Parlement européen et du Conseil modifiant la directive 97/67/CE en ce qui concerne l'achèvement du marché intérieur des services postaux de la Communauté

Calendrier	événement	action à entreprendre	responsable
7/11/06	Réception d'un document européen (législatif ou consultatif)	Communication au service juridique pour un avis sur la compétence du Sénat	SECRETARIAT DE LA DELEGATION DU SENAT AUPRES DU COMITE D'AVIS FEDERAL CHARGE DES QUESTIONS EUROPEENNES (« LE COMITE D'AVIS »)

Avant le 14/11/06	Rédaction d'un avis sur la compétence du Sénat Communication de l'avis sur la compétence du Sénat	Rédaction et envoi de l'avis sur la compétence du Sénat au secrétariat du Comité d'avis Si l'avis sur la compétence du Sénat constate que le Sénat n'est pas compétent, le secrétariat du Comité d'avis le transmet au Président du Comité d'avis qui consulte, le cas échéant, le Bureau du Sénat. Si l'avis sur la compétence du Sénat constate que le Sénat est compétent, le secrétariat du Comité d'avis transmet l'avis sur la compétence du Sénat et le document européen concerné au(x) Président(s) de la (des) commission(s) compétente(s) et au Président du Comité d'avis.	Service juridique SECRETARIAT DU COMITE D'AVIS
Avant le 21/11/06	Communication de l'avis sur la compétence du Sénat	Si le Sénat s'estime compétent, notification aux parlements belges	Présidence
Avant le 5/12/06	Examen du document européen par la (les) commission(s) compétente(s) et le Comité d'avis Adoption d'un avis sur la subsidiarité par la (les) commission(s) compétente(s) et/ou le Comité d'avis	Si les membres de la (des) Commission(s) compétente(s) et du Comité d'avis n'ont pas de remarques concernant le document européen concerné ou si le point n'est pas traité, le Sénat est censé ne pas avoir d'objections concernant la subsidiarité. Dans ce cas, la procédure se termine. Si une objection est formulée, la (les) Commission(s) compétente(s) et/ou le Comité d'avis se prononcent et font rapport de leurs travaux conformément à l'article 27 du Règlement du Sénat.	Président et secrétariat de la (des) commission(s) compétente(s) et du Comité d'avis
Avant le 12/12/06	Examen de l'avis sur la subsidiarité par la séance	Le Sénat se prononce en séance plénière sur les conclusions du rapport de la (des) Commission(s)	Présidence et Service de la Séance

	plénière du Sénat	compétente(s) et/ou le Comité d'avis.	
12/12/06	Communication de l'avis sur la subsidiarité	Le cas échéant, l'avis du Sénat est communiqué aux autres assemblées parlementaires belges et au secrétariat de la Conférence des Présidents des 7 assemblées parlementaires.	Présidence et Service de la Séance
19/12/06	Communication de l'avis sur la subsidiarité	Les avis des parlements sont communiqués aux institutions européennes, aux gouvernements fédéral, régionaux et communautaires belges concernés et aux parlements belges. Le correspondant IPEX met l'avis sur la subsidiarité sur le site web IPEX.	Secrétariat de la Conférence des Présidents des 7 assemblées parlementaires Secrétariat du Comité d'avis

Cyprus

ANSWERS TO THE QUESTIONNAIRE OF THE COSAC SECRETARIAT CONCERNING THE EXERCISE ON THE CONTROL OF THE SUBSIDIARITY PRINCIPLE WITH RESPECT TO THE DIRECTIVE FOR THE FULL ACCOMPLISHMENT OF THE INTERNAL MARKET FOR POSTAL SERVICES

Procedure:

1. Which committees were involved in examining the Commission proposal for a Directive for the full accomplishment of the internal market for Postal Services?

The examination was undertaken exclusively by the Parliamentary Committee on European Affairs.

2. Was your plenary involved?

The plenary of the House of Representatives was not involved in this experimental exercise, but this does not preclude the possibility of the plenary being involved in future proceedings and / or when the mechanism of subsidiarity control, as provided in the European Constitution, actually enters into force.

3. Were any other administrative services of your parliament involved in the process?

The European Affairs Service of the House of Representatives was involved in a technocratic level with the exercise.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

On the 9th November 2006, the legislative proposal, accompanied by material concerning the principle of subsidiarity and proportionality and the explanatory note of the COSAC Secretariat concerning the matter, were distributed to the members of the Parliamentary Committee on European Affairs. It has to be noted that the reason why the procedure was delayed was that the said proposal was sent to the House of Representatives in our language on the 31st of October 2006.

The documents were also accompanied by a letter from the president of the Parliamentary Committee on European Affairs, explaining the requirements of the task before the Committee. A report of the European Affairs Service, which studied the legislative proposal and put down its recommendations concerning the principle of subsidiarity and proportionality, was distributed to all the members of the House of Representatives. The same documents were sent to the Ministry of Communications and Works, to the Legal Service of the Republic of Cyprus as well as to the Office of the Commissioner of Telecommunications and Postal Regulations.

At the meeting of the 12th December 2006, the Committee on European Affairs taking into account the material before it, both by the COSAC Secretariat and the European Affairs

Service, examined the legislative proposal in question on the basis of the criteria set out under the Treaty of Maastricht concerning the principle of subsidiarity and proportionality.

Representatives from the Ministry of Communications and Works, the Legal Service of the Republic of Cyprus and the Office of the Commissioner of Telecommunications and Postal Regulations were invited by the European Affairs Committee to take part in the meeting and express their views on the proposal.

5. Did your government provide any information as part of the scrutiny process?

Yes. Representatives of the Ministry of Communications and Works and of the Legal Service of the Republic of Cyprus took part in the meeting of the Committee of European Affairs and expressed their views and opinions.

6. Did your national parliament consult regional parliaments with legislative powers?

No regional parliaments exist in Cyprus.

7. Were any other external actors involved in the examination?

Yes. Representatives from the Office of the Commissioner of Telecommunications and Postal Regulations took part in the meeting of the Committee of European Affairs and expressed their views and opinions.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No bicameral system in Cyprus.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

The House of Representatives may follow largely the same procedure following the Constitutional Treaty's entry into force. In future cases, it is possible that the Parliamentary Committee on European Affairs will, firstly, notify the competent sectoral parliamentary committees and request their views on the matter under examination and, secondly, invite interested parties, other than representatives from the competent Ministries, to express their views on the matter at hand. Finally, where it is deemed necessary to adopt a reasoned opinion concerning a breach of the subsidiarity principle, the President and the Plenary of the House of Representatives will also be notified. The findings of the Committee may also be transmitted to the government. The abovementioned procedure is currently under consideration by the House of Representatives.

Findings:

10. Did you find any breach on the subsidiarity principle?

No.

11. Did you find any breach on the proportionality principle?

No.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No reasoned opinion was adopted concerning a breach of the subsidiarity principle.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

The Commission's justification concerning the principle of subsidiarity was found to have been satisfactory.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

The Commission's justification concerning the principle of proportionality was found to have been satisfactory.

15. Did you encounter any specific difficulties during the examination?

The Committee felt that the time available to the national parliaments would not be sufficient if, during the time frame provided, the proper procedure were to be followed, during which more interested parties and the competent sectoral parliamentary committees would be invited to express their opinion on the matter at hand. In addition, difficulties are encountered due to the delay of the transmission of a proposal in the official language of each Member State of the EU.

16. Any other comments?

We have to note that the proposal under examination was transmitted in our official language on the 31st October 2006, that is two weeks after the official publication of the proposal by the European Commission, thus delaying the completion of the procedure used for the examination of the proposal within the six week period deadline.

Czech Republic: Chamber of Deputies

Parliament of the Czech Republic

CHAMBER OF DEPUTIES

2006

5th electoral term

66th

Resolution

of the Committee on European Affairs

at its 8th meeting on 14 December 2006

Regarding the Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services, 14357/06, COM(2006) 594 final/

The Committee on European Affairs after hearing the report of the Deputy Minister of the Interior for Information Technology, Ms Lenka Ptáčková, and after hearing the report of the rapporteur, Mr Petr Krill, and after deliberating the matter

approves the position annexed to this resolution.

Proposal for a Directive of the European Parliament and the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services

**COM(2006) 594 final, COD 14357/06
Interinstitutional file 2006/0196/COD**

- **Legal basis:**

Articles 47(2), 55 and 95 of the EC Treaty

- **Date of transmission to the Council:**

19 October 2006

- **Date of transmission to the Chamber of Deputies via the Committee on European Affairs:**

26 October 2006

- **Date deliberated in the Committee on European Affairs:**

14 December 2006

- **Procedure:**

Codecision

- **Preliminary position of the Government (pursuant to Art. 109a(1) of the Rules of Procedure of the Chamber of Deputies):**

Dated 10 November 2006, transmitted to the Committee on European Affairs on 22 November 2006 by means of the Information System for the Approximation of Law (*ISAP*).

- **Conformity with the principle of subsidiarity:**

The proposal complies with the principle of subsidiarity.

- **Background and subject matter:**

The proposed directive is already the third step in the process of the gradual and controlled opening of the postal services market, whose objective is the achievement of full liberalisation of the internal market of Community postal services. The existing legal provisions consist of the Directive 97/67/EC of the European Parliament and the Council of 15 December 1997 on the common rules for the development of the internal market of Community postal services and the improvement of quality of service and the Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services.

The current Directive 97/67/EC, as amended by Directive 2002/39/EC, calls for the Commission to submit to the European Parliament and the Council before 31 December 2006 a proposal for the full accomplishment of the postal internal market or for determining another appropriate step based on the conclusions of the study. The proposal is based on the conclusions of the Prospective Study on the impact on the

universal service of the full accomplishment of the postal internal market in 2009², an Impact Assessment Report³ and on a Report on the Application of the Postal Directive⁴.

The objective of the proposal is to confirm 1 January 2009 as the date for the complete opening of the internal market for postal services and for attaining more effective competition in the postal services market with the aim of eliminating obstacles and distortions of competition. The proposal follows up on existing Community provisions governing postal services, amends and in some new points supplements the Postal Directive 97/67/EC (as amended by Directive 2002/39/EC). The main points of the new proposal is the date for the **opening of the internal market for postal services by eliminating reserved areas, the safeguarding of universal⁵ postal services and the mechanisms of financing** (ensuring) such services.

• **Content and impact:**

The content of the proposal is the abolishment of reserved areas and the monopoly of a single provider of those services that have been reserved to date, the safeguarding of financially accessible universal postal services in the existing scope and quality, the creation of mechanisms for ensuring the financing of such services and the defining of the regulatory framework for the functioning of the postal services market (access to the postal infrastructure, control mechanisms, the provision of information to regulatory authorities).

In the amended Article 7(1), 1 January 2009 is proposed as the **date for the complete opening of the internal market of postal services**. It provides that from this date “Member States shall not grant nor maintain in force exclusive or special rights for the establishment and the provision of postal services”. By means of this proposal, **the option of reserving services and thereby the monopoly of a single exclusive provider of such services** within a Member State shall be abolished. The aim of the current practice of reserving certain services solely and exclusively for the universal services provider is to enable the financing of the provision of universal services from the profits obtained from the reserved services and thereby ensure universal access to such services, i.e. for example, in remote and not easily accessible areas where the provision of such services is at a substantial loss. The collection, sorting, transportation and delivery of national and incoming cross-border correspondence with a weight limit of up to 50 grams and a price limit of up to two and a half times the public tariff for correspondence of the first weight category are at present (as of 1 January 2006) included in the reserved services. In terms of quantity, such correspondence currently represents the majority of all postal items.

Under the proposal, universal postal services are to remain intact within the existing parameters (scope, quality) given that Article 3 of the Postal Directive remains unchanged. The aim of maintaining such services is also their role in society of promoting territorial and social cohesion. A basic requirement is to ensure at least once delivery and collection five days a week for each EU citizen. The amended Article 4 **obliges Member States to guarantee the provision of universal services** under conditions that are based on the principle of objectivity, non-discrimination, proportionality and with the least distortion of competition. Under the proposal, the designation of a provider/providers of universal services must also be limited in time (amended Art. 4(2)).

² COM (2006) 596 final.

³ SEC (2006) 1291.

⁴ COM (2006) 595 final.

⁵ The commonly used term is “universal services” (*univerzální služby*). The Czech translation of the Directive uses the term “general services” (*všeobecné služby*) and the Postal Services Act uses the term “basic services” (*základní služby*).

In paragraphs 2, 3 and 4 of the amended Article 7, various mechanisms are proposed for the financing of universal postal services as accompanying measures for the provision of such services under acceptable financial conditions in the new competitive environment. The proposal offers Member States the **option of financing (ensuring) the provision of universal postal services**:

1. by means of public procurement,
 2. through compensation from public funds,
 3. by dividing the net costs associated with the obligation to provide universal postal services amongst the providers of services and/or users (the creation of a compensation fund that would be financed by fees paid by providers/and or users).
- points 2 and 3 may only be applied if a Member State decides that the obligation to provide universal postal services provided for in the Directive generates net costs and is a unfair financial burden for the providers of universal postal services (amended Article 7(3)).

The proposal preserves the right of Member States to grant authorisations and individual licenses for the provision of postal services. However, under the amended Article 9(2) it **newly defines prohibited conditions for the granting of authorisation** to operators with the exception of those who are providers of universal postal services pursuant to Article 4. Such authorisation may not:

- be limited in number,
- stipulate concurrently the obligation to contribute to the mechanisms of sharing the costs and the obligation to provide universal services,
- duplicate the conditions applicable on the basis of other national provisions that do not specially govern this sector,
- impose other unreasonable technical or operational conditions above that which are provided for within the framework of the Directive.

The proposal newly provides for **the obligation** of Member States to **ensure transparent and non-discriminatory conditions for access to the postal infrastructure elements** provided for in the new Article 11a if, under the circumstances in a given Member State, it is necessary to protect users' interests or to promote competition. These infrastructure elements are: "postcode system, address database, post office boxes, collection and delivery boxes, information on change of address, re-direction service, return to sender service" (Article 11a).

In contrast to the current situation, the proposal newly provides for within the framework of **strengthening consumer protection and of increasing the position of the national regulatory authorities**:

- the possibility of permanently providing certain services to blind and partially sighted persons at no charge even in a competitive environment (amended Art. 12 first indent),
- support Member States in promoting the development of out of court resolution of disputes between consumers and the providers of postal services (amended Art. 19),
- monitoring and regulation of the provision of universal postal services by national regulatory authorities and ensuring compliance with competition rules (amended Art. 22(2)),
- cooperation between national regulatory authorities in order to facilitate the application of the Directive (amended Art. 22(2)),
- support Member States in implementing effective national mechanisms enabling the appeals of aggrieved users or providers against the decisions of national regulatory authorities (amended Art. 22(3)),

- authorisation to collect information from undertakings in the postal services market by national regulatory authorities so that they may effectively carry out their duties (new Art. 22a).

Under the proposal, Member States are obliged to implement the Directive into their national legal orders no later than **31 December 2008**. Moreover, the Commission must submit to the European Parliament and the Council every three years a report on the application of the Directive whereby the first such report must be submitted no later than by 31 December 2011.

The proposal significantly changes the existing Community legal provisions that govern the postal sector. The adoption of the proposal would result in the full opening of the internal postal market to competition as seen in Great Britain, Sweden and Finland. Despite abolishing the monopoly of the providers of reserved services, the proposal calls for preserving the financial accessibility of universal services in the current extent and quality that would be guaranteed by the Member State, which would contribute to its financing. The role of the state would also be to ensure access to certain parts of the postal infrastructure and, through the regulatory authorities, to exercise oversight, to create control mechanisms and to regulate the postal services market and, in particular, to limit distortions of competition. The regulatory authority would play a key role in the transition to a competitive environment. The proposal also calls for strengthening the position of the regulatory authorities. According to the Commission, it will not be necessary to create any new bodies of state administration. Moreover, the proposal will lead to greater protection of the interests of users (consumers) and to increasing the requirements for the transparency and effectiveness of the whole postal sector.

Impact on the Czech Republic:

At present, the postal market in the Czech Republic is more open than as is required under the existing Directive. The adoption of the proposed directive would lead to the full opening of the postal services market in the Czech Republic, which would be exposed to the effects of competition. As of 1 January 2009, it would be possible for the providers of postal services to provide services that to date were reserved, i.e. that relate to the aforementioned correspondence limited in weight up to 50 grams and with a price of two and a half times 18 CZK (the public tariff in the Czech Republic), which under existing legal provisions may only be provided by Česká pošta, s.p. as the sole exclusive provider. Its monopoly on the provision of such services would thus end, which closely relates to the question of providing universal services.

As a Member State, the Czech Republic would continue to be obliged to guarantee the provision of universal services. Thus, a given postal services provider will continue to provide it in the existing parameters of universal services. The proposal in this respect also calls for the adoption of one of the abovementioned mechanisms of financing (ensuring) the provision of universal postal services in the Czech Republic. A provider/providers of universal services would (as is currently carried out by Česká pošta) have the obligation to maintain separate accounts for services and products within the framework of the provision of universal services so that it may be possible to calculate the net costs of such services. The Czech Telecommunication Office (Český telekomunikační úřad) is the regulatory authority under whose jurisdiction the regulation of the postal market in the Czech Republic falls and which would be significantly affected by the proposed amendments to the legal provisions (for example, the creation of conditions for access to the postal infrastructure).

The Commission, based on studies aimed at assessing the impact of the opening of the market and on the basis of its own findings, came to the conclusion that “in no Member

State would market opening in 2009 jeopardize universal service, nor should it as a consequence be postponed.”⁶ The 2006 Price Warehouse Coopers Study⁷ that analyses the preparedness of the EU Member States for the full achievement of the internal market in postal services states that the Czech Republic obtained the worst assessment of all the EU Member States (the index for the Czech Republic = 71, the EU average = 100).

The adoption of the proposed directive will necessitate **significant amendments to the Postal Services Act** (Act No. 29/2000 Coll., as amended by subsequent laws) and the repealing of implementing provisions – the Government Decree No. 100/2005 Coll. The adoption of one of the various mechanisms for financing universal services would, according to the preliminary position of the Government, likely require the **adoption of additional legal provisions** (a government decree, a decree).

The impact on the national budget has not, for the time being, **been determined** and will be defined according to which method of financing (ensuring) universal services is selected.

Position of the Government of the Czech Republic:

Although the position of the Czech Republic is not definite, the Czech Republic does not intend to delay the process of opening the postal market. According to the Government’s preliminary position, the Czech Republic welcomes and **supports** the concept of liberalising the postal market. At the same time, however, it recommends carrying out additional more detailed analysis of its possible impacts and it would welcome discussion with those entities that will be affected by the proposed amendments (providers, operators, regulators and customers, etc.). However, the position also states certain concerns about the viability of the proposed methods of financing universal services, in particular, with respect to the compensation fund given the negative experiences ascertained from abroad. An example of a more suitable alternative means of ensuring such services listed in the preliminary position of the Government is, for example, an effective licensing policy within the new regulatory framework.

The preliminary position of the Government of the Czech Republic does not provide an economic analysis of the possible impacts of abolishing the reserved areas and the current monopoly of Česká pošta, s. p. in this area, nor does it provide an economic analysis of the possible mechanisms of financing (ensuring) universal service in the Czech Republic. Such an analysis has yet to be undertaken in the Czech Republic. Moreover, the position of those entities affected (i.e. Česká pošta, Český telekomunikační úřad, providers, users) or supporting documents from them, e.g. the economical parameters of the current provision of universal services. Some of these entities (Česká pošta, Český telekomunikační úřad) have in this respect already been approached. However, a broader debate on this subject has not yet taken place. As a result, the abovementioned entities, or the representatives thereof, were requested to submit their positions on the proposal and invited to attend the meeting of the Committee on European Affairs on 14 December 2006.

- **Estimated timeframe for deliberation in EU bodies:**

11 – 12 December 2006 Council for Transport, Telecommunications and Energy (TTE Council)

⁶ COM (2006) 596 final, p. 6.

⁷ PriceWaterhouseCoopers, *The impact on universal service of the full market accomplishment of the postal internal market in 2009*, 2006.

- **Conclusion:**

The Committee on European Affairs

1. **takes into account** the proposal for a directive amending the Directive 97/67/EC of the European Parliament and of the Council and on the accomplishment of the internal market of Community postal services;
2. **takes into account** the framework position of the Government of the Czech Republic on this legislative proposal and at the same time welcomes the position of providers of postal services (Česká pošta, s. p., Český telekomunikační úřad, Mediaservis s. r. o., TNT, TNT POST), which attended the meeting;
3. **requests the Government**, in light of the importance of guaranteeing universal services, to submit a solution for the financing (ensuring) of this service and an economic analysis of the possible impacts of the abolishment of reserved areas as well as the possible means of financing universal services;
4. **requests the Government to** inform the Committee of subsequent developments and the results of the deliberation of this proposal;
5. **resolves** to transmit the document together with its resolution and the Government's position, for information purposes, to the Economic Committee.

Josef Šenfeld
Verifier of the Committee
of the

Petr Krill
Rapporteur of the Committee

Soňa Marková
Deputy Chairwoman
Committee

Czech Republic: Senate

Report from Senate of the Czech Republic on experience of the subsidiarity and proportionality check on the Commission proposal for the full accomplishment of the Internal Market for Postal Services

The COSAC chairpersons agreed on 20 February 2006 that national parliaments upon completion of the examination of the commission proposal would draw up a short report summarising how they had set about the subsidiarity and proportionality check project and any lessons learnt. The reports should be submitted to the COSAC secretariat by 11 December. The report can be forwarded to the secretariat on: secretariat@cosac.eu in either English or French.

The Presidency has asked for the following points to be covered in the reports from national parliaments:

Procedures:

- 1. Which committees were involved in examining the Commission proposal for the full accomplishment of the Internal Market for Postal Services and what role did each committee play?*

In the first round of scrutiny, it was the Committee on EU Affairs. Committee on economy, agriculture and transport has been asked by the Committee on EU Affairs to give its opinion on the proposal, to be used in further scrutiny in the Senate.
- 2. Was your plenary involved?*

No, as the first opinion issued by Committee on EU Affairs does not include a position towards the government, there is no need to involve the plenary.
- 3. Were any other administrative services of your parliament involved in the process?*

The dossier was prepared for the Committee hearing by the relevant expert staff of the Senate (European Union Unit).
- 4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?*

The Committee on EU Affairs selected the Commission proposal for the full accomplishment of the Internal Market for Postal Services for scrutiny on 1 November 2006, Czech language version of the proposal was available on 7 November 2006; Government position was made available on 10 November 2006; the EU Affairs Committee held a first hearing on the proposal on 6 December 2006. On this meeting, the EU Affairs Committee assessed the proposal twofold – against the principles of subsidiarity and proportionality and against the position of the Government. Deliberations resulted in finding that the proposal conforms to the mentioned principles, in assessment that further scrutiny will be needed and that a sectoral committee need be involved - Committee on economy, agriculture and transport was asked for opinion. The EU Affairs Committee also asked the Government to submit a more thorough position once consultations with domestic stakeholders and further analysis are made. The Committee on economy, agriculture and transport will scrutinise the proposal earliest in January 2007 (timing depends on the advance of the dossier within the Council and availability of

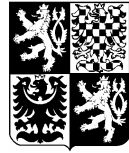
Government's complex position).

5. *Did your government provide any information as part of the scrutiny process?*
The government provided, in line with the Senate's Rules of Procedure and Government Guidelines on Communication with Parliament in EU Affairs, a Framework Position on the proposal.
6. *Did your national parliament consult regional parliaments with legislative powers?*
No, as there are no such parliaments in the Czech Republic.
7. *Were any other external actors involved in the examination?*
Not at this stage. However, the Czech Telecommunications Office (regulator) and the Czech Post (provider of universal service) may be consulted in the future.
8. *In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?*
No. The Committee on European Affairs of the House of Representatives will discuss the proposal on 14 December 2006. The two committees have independent powers and procedures in EU scrutiny.
9. *Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?*
In principle yes, however, the first hearing at the Committee on EU Affairs was planned at an exceptionally early stage due to the subsidiarity and proportionality check deadline. At this early point of negotiations, the government position is rather austere and elementary therefore the Senate will continue scrutinising the proposal and the position of the CZ government.

Findings:

10. *Did you find any breach on the subsidiarity principle?*
No
11. *Did you find any breach on the proportionality principle?*
No
12. *Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)*
No
13. *Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?*
Yes
14. *Did you find the Commission's justification with regard to the proportionality principle satisfactory?*
Yes
15. *Did you encounter any specific difficulties during the examination?*
The deadline. The Czech version of the Commission proposal for the full accomplishment of the Internal Market for Postal Services was made available on 7 November 2006; therefore the six-week period to complete scrutiny would normally elapse on 19 December 2006. Czech Senate exceptionally speeded up the procedure and planned a very early first round of scrutiny in order to meet the COSAC deadline.
16. *Any other comments?*

THE PARLIAMENT OF THE CZECH REPUBLIC
SENATE



6th term

12th RESOLUTION

COMMITTEE ON EU AFFAIRS

delivered on the 2nd meeting held on 6 December 2006

on the Commission proposal for the full accomplishment of the
Internal Market for Postal Services

(Senate Press n° N 100/05)

Following introductory information by Lenka Ptáčková, Deputy Minister for
information technologies, the rapporteur's report by Senator Luděk Sefzig and after a
debate

The committee

- I. s u s p e n d s**
the hearing on this point until a complex government position will have been
prepared;
- II. a s k s**
Committee on economy, agriculture and transport of the Senate of the Czech
Republic for opinion on this proposal;
- III. f i n d s**
no breach of the subsidiarity and proportionality principle;
- IV. a u t h o r i s e s**
the committee chairperson, Senator Luděk Sefzig, to submit this resolution to the
Speaker of the Senate of the Parliament of the Czech Republic and to agree a
deadline for submitting of opinion with the chairperson of the Committee on
economy, agriculture and transport.

Luděk Sefzig *sign manual*
Committee Chairperson

Luděk Sefzig *sign manual*
Committee Rapporteur

Tomáš Grulich *sign manual*
Committee verifier

Estonia

11 December 2006 No 2-22/ 1123

Dear Ms. Kaukaoja,

Following the decision of the COSAC chairpersons in Vienna in February 2006 the European Union Affairs Committee of the Riigikogu has carried out the subsidiarity and proportionality check on the Commission proposal for Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services. In order to facilitate the compilation of the replies, we have structured our reply in the form of answers to the questions posed in the aide-mémoire.

Procedures:

1. Which committees were involved in examining the Commission proposal for Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services and what role did each committee play? The European Union Affairs Committee and the Economic Affairs Committee of the Riigikogu were involved. The Economic Affairs Committee gave an opinion to the European Union Affairs Committee. The European Union Affairs Committee formed an opinion by taking into account also the opinions of the Economic Affairs Committee of the Riigikogu and the Ministry of Economic Affairs and Communications.
2. Was your plenary involved? No
3. Were any other administrative services of your parliament involved in the process? Yes, in addition to the aforementioned two committees the translation bureau of the documentation department was involved.
4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement? The European Union Affairs Committee of the Riigikogu discussed the procedure for conducting the subsidiarity and proportionality check at its sitting on November 10, 2006 and decided to forward the materials to the Economic Affairs Committee of the Riigikogu and the Ministry of Economic Affairs and Communications in order to ask their opinion.

The Economic Affairs Committee of the Riigikogu discussed the proposal at its session on December 7 and submitted its opinion to the European Union Affairs Committee. The Ministry of Economic Affairs and Communications submitted its opinion on December 5, 2006. The representative of the Ministry presented the opinion of the Ministry at the EU affairs Committee session on December 8.

The European Union Affairs Committee discussed the proposal as well as the opinions of the Economic Affairs Committee and the Ministry of Economics and Communications on December 8 and formed an opinion.

The opinions of the European Union Affairs Committee, the Economic Affairs Committee and the Ministry of Economic Affairs and Communications were translated into English by the translation bureau. The European Union Affairs Committee forwarded the translated opinions to the Commission, European Parliament, Council and COSAC Presidency on December 11, 2006. Finally, the information and opinions in Estonian and English were uploaded on the IPEX website on December 11.

5. Did your government provide any information as part of the scrutiny process? Yes, however because the position of the Government was given later than initially planned, the normal scrutiny procedure will be accomplished on December 15 as a separate issue.
6. Did your national parliament consult regional parliaments with legislative powers? No
7. Were any other external actors involved in the examination? No
8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber? Estonia has a unicameral system.
9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force? The Riigikogu has not yet decided what procedure to use after the entering into force of the Constitutional Treaty.

Findings:

10. Did you find any breach on the subsidiarity principle? No
11. Did you find any breach on the proportionality principle? No
12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat) No
13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory? Yes
14. Did you find the Commission's justification with regard to the proportionality principle⁸ satisfactory? Yes
15. Did you encounter any specific difficulties during the examination? No
16. Any other comments?

The procedure used at the moment by COSAC works well, although the possibility to submit common positions should be more readily employed.

In addition, there should be in place an information exchange system on a regular basis regarding the additional subsidiarity checks conducted by national parliaments that are not coordinated by COSAC. The exchange of information should preferably take place through the IPEX website. Some information exchange took place between the civil servants of the respective chambers by e-mail describing the procedures used by the chambers. In order to facilitate access to the information, national parliaments should strive to provide on the IPEX website translations to English of the opinions where they have found a breach on the subsidiarity principle. The COSAC secretariat should compile annual summaries on the subsidiarity checks conducted by national parliaments.

⁸ The protocol on subsidiarity and proportionality does not stipulate an explicit legal obligation for the Commission to include a justification with regard to proportionality in the explanatory memorandum of a legislative proposal. However, according to the interinstitutional agreement on better lawmaking of 2003 the Commission "will also explain in its explanatory memorandum how measures proposed are justified in the light of the principles of subsidiarity and proportionality" (Art. 15)

During the subsidiarity and proportionality checks in the Riigikogu the standing committees have been involved in the process only by giving their opinion to the European Union Affairs Committee. In order to make the subsidiarity and proportionality checks even more efficient, the standing committees could be encouraged to exchange information with their colleagues from respective committees in other parliaments.

Yours sincerely,

Kristiina Ojuland
Chairman of the European Union Affairs Committee
Riigikogu

Annexes: 1. Minutes of the European Union Affairs Committee (1 page);
 2. Opinion of the Economic Affairs Committee (1+3 pages);
 3. Opinion of the Ministry of Economics and Communications (3 pages).

Olev Aarma (tel: +372 631 6465; e-mail: olev.aarma@riigikogu.ee)

OPINION

On 5 December 2006 the Economic Affairs Committee of the Riigikogu discussed the proposal for the Directive of the European Parliament and the Council amending the Directive 97/67/EC, on common rules for the development of the internal market of Community postal services, in order to assess the conformity of its harmonisation with the principles of subsidiarity and proportionality.

The Head of the Communications Department of the Ministry of Economic Affairs and Communications Edvard Saarma presented the position of the Ministry.

Taking into account the opinions and clarifications concerning the proposal forwarded by the representative of the Ministry of Economic Affairs and Communications, the Economic Affairs Committee decided to support, in principle, these opinions as concerns the conformity of the proposal with the principles of subsidiarity and proportionality.

The Economic Affairs Committee sets out herein the note of its member Igor Gräzin on the use of the term ‚subsidiarity’: „A new terminological mistake is taking shape. The guiding principle of subsidiarity is not closeness but complementarity. The translation sent by EUAC has used the term correctly. In the Treaty establishing the European Community (Art. 5), subsidiarity denotes legislation where national means are not sufficient and where the European level compensates for this. Proportionality only means that the measures taken are in proportion with the objectives. EUAC is also correct in using this term. Unfortunately, however, these terms have been misunderstood by the MEAC, which is why their written answer is somewhat incomprehensible. To recap: subsidiary law means complementary law; proportionality denotes the conformity of the measure with the objective.”

Yours sincerely,

Mart Opmann
Chairman of the Economic Affairs Committee of the Riigikogu

Annex:

1. Extract from Minutes No 62 of the 5 December 2006 sitting of the Economic Affairs Committee of the Riigikogu.

EXTRACT
Minutes No 62 of the sitting of the
Economic Affairs Committee of the Riigikogu

Tallinn, Toompea

Monday, 5 December 2006

Beginning 12.30 p.m., end 2 p.m.

Chairman: Mart Opmann
Secretary: Teele Taklaja
Present: Mati Kepp, Jüri Tamm, Igor Gräzin, Tatjana Muravjova, Helle Kalda, Mart Opmann, Sven Sester, Henn Pärn, Marin Daniel (advisor), Sirje Viitmaa (advisor), Piia Schults (advisor), Teele Taklaja (advisor)
Absent: Mart Laar, Liina Tõnisson, Vladimir Velman
Invited: Head of the Communications Dept., Ministry of Economic Affairs and Communications Edvard Saarma; Minister of Economic Affairs and Communications Edgar Savisaar; Head of the Railways Division, Road and Railways Dept., MEAC, Indrek Laineveer; Expert of the Quality Infrastructure Division, Internal Market Dept., MEAC, Ago Pelisaar; Head of the Economic Policy Division, Economic Development Dept., MEAC, Maria Koidu

Participants:

AGENDA:

1. Proposal for a directive of the European Parliament and the Council, amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services COM (2006) 594, and submission of an opinion to the EUAC.

Invited: Head of the Communications Dept., MEAC Edvard Saarma;

1. Mart Opmann introduced the discussion on the conformity with the principles of subsidiarity and proportionality of the proposal for a directive of the European Parliament and the Council, amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services COM (2006) 594, and submission of an opinion to the EUAC. Head of the Communications Department of the Ministry of Economic Affairs and Communications (MEAC) Edvard Saarma had been invited to the sitting of the Committee.

Edvard Saarma explained to the Committee the opinion of the MEAC on the above proposal for a directive, in order to assess its conformity with the principles of subsidiarity and proportionality.

Subsidiarity principle is based on the idea that higher social units, in this case the Community, should take upon themselves only the tasks that the lower social units, i.e. the Member States, are not able to carry out. This also reflects the principle that decisions should be taken as close as possible to the citizens. MEAC based its opinion on this principle.

The main objectives of the proposed amendments to the directive are to achieve an internal market for postal services through the removal of exclusive and special rights in the postal sector, which at the moment are in force in many Member States (concerning 50 gram simple

letters in Estonia), as well as safeguarding a common level of universal services for all users in all EU countries (which vary greatly) and setting harmonised principles for the regulation of postal services in an open market environment, with the aim of reducing other obstacles to the functioning of the internal market.

MEAC analysed the proposals and compared these to the valid Postal Directive. The new proposal is much freer and the decision-making process is left more to the competence of the Member States. For example the financing method set out in Article 7. If unfair burden is incurred by the universal service provider in the provision of the service, a national decision can be made on how to finance this: either through a compensation fund from the state budget or by collecting X percent of turnover from the market participants. Member States can also to a great extent decide on issues of access to the postal network, taking into account the specificity of their internal market and the market situation. The new proposal does not include the requirement to monitor cross-subsidies (covering the expenses of a service with funds from another) or to create additional regulatory authorities in the postal field.

MEAC found two elements in the proposed directive which may cause problems to Estonia and which are presented to the Government of the Republic. Firstly, considering the Estonian market situation, where a reserved service was enforced, i.e. the provider of universal postal service was only granted a special right, on 1 July 2006, it would be a disproportionate measure for the universal service provider to open the market completely in 2009. MEAC proposes to open the market gradually by the year 2012. Secondly, proceeding from the principle of subsidiarity, it is important to clarify the requirement of cost-oriented accounting, as the prices of universal service are generally based on costs. Pursuant to the valid Acts, universal service costs the same in the whole country, and single piece tariff is not distinguished from batch delivery tariff – a different price shaping mechanism would work here.

Generally speaking, the European Commission has thoroughly analysed the principle of subsidiarity and has kept to the procedural requirements.

Members of the Committee asked questions on cross-subsidisation and the term subsidiarity.

Edvard Saarna explained that cross-subsidisation is only valid in the framework of universal service and only in case of postal services.

Member of the Committee Igor Gräzin launched a discussion on the translation and definition of the term 'subsidiarity'. Jüri Tamm proposed that Gräzin should formulate his thoughts in a memorandum, which is presented as follows: „A new terminological mistake is taking shape. The guiding principle of subsidiarity is not closeness but complementarity. The translation sent by EUAC has used the term correctly. In the Treaty establishing the European Community (Art. 5), subsidiarity denotes legislation where national means are not sufficient and where the European level compensates for this. Proportionality only means that the measures taken are in proportion with the objectives. EUAC is also correct in using this term. Unfortunately, however, these terms have been misunderstood by the MEAC, which is why their written answer is somewhat incomprehensible. To recap: subsidiary law means complementary law; proportionality denotes the conformity of the measure with the objective.”

Taking into account the opinions and clarifications on the proposed directive forwarded by the representative of the MEAC, the Economic Affairs Committee decided to express, in principle, their support to the positions of the MEAC on the proposal for a directive of the European Parliament and the Council, amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services, in order to analyse its conformity with the principles of subsidiarity and proportionality. The members of the Committee took note of the

fact that the Government of the Republic has not yet presented its general opinion on the directive to the Riigikogu.

IT WAS DECIDED:

1. To support in principle the positions of the MEAC on the proposal for a directive of the European Parliament and the Council, amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (by consensus);
- 1.2 To submit the opinion of the Economic Affairs Committee to the EUAC by 7 December 2006.

Mart Opmann
Chairman

Teele Taklaja
Secretary

Minutes No 170 of the sitting of the European Union Affairs Committee of the Riigikogu

Tallinn, Toompea

Friday, 8 December 2006

Beginning 11.00 a.m., end 12.22 p.m.

Chairman: Kristiina Ojuland

Secretary: Piret Valler

Present: Enn Eesmaa, Raivo Järvi, Lauri Laasi (substitute member of Küлло Arjakas), Mart Meri, Mart Nutt, Kristiina Ojuland, Ülle Rajasalu, Urmas Reinsalu, Sven Sester, Tiit Tammsaar, Vladimir Velman, Olev Aarma (advisor), Külli Kask (advisor), Siret Neeve (advisor)

Absent: Mati Kepp, Juhan Parts, Liina Tõnisson, Taavi Veskimägi

Invited: Minister of Foreign Affairs Urmas Paet, Director General of the European Union Department of the Ministry of Foreign Affairs Taavi Toom, Minister of Economic Affairs and Communications Edgar Savisaar, Deputy Secretary General of European Union and International Co-operation of the MEAC Andres Tint, Deputy Secretary General for Transport and Transit Services of the MEAC Nathan Tõnisson, Head of the Communications Department of the MEAC Edvard Saarma, Senior Specialist of the Forestry Department of the Ministry of the Environment Rauno Reinberg, advisor of the European Union Secretariat of the State Chancellery Uku Särekanno, advisor of the European Union Secretariat of the State Chancellery Kristiina Neudorf-Kreem

AGENDA:

.....

4. Scrutiny of the principles of subsidiarity and proportionality: Proposal for a directive of the European Parliament and the Council, amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services COM (2006) 594;

.....

IT WAS DECIDED:

.....

4.1. To agree with the assessment of the Ministry of Economic Affairs and Communications and the Economic Affairs Committee that the proposal of the European Commission is in conformity with the principles of subsidiarity and proportionality;

4.2. That the EU Affairs Committee shall submit their position on the proposal for the directive and the positions of the Government of the Republic after the proposal is proceeded in the Riigikogu pursuant to the Riigikogu Rules of Procedure Act;

.....

Kristiina Ojuland
Chairman

Piret Valler
Secretary

Certified True Extract

Piret Valler
Secretary

Mrs Kristiina Ojuland
Chairman
European Union Affairs Committee of the Riigikogu
Lossi plats 1a
15165 Tallinn

Yours: 10.11.2006 nr 2-22/1028
Ours: 05.12.2006 nr 24-2/11627

Assessment of conformity with the principles of subsidiarity and proportionality

You have requested the opinion of the Ministry of Economic Affairs and Communications on the proposal for the Directive of the European Parliament and of the Council, amending the Directive 97/67/EC, in connection with the completion of the internal market of Community postal services, in order to assess the conformity thereof with the principles of subsidiarity and proportionality.

Pursuant to Article 2 of the Treaty on European Union, the principle of subsidiarity must be observed in attaining the goals of the Union. Pursuant to Article 5 of the Treaty establishing the European Community, both conditions in Article 5 paragraph 2 must be fulfilled in order for the subsidiarity requirement to be fulfilled:

- *actions for achieving the Community objectives on the national level are not sufficient (criterion of necessity), and*
- *the Community objectives can be better achieved through Community action (criterion of efficiency).*

In addition, we must take into account that the third paragraph of the Article stipulates “not to go beyond what is necessary”, i.e. the need to ensure the proportionality of the Community action.

Guidelines on following the principle of subsidiarity are set out in the Protocol No 30 on the application of the principles of subsidiarity and proportionality of the Amsterdam Treaty.

Objectives of proposed actions are as follows:

- to reach the internal market of postal services by repealing exclusive and special rights in the postal sector;
- to ensure a common level of universal services in all EU countries for all users;
- to enforce generalised principles for regulating postal services in open market environment, in order to reduce other obstacles to the functioning of the internal market.

Member States cannot achieve these objectives on their own. The best example of this is the fact that a number of Member States have retained, to varying extent, monopoly over certain postal services, in order to finance the provision of universal services, while other Member States have completely or partially yielded their monopoly or have a definite intention to do so before the year 2009.

These objectives can be better achieved on the Community level because of the scope or impact of the proposed actions, which is why it is thought that the Community might take measures stipulated in Article 5 of the Treaty on EU, pursuant to the principle of subsidiarity.

The explanatory letter of the proposal emphasises that pursuant to the objective stipulated in Article 5 of the EU Treaty, the Directive does not go beyond what is necessary to achieve the objectives.

The proposal also sets out the general framework of legislative acts, not a detailed set of rules for regulating this sector.

Pursuant to the principle of proportionality, the proposal has left the Member States a number of possibilities for achieving their objectives in the best possible way:

- instead of stipulating one solution, the Member States are allowed to choose between several financing methods presented in Article 7;
- access to the services network is provided in the new article 11a, which gives the Member States the liberty to assess whether and to what extent they need to regulate access to certain areas or services of the postal infrastructure; the Member States also regulate access to the final links of the postal service chain, namely sorting and delivery;
- a proposal has been made to leave out the requirement to observe the cross-subsidisation set out in the sixth indent of Article 12 of the current sector-based rules, and to convey the efficient regulation of this issue to the Member States;
- no proposal has been made to create new bodies to coordinate the activities of national regulatory bodies.

In conformity with the principle of subsidiarity, the definition of broad universal service set out in the proposal is applied in diverse ways across the EU, depending on the national and social needs. Derogations are allowed in special cases (e.g. reducing delivery frequency in particularly distanced areas).

At the same time we think that in view of the previous developments of Estonia's postal services market, it is pertinent to open the market gradually in 2009-2012. We support the right granted to Member States to decide over the most suitable national measure for ensuring the provision of universal postal services, and see no reason to continue to apply measures granting exclusive or specific rights in postal sector.

Estonia's universal postal services provider has not had sufficient possibilities to prepare for the complete opening up of the market, unlike in other Member States. The reserved sector, which according to the valid directive constitutes of delivery of letters with the maximum weight of 50 g collected by the universal postal service, was only enforced on 1 January 2006. In most Member States the relevant regulatory stipulation has been in force for years. Therefore other Member States have previously implemented measures for ensuring the provision of universal postal service, creating conditions where their postal services market is able to function more efficiently in open market conditions than in Estonia.

The gradual opening of the postal market is in our case also justified by the fact that universal postal services are already provided in competitive conditions in Estonia. An example of this is home delivery of newspapers and magazines and speed delivery of packages in high density population areas.

A sudden, insufficiently prepared transition to conditions of open competition on 1 January 2009 would thus be disproportionate for Estonia.

The Ministry of Economic Affairs and Communication finds that in providing universal postal services, proceeding from the principle of subsidiarity, it is necessary to clarify the requirement of cost-orientation, as the Member States have interpreted this requirement differently, as well as to provide a possibility to apply the requirement of national common price to a single dispatch, if necessary.

Generally, the Commission has followed the procedural requirements in analysing the conformity with the principle of subsidiarity, by organising studies and carrying out the required impact assessment. In addition to this, the committee has justified in its explanatory letter the relevance of proposals from the viewpoint of the principle of subsidiarity.

Yours sincerely,

Edgar Savisaar
Minister

Edvard Saarma 6397665
edvard.saarma@mkm.ee

Finland

EDUSKUNTA – PARLIAMENT OF FINLAND

The Grand Committee
MEMORANDUM

1 December 2006

Position of the Grand Committee on the Commission proposal for the full accomplishment of the Internal Market for Postal Services
- approved in the context of COSAC's subsidiarity and proportionality check

The Grand Committee transmitted the Commission's proposal to the Eduskunta's Transport and Communications Committee for scrutiny and report. The TCC reported that the proposal is not in contravention of the subsidiarity and proportionality principles and that the Commission's justifications are adequate. The Grand Committee approved the findings of the TCC.

**

The answers to the questionnaire are as follows:

Procedures:

1. Which committees were involved in examining the Commission proposal and what role did each committee play?

The Transport and Communications Committee examined the proposal and delivered a report to the Grand Committee, which approved the TCC's conclusions.

2. Was your plenary involved?

No.

3. Were any other administrative services of your parliament involved in the process?

No.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

Received by Grand Committee and sent to Transport and Communications Committee on 25.10.2006. Report of TCC 21.11.2006. Decision of GC 29.11.2006.

5. Did your government provide any information as part of the scrutiny process?

The TCC heard the evidence of the responsible ministry.

6. Did your national parliament consult regional parliaments with legislative powers?

No.

7. Were any other external actors involved in the examination?

No.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

n/a

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Broadly, yes. However, according to the planned procedure, a scrutiny examination would take place only if someone proposes it. As this proposal manifestly does not raise issues of

subsidiarity, that would be unlikely. Also, the Constitutional Treaty does not allow a check of proportionality, so that would have to be done within the existing, national scrutiny procedure.

Findings:

10. Did you find any breach on the subsidiarity principle?

No.

11. Did you find any breach on the proportionality principle?

No.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Yes.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes.

15. Did you encounter any specific difficulties during the examination?

No.

16. Any other comments?

Nil.

Rapport de l'Assemblée nationale relatif à l'expérience du contrôle de la subsidiarité et de la proportionnalité

Les présidents de la COSAC ont convenu, le 20 février 2006, que les parlements nationaux prépareraient à l'issue de l'examen de la proposition de directive sur l'achèvement du marché intérieur des services postaux un bref rapport résumant la façon dont ils auront mis en place le contrôle de subsidiarité et de proportionnalité, ainsi que les leçons qu'ils en auront tirées.

Le présent document répond à cette demande et s'efforce de traiter l'ensemble des questions mentionnées dans l'aide mémoire établi par le secrétariat de la COSAC.

I Procédures

1) Quels sont les comités qui ont participé à l'examen de la proposition de directive et quel était le rôle de chaque comité ?

S'agissant de l'Assemblée nationale, la procédure à suivre a été définie à la suite d'un échange de courriers entre le Président de la Délégation pour l'Union européenne et le Président de l'Assemblée nationale. Il a ainsi été décidé que la Délégation pour l'Union européenne préparerait des « projets d'avis » et les communiquerait à la Présidence qui, comme elle le fait pour toutes les initiatives parlementaires, les renverrait à la commission compétente ; cette dernière devant disposer d'un délai de trois semaines pour se prononcer, tacitement ou expressément. En cas de divergence entre la Délégation et la commission, c'est le point de vue de la commission qui prévaudrait. La position définitive de l'Assemblée, qu'elle résulte d'une décision de la commission ou de la Délégation, sera communiquée par la Présidence à la Commission européenne et au Gouvernement.

2) Votre assemblée plénière y a-t-elle participé ?

La procédure précédemment exposée ne prévoit pas d'examen en séance plénière.

3) D'autres services administratifs de votre parlement ont-ils participé à ce processus ?

Le contrôle de subsidiarité et de proportionnalité a fait intervenir les services de la Délégation pour l'Union européenne, puis, dans un second temps, ceux de la commission des affaires économiques, de l'environnement et du territoire.

4) Pouvez-vous décrire la procédure utilisée durant l'examen, ainsi que la chronologie de leur participation ?

Au sein de la Délégation pour l'Union européenne, deux rapporteurs spécialisés (l'un de la majorité, l'autre appartenant à l'opposition) ont été chargés, au cours de la présente législature, d'examiner l'ensemble des textes susceptibles de soulever une difficulté au regard des principes de subsidiarité et de proportionnalité.

Compte tenu du délai total de six semaines prévu pour ce contrôle et de la nécessité de laisser trois semaines à la commission compétente au fond, l'intervention des deux rapporteurs de la Délégation a été réalisée dans un délai très bref : la proposition de directive présentée le 18 octobre 2006 par la Commission européenne a été soumise au contrôle de la Délégation le 22 novembre suivant.

Ce contrôle a donné lieu à une communication des deux rapporteurs spécialisés devant l'ensemble de la Délégation, suivie du vote d'un projet d'avis.

Le projet d'avis de la Délégation a été transmis à la commission des affaires économiques, de l'environnement et du territoire, par la Présidence de l'Assemblée. La commission a désigné un rapporteur qui a rédigé un rapport d'information, présenté devant la commission le 6 décembre 2006. Lors de cette réunion, la commission a adopté le projet d'avis de la Délégation sans modification. Le rapport d'information a été publié.

5) Votre gouvernement a-t-il fourni quelque information que ce soit dans le cadre de la procédure de contrôle ?

Des contacts ont effectivement été pris avec le secrétariat général des affaires européennes (SGAE), organe chargé de la coordination interministérielle dans les domaines communautaires, et avec le ministère de l'industrie (chargé des postes) pour connaître la position du Gouvernement français sur ce dossier.

Une fiche d'impact simplifiée a été transmise à la Délégation par le SGAE. Le ministère de l'industrie a aussi porté à notre connaissance un courrier qu'il venait d'adresser au Commissaire européen compétent.

6) Votre gouvernement national a-t-il consulté les parlements régionaux détenant des pouvoirs législatifs ?

Seules les deux assemblées du Parlement interviennent dans la procédure du contrôle de subsidiarité et de proportionnalité.

7) Y avait-il d'autres participants à l'examen ?

Les deux rapporteurs spécialisés de la Délégation ont souhaité réaliser quatre auditions pour approfondir leur réflexion. Ont ainsi été entendus la commission supérieure du service public des postes et des communications électroniques, des représentants de la direction de La Poste et deux syndicats (CGT-PTT et FO communication).

8) Avez-vous coordonné votre examen avec l'autre chambre parlementaire ?

Des contacts téléphoniques ont eu lieu entre les services administratifs des deux Délégations pour l'Union européenne. Toutefois, la Délégation du Sénat ayant désigné son rapporteur peu de temps avant l'examen du texte par la Délégation de l'Assemblée nationale, il n'a pas été possible de confronter les points de vue des différents rapporteurs.

9) La procédure utilisée pour cette proposition est-elle conforme à la procédure que votre parlement prévoit d'utiliser après l'entrée en vigueur du traité constitutionnel ?

La procédure suivie correspond effectivement à ce qui avait été envisagé dans le cadre de la mise en œuvre du contrôle institué par le projet de traité établissant une Constitution pour l'Europe.

Toutefois, l'expérience tirée du contrôle de la proposition de directive postale pourrait inciter à faire évoluer cette procédure. Il apparaît, en effet, qu'il est difficile de dissocier l'examen de la subsidiarité et de la proportionnalité de l'analyse du fond. Lors de la prochaine législature, il pourrait donc être envisagé de confier à un rapporteur intéressé par le sujet du texte le soin de procéder à l'examen de la subsidiarité et de la proportionnalité (et par conséquent de piloter l'élaboration de l'éventuel projet d'avis à transmettre à ce titre à la commission compétente au fond). Cet examen devrait se faire en liaison avec les deux rapporteurs spécialisés « subsidiarité et proportionnalité ». Ceux-ci auraient alors plutôt vocation à assurer un suivi et une veille permanents de l'application et du contrôle de subsidiarité et de proportionnalité. Ils pourraient dans ce sens établir chaque année (ou par semestre ?) un rapport de synthèse.

10) Avez-vous trouvé que le principe de subsidiarité a été violé ?

L'avis adopté par l'Assemblée nationale ne formule pas d'observation au regard du principe de subsidiarité dans la mesure, notamment, où chaque pays conserve la faculté d'organiser son propre service postal.

11) Avez-vous trouvé que le principe de proportionnalité a été violé ?

L'avis adopté par l'Assemblée nationale exprime des réserves au regard de la proportionnalité et demande à la Commission européenne :

« - de démontrer que la suppression du secteur réservé concernant les correspondances d'un poids inférieur à 50 grammes ne fragiliserait pas les opérateurs postaux assurant le service universel ;

- d'établir que les autres modes de financement mentionnés dans la proposition permettraient de maintenir un service de qualité et de proximité ;

- de justifier que les exemples de libéralisation anticipée du secteur postal sont probants, alors que les conditions géographiques et démographiques propres à chaque pays, ainsi que les interprétations différentes données de la définition du service universel font varier sensiblement le coût de ce service d'un Etat à l'autre ».

II. Constats

12) L'avis que vous avez émis était-il raisonné ?

La réponse à la question précédente fournit les indications sur ce point.

Une copie de l'avis de l'Assemblée nationale, ainsi que des comptes rendus des réunions de la Délégation pour l'Union européenne et de la commission des affaires économiques a été précédemment transmise au secrétariat de la COSAC.

13) Pensez-vous que la justification de la Commission, en ce qui concerne le principe de subsidiarité soit satisfaisante ?

L'Assemblée n'a pas soulevé de remarques sur ce point.

14) Pensez-vous que la justification de la Commission en ce qui concerne le principe de proportionnalité soit satisfaisante ?

L'avis adopté par l'Assemblée nationale met l'accent sur les insuffisances de la Commission en la matière (voir réponse 11).

15) Avez-vous rencontré des difficultés spécifiques lors de l'examen ?

La brièveté du délai d'examen fait que le serveur IPEX ne peut apporter des informations pertinentes que si chaque chambre parlementaire fournit les renseignements la concernant au plus vite et, s'agissant d'une procédure décidée par la COSAC et applicable dans l'ensemble des parlements, ne se limite pas à mentionner l'état de l'examen par un jeu de symboles.

AVIS DE L'ASSEMBLEE NATIONALE

**sur la proposition de directive du Parlement européen
et du Conseil modifiant la directive 97/67/CE en ce qui concerne
l'achèvement du marché intérieur des services postaux
de la Communauté
(COM [2006] 594 final)**

AVIS DE L'ASSEMBLEE NATIONALE

L'Assemblée nationale,

- considère que la proposition de directive n'appelle pas d'observation au regard du principe de subsidiarité, dans la mesure, notamment, où chaque pays conserve la faculté d'organiser son propre service postal ;

- demande à la Commission européenne d'apporter des réponses aux réserves qu'elle exprime au regard de la proportionnalité. En particulier, il lui est demandé :

. de démontrer que la suppression du secteur réservé concernant les correspondances d'un poids inférieur à 50 grammes ne fragiliserait pas les opérateurs postaux assurant le service universel ;

. d'établir que les autres modes de financement mentionnés dans la proposition permettraient de maintenir un service de qualité et de proximité ;

. de justifier que les exemples de libéralisation anticipée du secteur postal sont probants, alors que les conditions géographiques et démographiques propres à chaque pays, ainsi que les interprétations différentes données de la définition du service universel font varier sensiblement le coût de ce service d'un Etat à l'autre.

OPINION OF THE NATIONAL ASSEMBLY

on the proposal for a directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the final accomplishment of the internal market of Community postal services (COM [2006] 594 final)

The National Assembly,

- Considers that the proposal for a directive does not call for any remarks as regards the subsidiarity principle, insofar as, in particular, each country keeps the right to organise its own postal service;

- Calls on the European Commission to provide answers to the reservations it expresses as regards proportionality. In particular, it is asked to:

. Demonstrate that the suppression of the reserved area concerning mail weighing under 50 grammes would not weaken postal operators providing universal service;

. Establish that the other methods of financing mentioned in the proposal would allow a quality and proximity service to be kept;

. Justify that the examples of early liberalisation of the postal sector are convincing, whereas the geographic and demographic conditions specific to each country, as well as the various interpretations given to the definition of universal service, make the cost of this service vary considerably from one State to another.

France: Senat



R E P U B L I Q U E F R A N Ç A I S E

DELEGATION
POUR
L'UNION EUROPEENNE

Paris, le 5 décembre 2006

RESULTAT DU TEST DE SUBSIDIARITE ET PROPORTIONNALITE SUR LA TROISIEME DIRECTIVE POSTALE

1. Le test a été conduit par la délégation pour l'Union européenne. Aucun autre organe du Sénat n'a participé. (La délégation reflète la composition politique du Sénat, puisqu'elle est désignée en appliquant la représentation proportionnelle des groupes politiques ; par ailleurs, tous les membres de la délégation doivent être membres en même temps d'une des six commissions permanentes du Sénat ; celles-ci ont toutes au moins un représentant au sein de la délégation).

Le gouvernement a transmis une « fiche d'impact » analysant les conséquences de la proposition de directive sur la législation nationale.

Il n'y a pas eu de coordination avec l'autre chambre, mais une information réciproque.

2. Les débats de la délégation figurent à l'adresse suivante : <http://intranet.senat.fr/europe/r28112006.html#toc2>

3. Le résultat du test figure dans la fiche suivante :

**PROPOSITION DE DIRECTIVE MODIFIANT LA DIRECTIVE 97/67/CE
EN CE QUI CONCERNE L'ACHEVEMENT DU MARCHÉ INTERIEUR
DES SERVICES POSTAUX DE LA COMMUNAUTE
RAPPORT DE LA COMMISSION - ÉTUDE PROSPECTIVE CONCERNANT**

**L'IMPACT SUR LE SERVICE UNIVERSEL DE L'ACHEVEMENT
DU MARCHÉ INTERIEUR DES SERVICES POSTAUX EN 2009
DOCUMENT DE TRAVAIL ACCOMPAGNANT LA PROPOSITION DE DIRECTIVE MODIFIANT LA
DIRECTIVE 97/67/CE EN CE QUI CONCERNE L'ACHEVEMENT DU MARCHÉ INTERIEUR DES
SERVICES POSTAUX DE LA COMMUNAUTE (RESUME DE L'ANALYSE D'IMPACT)
COM (2006) 594 final, COM (2006) 596 final, SEC (2006) 1292 final**

Objet :

L'Union européenne s'est engagée, depuis 1989, dans une politique de libéralisation et d'harmonisation des services postaux. Cette démarche a été marquée par deux directives (celle de 1997 et celle de 2002), la proposition de directive de la Commission devant constituer la troisième et dernière étape de l'ouverture des services postaux.

Les deux premières directives ont établi un cadre réglementaire visant à concilier l'ouverture progressive à la concurrence et la prise en compte de la mission d'intérêt général fournie par les opérateurs postaux.

Pour cela, la réglementation européenne a agi dans une double direction :

– d'une part, elle garantit aux citoyens européens un « service universel » comprenant au moins une distribution et une levée de courrier par jour, cinq jours par semaine, en tout point du territoire de l'Union ;

– d'autre part, elle limite progressivement la portée du monopole des opérateurs nationaux. Ainsi, le champ du « secteur réservé », qui concernait les envois de moins de 350 grammes en 1997, n'a plus concerné que ceux de moins de 100 grammes après 2002, puis ceux de moins de 50 grammes depuis le premier janvier 2006.

La directive, telle que modifiée en 2002, retient l'échéance de 2009 pour une ouverture totale à la concurrence. Mais elle prévoit une « clause de rendez-vous », la Commission devant confirmer avant fin 2006 cette échéance et en préciser les modalités sur la base d'une étude prospective.

C'est là l'objet de la présente proposition de directive qui s'accompagne d'une étude d'impact, d'un rapport sur l'application de la directive précédente et d'une étude prospective. La proposition, qui ne comprend en définitive qu'un nombre relativement limité de modifications à la directive actuelle, s'articule principalement, au-delà de certaines mesures techniques, autour de trois points principaux.

Premièrement, elle supprime le « secteur réservé » et consacre l'ouverture du marché postal à la concurrence pour 2009, y compris pour les plis de moins de 50 grammes. On notera que plusieurs États, d'Europe du Nord principalement, ont d'ores et déjà libéralisé leur secteur postal ou sont sur le point de le faire : c'est le cas de l'Allemagne, du Royaume-Uni, des Pays-Bas, de la Suède ou du Danemark.

Deuxièmement, elle maintient les obligations qui incombent aux États membres d'assurer un service universel – dont le contenu n'est pas modifié – et permet aux États membres de maintenir des tarifs uniques pour les particuliers ou des raisons d'intérêt général (envoi de presse par exemple).

Troisièmement, elle détermine les possibilités offertes aux États membres pour assurer le financement des prestations de service universel dans ce nouveau contexte.

Jusqu'à présent, c'est en effet l'existence d'un « secteur réservé » qui permet bien souvent le financement du service universel par l'opérateur public. Demain, selon la Commission, les États membres auront alors à choisir entre différentes options qu'il serait d'ailleurs possible de combiner : aides d'État, passation de marchés publics, fonds de compensation, partage des coûts entre opérateurs. Cette liste n'est pas limitative, la proposition de directive se limitant à interdire le financement par le secteur réservé et à proscrire toute solution pouvant constituer une « distorsion disproportionnée du fonctionnement du marché ».

Ainsi, au gré des différentes options, il serait possible de maintenir un régime d'autorisation, au travers de marchés publics, en liant l'octroi de l'autorisation à une obligation de participation à un fonds de compensation ou au respect des obligations de service universel.

De son côté, le fonds de compensation, destiné à financer le coût net du service universel, pourrait être alimenté par des contributions budgétaires, des taxes sur l'utilisateur ou des contributions des différents opérateurs. A ce propos, je vous rappelle qu'en France, la loi postale du 20 mai 2005 a d'ores et déjà prévu le principe d'un tel fonds de compensation, destiné à assurer le financement du service universel dans l'hypothèse où la disparition du monopole ne le permettrait plus.

Pour sa part, le partage des coûts relèverait d'un mécanisme dit de « pay or play », exigeant de tous les opérateurs soit l'exercice du service universel (« play »), soit l'acquiescement d'une contribution (« pay »).

Motivation de la Commission au regard de la subsidiarité et de la proportionnalité :

La Commission ne fait guère d'effort pour justifier sa proposition au regard du principe de subsidiarité. Que ce soit dans l'exposé des motifs de la directive, ou dans ses considérants, elle se contente de formules « passe-partout ». Sans doute considère-t-elle qu'en l'occurrence, la légitimité d'une intervention communautaire est évidente. Nous en sommes à la troisième directive postale, et il s'agit de gérer le marché intérieur unique dans un domaine comportant une dimension transfrontalière.

La justification au regard du principe de proportionnalité est plus détaillée. La Commission souligne notamment que « *la proposition offre aux États membres plusieurs moyens possibles d'atteindre au mieux les objectifs proposés :*

– les méthodes de financement proposées à l'article 7 offrent aux États membres un large choix de solutions plutôt que d'en imposer une seule ;

– la question de l'accès au réseau est abordée dans le nouvel article 11 bis proposé, qui permet aux États membres d'évaluer la nécessité et l'étendue d'une réglementation concernant certains éléments de l'infrastructure ou des services postaux et de réglementer l'accès en aval aux parties « tri » et « distribution » du réseau ;

– il est proposé de supprimer le sixième tiret de l'article 12, qui impose le suivi des subventions croisées par le biais de règles sectorielles, et de laisser aux États membres le soin de fixer des règles concrètes en cette matière ;

– il n'est pas proposé de créer de nouveaux organismes pour coordonner les activités des autorités réglementaires nationales. »

Éléments d'appréciation au regard de la subsidiarité et de la proportionnalité :

C'est dans le document joint à la directive, intitulé « résumé de l'analyse d'impact », que l'on trouve un réel examen du problème de la subsidiarité. Dans ce document, la Commission se pose la question essentielle : un nouveau texte est-il nécessaire ? Que se passerait-il en l'absence d'une nouvelle directive ? Or, en l'occurrence, un nouveau texte paraît indispensable. En effet, la directive postale actuelle contient une clause de caducité : sa validité expire au 31 décembre 2008. En l'absence d'un nouveau texte, les services postaux rentreraient dans le droit commun de la libre prestation de services ; par exception, chaque État membre pourrait fixer les conditions d'un service universel sur son territoire, sous le contrôle de la Commission européenne. On se retrouverait ainsi dans une situation de grande insécurité juridique, et finalement c'est la Cour de justice qui serait amenée à trancher. Le résultat serait donc un cadre juridique moins stable, moins homogène, et vraisemblablement moins protecteur pour les services postaux. Du point de vue de la subsidiarité, la proposition de directive ne paraît donc pas critiquable.

Pour ce qui concerne la proportionnalité, le point paraît plus délicat. À première vue, la directive ne contraint pas les États membres plus que nécessaire, puisque, en particulier, elle leur laisse un large choix quant à la manière de financer le service universel. Cet argument serait convaincant si les formules qui restent autorisées constituaient des solutions crédibles pour le financement du service universel. Mais ce point n'est pas établi par la Commission. Or, on peut raisonnablement douter de la viabilité des modes de financement du service universel autres que l'existence d'un secteur réservé. S'il s'avérait que la directive, tout en maintenant l'objectif de préserver le service universel, n'autorise pas le seul moyen de financement réellement adapté à cette présentation, alors le principe de proportionnalité ne serait pas respecté. Il est donc nécessaire, pour garantir que le principe de proportionnalité est complètement respecté, que la Commission apporte la preuve que les différents modes de financement qui restent seuls autorisés permettent effectivement de financer le service universel.

Observations adoptées par la délégation :

La délégation pour l'Union européenne estime que la proposition de directive sur l'achèvement du marché intérieur des services postaux respecte le principe de subsidiarité, mais qu'elle ne satisfera au principe de proportionnalité que dans la mesure où elle permettra de manière effective de garantir un financement approprié du service universel.

La délégation invite en conséquence la Commission à apporter la démonstration qu'un tel financement pourra être assuré dans le cadre des formules autorisées par la proposition de directive.

Germany: Bundesrat

Report from national parliaments: subsidiarity and proportionality check

Bundesrat/Germany

Procedure:

- 1. Which committees were involved in examining the Commission proposal for a regulation for the full accomplishment of the Internal Market for Postal Services and what role did each committee play?**

At the Bundesrat the Committee on Questions of the European Union is the competent committee for the deliberation of EU legislative proposals and other EU documents. The EU Committee deliberates on the basis of recommendations from sectoral committees. The sectoral committees that were involved in the subsidiarity check of the above mentioned regulation are the Committee on Legal Affairs and the Committee on Economic Affairs.

- 2. Was your plenary involved?**

Following deliberation in the committees, the Bundesrat plenary adopted an opinion on the above mentioned proposal in its meeting on 15 December 2006.

- 3. Were any other administrative services of your parliament involved in the process?**

No.

- 4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?**

After the Bundesrat secretariat had received the legislative proposal in German language from the German government on 2 November 2006 it was distributed to the committee secretariats. In addition to the EU Committee the Secretary General of the Bundesrat declared on behalf of the President of the Bundesrat two sectoral committees responsible for the deliberation of the proposal (cp. question 1).

The Committee on Economic Affairs deliberated the proposal in its session on 27 November 2006; in the Committee on Legal Affairs the proposal was deliberated on 29 November 2006. The Committee on Questions of the European Union adopted a recommendation to the plenary in its meeting on 1 December 2006 based on the recommendations of the two sectoral committees involved.

Finally, the plenary voted an opinion on the proposal in its session on 15 December 2006 that will be submitted to the Federal Government.

- 5. Did your government provide any information as part of the scrutiny process?**

The Federal Government explained its position to several aspects of the proposal in the deliberations of the committees.

6. Did your national parliament consult regional parliaments with legislative powers?

The Bundesrat did not directly involve regional parliaments. It lies in the responsibility of the government of each Land to consult its regional parliament.

7. Were any other external actors involved in the examination?

No.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

No.

However, in case of the entering into force of the Constitutional Treaty the Bundesrat will, if there are problems with the six week deadline, convoke a chamber for urgent EU matters, the so called Chamber of European Affairs, whose decisions have the same effect as decisions of the plenary. The Chamber of European Affairs consists of 16 members, one member from each Land. Decisions of the Chamber of European Affairs can also be taken in a written procedure.

Findings:

10. Did you find any breach on the subsidiarity principle?

No, except for Art. 22 I, III of the proposal.

The Bundesrat doubts the existence of a legal base as well as necessity with regard to the obligation of Member States to ensure consultation and cooperation between regulatory authorities for the postal sector and national authorities entrusted with the implementation of competition law and consumer law, as stipulated in Art. 22 I of the proposal. Same applies to Art. 22 III of the proposal according to which in the case of an appeal against the decision of the national regulatory authority the decision shall stand until the appeal body has taken its decision.

11. Did you find any breach on the proportionality principle?

No.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Yes. The objectives of the proposal cannot be accomplished by the member states alone.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes.

15. Did you encounter any specific difficulties during the examination?

No.

16. Any other comments?

Germany: Bundestag

Answers to the questions put forward in the Aide-mémoire for the subsidiarity and proportionality check on the Commission proposal concerning Postal Services

Procedure:

14. Which committees were involved in examining the Commission proposal for a Directive on Postal Services and what role did each committee play?

The committees involved within the German Bundestag were the Committee for Economics and Technology as the committee responsible, the Committee for Food, Agriculture and Consumer Protection, the Internal Affairs Committee and the Committee on the Affairs of the European Union in an advisory capacity.

15. Was your plenary involved?

No. According to the Bundestag's procedure for the scrutiny of EU documents, the plenary is only seized if the Committee responsible issues a recommendation to that effect. This was not the case with the proposed directive.

16. Were any other administrative services of your parliament involved in the process?

No.

17. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

The German Federal Government has formally transmitted the draft directive to the German Bundestag. The proposal was referred to the Committee for Economics and Technology as the committee responsible and the Committee for Food, Agriculture and Consumer Protection, the Internal Affairs Committee as well as the Committee on the Affairs of the European Union in an advisory capacity. The Committee for Economics and Technology closed the deliberations on 17 January, 2006, raising no objections with regard to the principles of subsidiarity and proportionality. The EU Affairs Committee adopted an advisory opinion, but equally raised no objections with regard to the said principles. Consequently, according to the Bundestag's procedure for EU documents, the parliamentary scrutiny procedure was closed without seizing the plenary.

18. Did your government provide any information as part of the scrutiny process?

The German government has submitted a report (so-called Ressortbericht), which contained relevant information.

19. Did your national parliament consult regional parliaments with legislative powers?

No.

20. Were any other external actors involved in the examination?

No.

21. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

There was no particular coordination with the Bundesrat.

22. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

No, the current procedure for the scrutiny of EU documents was used.

Findings:

23. Did you find any breach on the subsidiarity principle?

No.

24. Did you find any breach on the proportionality principle?

No.

25. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

26. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

No special observations.

27. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

No special observations.

28. Did you encounter any specific difficulties during the examination?

On the basis of the current procedure for the parliamentary scrutiny of EU documents, it is very difficult for the Bundestag to respect the six weeks time frame.

29. Any other comments?

No.

Greece

2nd Subsidiarity and proportionality check

Report from the Hellenic Parliament.

Procedures:

The Committee for European Affairs of the Hellenic Parliament and the competent Standing Committee for Social Affairs were convened in a joint meeting, on January 12, 2007*, in order to examine the Proposal for a Directive of the European Parliament and the Council amending directive 97/67 EC concerning the final accomplishment of the Internal Market of Community Postal Services.

The debate was introduced by rapporteurs who were designated by each of the political groups. The meeting was also attended by many MEPs, as well as by external actors (representatives of the Ministry for Transports and Communications and representatives of the state owned “Hellenic Post” company).

The Ministry had also provided explanatory memoranda, (from the beginning of December) that were submitted to the rapporteurs, along with the translated proposal, the summary of impact assessment and the implementation report of the postal directive 97/67.

The above mentioned procedure will most probably continue to be applied, when the Constitutional Treaty enters into force.

Findings

According to the debate, the proposal complies with the subsidiarity principle, and the Commission’s justification was considered convincing.

However the rapporteurs voiced doubts concerning the compliance of the proposal with the principle of proportionality. Specifically, the majority of the MPs from all parties argued that the maintenance of the universal service and its quality –which is one of the objectives of the proposal- are not ensured, by the proposed financing means that would replace the actual reserved area for mail under 50 grams.

A reasoned opinion has not been drafted for the purpose of Subsidiarity and Proportionality Check, as the time frame of six weeks was over by the time of the debate. The members of the two Committees plan, however, to endorse an opinion addressed to the Government, as they consider the issue very significant.

* The meeting had originally been scheduled for the 8th of December but had to be

Hungary

Subsidiarity and proportionality check in the Hungarian National Assembly

On the Commission proposal for the full accomplishment of the Internal Market for Postal Services

Procedures:

1. Which committees were involved in examining the Commission proposal for the full accomplishment of the Internal Market for Postal Services?

Generally it is the Committee on European Affairs which is entitled to monitor the application of the principle of subsidiarity in the Hungarian National Assembly according to Article 9.§ of the Act LIII of 2004 on the cooperation of the Parliament and the Government in European Union affairs. No other Committees were involved in the current examination.

2. Was your plenary involved?

As no breach of subsidiarity was found by the Committee on European Affairs, therefore the plenary was not involved in the procedure. By virtue of the Standing Orders of the National Assembly, the plenary should be involved only if there is a need of drawing up a reasoned opinion.

3. Were any other administrative services of your parliament involved in the process?

No.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

Upon the publication of the Commission proposal, the Secretariat of the Committee on European Affairs prepared an analysis of the legislative document. This background material facilitated the political debate in the Committee, and was necessary given the fact that the Hungarian language version of the text was not available until the day of the Committee meeting. The committee members and the fraction experts also looked into the matter thoroughly.

At its meeting on 15 November the Committee on European Affairs undertook a comprehensive examination of the proposal for the full accomplishment of the Internal Market for Postal Services. After the discussion, the Committee decided to launch a scrutiny procedure (see below, pt. 16.).

As no breach of the subsidiarity principle was found the procedure came to end at this point.

5. Did your government provide any information as part of the scrutiny process?

The Ministry of Economy and Transport provided background information and its written opinion on the draft proposal, although these materials concentrated on the policy issues

of the sector and have not addressed the subsidiarity principle. Furthermore, the Deputy Minister held a briefing about the Commission's proposal in a Committee meeting, but has not expressed any opinion regarding subsidiarity.

6. Did your national parliament consult regional parliaments with legislative powers?

No, in Hungary there are no regional parliaments

7. Were any other external actors involved in the examination?

No.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

The Hungarian National Assembly is a unicameral parliament.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Yes, the procedure used was in accordance with the Act LIII of 2004 on the cooperation of the Parliament and the Government in European Union affairs and the Standing Orders of the National Assembly, both of which contain the rules for the procedure of subsidiarity check.

Findings:

10. Did you find any breach on the subsidiarity principle?

No.

The Committee considered the existence of the following elements in relation to the proposal:

- a meaningful connection between the proposed actions and Community objectives;*
- the Community/cross-border scope of the problem;*
- the "added value" of legislation on a European level/the inadequacy of purely national legislation.*

The Committee has found all of these elements to be present. In addition, the Committee took into account the fact that the proposal serves as an amendment of existing EU legislation.

11. Did you find any breach on the proportionality principle?

No. Since the proposal mainly concentrates on principles and provides the member states with a wide range of policy options, the legal means to be applied on the community level cannot be considered as intrusive. The individual elements of the proposal (such as the abolition of the reserved area) have not been found to be disproportionate in a legal sense either. As to their practicability, the Committee will form its opinion in the course of a scrutiny procedure (see below, pt. 16.).

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No, in lack of finding a breach of the Treaty.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

The relevant part of the Explanatory Memorandum (2.1.1.) was found to be inadequate. In effect, the justification practically consisted of a statement that the proposal is not in breach of the subsidiarity principle. A substantive statement of reasons is required in this respect, containing at least a short discussion of the elements listed above, under pt. 10. It has to be added, that the background policy papers attached to the draft (COM (2006) 595 and 596) have been helpful in an examination of the draft from the point of view of subsidiarity.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

The relevant part of the Explanatory Memorandum(2.1.2.) is not extensive, but touches upon the most important questions in this field, and may consequently be regarded as satisfactory. A short discussion on the chosen legal instrument (directive) would have been welcome.

15. Did you encounter any specific difficulties during the examination?

No specific difficulties have been encountered, although a Hungarian-language version of the proposal would have been useful, had it been available at the time of the Committee meeting.

16. Any other comments?

As it has been pointed out, no breach of the subsidiarity or proportionality principles has been found. On the other hand, in light of the importance of the draft, especially its potential significance for the organisation of postal services in the Republic of Hungary, the Committee n European Affairs of the Hungarian National Assembly decided to launch a scrutiny procedure in relation to the draft. The Committee has found that the questions which arise in relation to the draft are political, rather than legal in nature (i.e. apply to the potential effects of the proposal, rather than a breach of a Treaty Article) and the scrutiny process is consequently a more suitable framework for debate and action.

postponed due to circumstantial reasons.

Ireland

Contribution to the subsidiarity and proportionality test in the context of COSAC in relation to COM(2006)594: A Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services.

Proposal's Background:

When this proposal was initially considered by the EU Scrutiny Committee of the Houses of the Oireachtas (that brings together members of both chambers of the national parliament of Ireland) in November 2006, and referred for further sectoral scrutiny, it was observed that it had the potential to have significant implications for the future of postal services in Ireland and across the rest of the European Union.

The Commission sets out in its memorandum to the proposal that the gradual and controlled opening of the postal services sector has been a goal within the EU since 1994. Under the existing legislative framework for postal services in the European Union the Commission was required to submit by 31st December 2006 a report to the European Parliament and Council on the desirability of completing the process by 2009.

The significance of this sector is underlined in the related Commission report to the two Institutions. In 2004, postal services in the EU earned about €90 billion or 0.9% of the GDP. Postal services are labour intensive and are also one of the principal public employers in Europe. Employment in the sector is fairly stable with 1.71 million persons employed in 2004 by universal service providers. However, 5 million jobs are related to postal activities, i.e. directly dependent on, closely related to or induced by the postal sector. The report goes on to note that postal services are an essential element for ensuring social and territorial cohesion and contribute to competitiveness.

The Commission's report then indicates that it believes that good progress has been made in making the postal services more competitive. In particular, the report sets out the view that there has been a 'substantial and measurable improvement of the quality of postal services, the establishment of a harmonised minimum level of universal service and the introduction of a gradual and controlled opening of the postal market to competition.

The report also notes that a number of Member States either have fully opened up to competition their postal services, or are in the process of doing so. This will, according to the Commission, result in 60% of the EU market being fully open to competition. The report concludes that the target date of 2009 for EU-wide fully competitive markets in postal services should remain unchanged.

The arguments advanced by the Commission for opening the market to competition include reduced costs to businesses and employment creation. The obligation to provide a universal service would also remain under the proposal, following from the report.

Once implemented, the Department of Communications, Marine and Natural Resources⁹ has confirmed, the proposed measure will result in *An Post*¹⁰ no longer having a legal monopoly on certain postal services. The proposed measure also provides a number of options for Member States to fund the universal service obligation.

Subsidiarity Background:

The Commission argues that the aims of the proposal, to complete the internal postal services market and safeguard a common-level of services, can not be achieved through the Member States acting alone. It then carries some aspects of subsidiarity into its contentions that the proposed measure is in conformity with the principle of proportionality. For example it sets out that in relation to methods of financing universal service obligations that Member States would have a large choice of options. It is also not proposed to create new bodies to co-ordinate the activities of national regulatory authorities.

The Department highlights the Commission's conclusion that 'Ireland is above average in terms of readiness for full marketing opening'. It also tends toward agreeing with the Commission that a Community-wide high-level framework is the most appropriate mechanism to achieve such an objective. The Department does however underline that it continues to consult on the proposal with interested parties.

On the basis of the flexibility the Department sees built into the proposal in relation to the funding of the universal service obligation and market access, as well as the envisaged phased entry of the measures contained in the proposal, the Department is of the view that the proposed measure is in conformity with the principles of subsidiarity and proportionality.

Based on the Commission's line of thinking that the adoption of such a proposal at the Community level is required to achieve the objectives of the proposal and that the Department is satisfied with the policy flexibility provided in the proposal, it would appear that the proposed measure is in conformity with the principle of subsidiarity. It is more difficult at this stage to come to a similar conclusion in relation to the proposal's conformity with the principle of proportionality. In particular, a definitive conclusion in this regard would require the conclusions of the Department's consultation process. These would also assist in the detailed scrutiny that would be carried out by the sectoral committee.

Conclusion:

It was therefore agreed by the EU Scrutiny Committee at its meeting on 24 January in respect of the subsidiarity and proportionality test in the context of the COSAC exercise that the proposed measure is in conformity with the principle of subsidiarity. While it would appear at this stage that it is also proportionate, it was, in addition, agreed that further detailed consideration at

⁹ The lead government department for the Proposal

¹⁰ The State-owned provider of postal services in Ireland

the national level will be required before it would be possible to fully determine whether the proposal is proportionate.

Annex: Responses to Presidency Questionnaire

Procedure

1. Which committees were involved in examining the Commission proposal for a for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services.

The Joint Committee on European Affairs, EU Scrutiny Committee; referred for further scrutiny to the joint sectoral committee (Joint Committee on Communications, Marine and Natural Resources).

2. Was your plenary involved?

No. The matter was considered within committees of the Houses of the Oireachtas.

3. Were any other administrative services of your parliament involved in the process?

Yes. Legal advice was available on the principles concerned.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

See attached note.

5. Did your government provide any information as part of the scrutiny process?

Yes. The government department with lead responsibility for the proposal provided its view on whether the proposal complied with the principles of subsidiarity and proportionality. The Department also provided information on its proposed consultations with interested parties in relation to the proposed measure.

6. Did your national parliament consult regional parliaments with legislative powers?

N/A

7. Were any other external actors involved in the examination?

Notification of the consideration of the matter was also posted on the Houses of the Oireachtas web-site.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

The parliamentary committees concerned are joint committees that bring together members from both Houses of the Oireachtas.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

The procedure used was that established under the current legal framework.

Findings

10. Did you find any breach on the subsidiarity principle?

No. See attached note for rationale.

11. Did you find any breach on the proportionality principle?

No definitive decision was possible. See attached note for rationale.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No. See attached note.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

See attached note

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

A definitive conclusion in this regard would require the conclusions of the Department's consultation with interested parties.

15. Did you encounter any specific difficulties during the examination?

No.

16. Any other comments?

Latvia

Opinion of the Saeima European Affairs Committee regarding the observation of the principles of subsidiarity and proportionality in the 18 October 2006 proposal for the final version of directive COM(2006) 594 of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services

Procedures:

1. Which committees were involved in examining the proposal and what role did each committee play?

The Saeima European Affairs Committee considered the proposal for the directive COM(2006) 594 of the European Parliament and of the Council with regard to its compliance with the principles of subsidiarity and proportionality. In view of the specific nature of the issue and the six-week time limit, other Saeima committees were not involved in the scrutiny process.

2. Was your plenary involved?

The given issue has not been on the agenda of Saeima plenary meetings.

3. Were any other administrative services of your parliament involved in the process?

Other administrative services of the Saeima were not involved in the scrutiny process.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

The Latvian translation of the proposal for the directive COM(2006) 594 of the European Parliament and of the Council was received only on 6 November 2006. On 10 November 2006, the Saeima European Affairs Committee transmitted the text to the Latvian Ministry of Transport with a request to assess the compatibility of the directive with the principles of subsidiarity and proportionality.

On 8 December 2006, the Saeima European Affairs Committee received the opinion of the Latvian Ministry for Transport regarding the observation of the principles of subsidiarity and proportionality in the proposal for the final version of directive COM(2006) 594 of the European Parliament and of the Council, and on 20 December the issue was examined by the Saeima European Affairs Committee.

5. Did your government provide any information as part of the scrutiny process?

On the part of the Latvian government, only the Ministry for Transport was involved in the scrutiny process.

6. Did your national parliament consult regional parliaments with legislative powers?

Since the proposal for the directive concerning the full accomplishment of the internal market of Community postal services does not lie within the competence of Latvian local governments, local governments were not consulted on this issue.

7. Were any other external actors involved in the examination?

In view of the specific nature of the issue, other external actors were not involved in the examination.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Latvia has a unicameral parliament.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

So far the Latvian parliament has not approved the review procedure which the parliament could use once the Constitutional Treaty enters into force. The subsidiarity and proportionality check was conducted by testing the procedure which the parliament could use in the future.

Findings:

10. Did you find any breach on the subsidiarity principle?

No breaches of the subsidiarity principle were found.

11. Did you find any breach on the proportionality principle?

In general no breaches of the proportionality principle were found. But in particular, Article 11a raised large debates. Article 11a determine, that "Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions, Member States shall ensure that transparent and non-discriminatory access conditions are available to the following elements of postal infrastructure or services: postcode system, address database, post office boxes, collection and delivery

boxes, information on change of address, re-direction service, return to sender service". Members of the Saeima European Affairs Committee noted that issue of access to address databases should be viewed in the context of personal data protection and confidentiality of information. Moreover, the project does not clearly define the term "address databases", as well as the principles of database creation and operation. Therefore, the conditions of access to mail services should be defined precisely during the discussion of the directive.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

N/A.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Yes.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes.

15. Did you encounter any specific difficulties during the examination?

Taking into consideration the fact that recently the Saeima European Affairs Committee was preoccupied with parliamentary elections in Latvia, it could not consult other Saeima committees and administrative services, and could not provide within six weeks its opinion regarding the proposal for the final version of directive COM(2006) 594 of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services.

16. Any other comments?

No comments.

Lithuania

REPORT TO COSAC

BY THE COMMITTEE ON EUROPEAN AFFAIRS OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA

FOR THE SUBSIDIARITY AND PROPORTIONALITY CHECK ON THE COMMISSION PROPOSAL FOR THE FULL ACCOMPLISHMENT OF THE INTERNAL MARKET FOR POSTAL SERVICES

Procedures:

1. Which committees were involved in examining the Commission proposal for a full accomplishment of Internal Market for Postal Services and what role did each committee play?

Three parliamentary committees were involved: the Committee on European Affairs, the Committee on Economics and the Committee of the Development of Information Society. The Committee on Economics and the Committee on Development and Information Society submitted its expert conclusion to the Committee on European Affairs, which took the final decision.

2. Was your plenary involved?

No.

3. Were any other administrative services of your parliament involved in the process?

Yes. The Law Department of the Office of the Seimas submitted an opinion on the compliance of the Commission's proposals with the principle of subsidiarity.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

15 November 2006 – The Committee on European Affairs decided to ask the conclusions of the two specialized committees of the Seimas (the Committee on Economics and the Committee of the Developments of Information

Society). Two members of the Committee on European Affairs were nominated as reporters.

29 November 2006 – The Law Department of the Office of the Seimas issued its opinion. No breach of the principle of subsidiarity was found.

29 November 2006 – The European Law Department under the Ministry of Justice submitted its opinion to the Committee on European Affairs. No breach of the principle of subsidiarity was found.

12 December 2006 – The Committee on Economics and the Committee of the Development of Information Society held a meeting, heard the opinion of the AB “Lietuvos paštas” (Stock Company Lithuanian Post) and issued its conclusion. Two Committees decided that there is no possible breach of the principles of subsidiarity and proportionality.

6 December 2006 – The Committee on European Affairs debated the issue at its meeting. Representatives of the Ministry of Transport and Communications of the Republic of Lithuania submitted its opinion to the Committee on European Affairs. The Committee heard the conclusion of the Committee on Economy and the opinions of the Ministry of Transport and Communications, the European Law Department under the Ministry of Justice and prominent European law experts. No breach of the principle of subsidiarity was found.

5. Did your government provide any information as part of the scrutiny process?

Yes. The Ministry of Transport and Communications of the Republic of Lithuania was entrusted with drafting the Governments’ opinion. The Committee on European Affairs also received the opinion of the European Law Department under the Ministry of Justice.

6. Did your national parliament consult regional parliaments with legislative powers?

No.

7. Were any other external actors involved in the examination?

Yes. The Committee on Economics heard the opinion of the AB “Lietuvos paštas” (Stock Company - Lithuanian Post). The Committee on European

Affairs also heard prominent Lithuanian lawyers, experts on European Law.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No. The Seimas of the Republic of Lithuania is a unicameral parliament.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

On 13 November 2004 the Seimas passed amendments to the Statute of the Seimas of the Republic of Lithuania (i.e. Rules of Procedure) setting forth a procedure for the examination of the proposals to adopt EU legal acts with regard to their compliance with the principle of subsidiarity. The amendments are already in force and they are in full conformity with the provisions governing the application of the principle of subsidiarity under the Treaty Establishing a Constitution for Europe.

Findings:

10. Did you find any breach on the subsidiarity principle?

No.

11. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

12. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Not fully. We would like to draw your attention to the fact that the explanatory note from the Commission does not clearly state the how exactly the liberalisation of the postal services market, i.e. the abolition of the reserved postal services area, will add up to the smooth functioning of the internal market.

13. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes.

14. Did you encounter any specific difficulties during the examination?

No.

15. Any other comments?

We really appreciate a launching of the IPEX website which helps us with providing a platform for the electronic exchange of information between EU National Parliaments.

Luxembourg

Avis de la Commission de la Fonction publique et de la Réforme administrative, des Media et des Communications

(19 décembre 2006)

Du point de vue procédural, il est à noter que la Conférence des Présidents du Parlement luxembourgeois avait, dans un premier temps, saisi la Commission de l'Economie, de l'Energie, des Postes et des Sports. Celle-ci s'étant déclarée incompétente, c'est finalement la Commission de la Fonction publique et de la Réforme administrative, des Media et des Communications qui s'est chargée de l'examen de la proposition de directive du Parlement européen et du Conseil modifiant la directive 97/67/CE en ce qui concerne l'achèvement du marché intérieur des services postaux de la Communauté et de la rédaction du présent avis.

Il est par ailleurs précisé que l'Assemblée plénière de la Chambre des Députés luxembourgeoise n'a pas participé aux débats concernant cet examen. Par contre, le Greffe de la Chambre des Députés, à savoir : le secrétariat de la commission parlementaire, le secrétariat général de la Chambre des Députés, ainsi que le service des Relations internationales ont participé au processus.

Au cours des débats afférents à l'examen de ce texte, la Commission de la Fonction publique et de la Réforme administrative, des Media et des Communications a procédé à un échange de vues avec le Ministre délégué aux Communications.

Etant donné que, dans le cas du Grand-Duché il n'y avait pas lieu de consulter de quelconques parlements régionaux détenant des pouvoirs législatifs ni de procéder à une coordination avec une autre chambre parlementaire, la Commission de la Fonction publique et de la Réforme administrative, des Media et des Communications a estimé que la procédure utilisée pour ce projet était conforme à la procédure que le Parlement luxembourgeois prévoit d'adopter après l'entrée en vigueur du Traité Constitutionnel.

L'appréciation au regard de la subsidiarité

Pour ce qui concerne la subsidiarité, la Commission de la Fonction publique, de la Réforme administrative, des Media et des Communications du Parlement luxembourgeois note que la Commission européenne fait peu d'efforts pour justifier sa proposition au regard de ce principe, et ceci ni dans l'exposé des motifs de la proposition de directive, ni dans ses considérants, où elle se contente de formuler des généralités. Sans doute la Commission européenne considère-t-elle que la légitimité d'une intervention communautaire est évidente, et ceci pour deux raisons : d'une part, il s'agit là de la troisième directive postale et, d'autre part, il s'agit de gérer le marché intérieur unique dans un domaine comportant une dimension transfrontalière.

La Commission parlementaire luxembourgeoise constate qu'un nouveau texte est nécessaire. En effet, la directive postale actuelle contient une clause de caducité : sa validité expire au 31 décembre 2008. En l'absence d'une nouvelle directive, les services postaux rentreraient dans le droit commun de la libre prestation de services ; par exception, chaque État membre pourrait fixer les conditions d'un service universel sur son territoire, sous le contrôle de la Commission européenne. On se retrouverait ainsi dans une situation de grande insécurité juridique, moins stable et moins homogène.

La Commission de la Fonction publique, de la Réforme administrative, des Media et des Communications du Parlement luxembourgeois estime que le principe de subsidiarité est violé : en effet, eu égard à l'exiguïté du territoire du Grand-Duché, elle est d'avis que l'un des objectifs visés par la proposition de directive, à savoir le maintien du service universel, peut être atteint de manière plus efficace au niveau national. Elle note, à cet égard, que le rapport de PriceWaterHouseCoopers « *The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009* », rapport à la base de la proposition de la Commission européenne, souligne la spécificité du marché postal luxembourgeois et prédit au Luxembourg de grands problèmes, à la suite d'une libéralisation totale du marché. La commission parlementaire regrette que la Commission n'ait pas pris en considération ces remarques.

Pour finir, la commission parlementaire exprime ses doutes quant au financement du service universel, et donc à sa sauvegarde, et se demande pour quelles raisons les services réservés du cadre actuel devraient être annulés, même dans le cas d'une libéralisation totale.

L'appréciation au regard de la proportionnalité

Pour ce qui est de la proportionnalité, la Commission de la Fonction publique, de la Réforme administrative, des Media et des Communications du Parlement luxembourgeois est d'avis, qu'à première vue, la directive respecte ce principe : elle ne contraint pas les États membres outre mesure, puisqu'elle leur laisse un large choix quant à la manière de financer le service universel.

Cependant, la commission parlementaire luxembourgeoise, tout en rappelant que le principe de proportionnalité suppose que les mesures proposées sont adaptées aux objectifs visés, estime que la liberté laissée aux États membres n'est pas suffisante : en supprimant la possibilité de financer le service universel par l'existence d'un secteur réservé, la proposition de directive excède le nécessaire pour atteindre les objectifs poursuivis.

Le souci principal des membres de la commission parlementaire porte sur la crédibilité, l'efficacité et la transparence des différents modes de financement du service universel qui sont autorisés par le texte. Ils craignent en effet que les procédures nécessaires à mettre en œuvre pour ces nouveaux modes de financement ne génèrent plus de bureaucratie que l'existence d'un secteur réservé. Si c'est le cas, il faudra que la proposition de directive soit revue sur le fond.

La Commission de la Fonction publique, de la Réforme administrative, des Media et des Communications du Parlement luxembourgeois donne à considérer que, pour financer le service universel, il n'y a aujourd'hui pas d'autre formule plus crédible, plus adaptée et moins coûteuse que le maintien du secteur réservé et que les solutions alternatives proposées ne sont pas suffisantes. Elle est d'avis qu'il ne sert à rien de permettre aux États membres de maintenir un service universel si,

parallèlement, on leur interdit de maintenir le secteur réservé, qui est le moyen le plus sûr de le financer. Elle demande donc que l'on puisse maintenir le secteur réservé aussi longtemps qu'une solution de rechange valable pour le financement du service universel ne sera pas apportée.

En conclusion, la commission parlementaire luxembourgeoise estime que la proposition de directive sur l'achèvement du marché intérieur des services postaux ne satisfera au principe de proportionnalité que dans la mesure où elle permettra de manière effective de garantir un financement approprié du service universel. Elle invite en conséquence la Commission européenne à démontrer qu'un tel financement pourra être assuré dans le cadre des formules autorisées par la proposition de directive.

The Netherlands

REPORT TO THE COSAC-SECRETARIAT

THE SCRUTINY PROCEDURE OF COM(2006) 594 fin

BY

**THE SENATE AND THE HOUSE OF
REPRESENTATIVES**

OF THE KINGDOM OF THE NETHERLANDS

11 December 2006

Staff of the TCS:

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Procedures:

1. Which committees were involved in examining the Commission proposal COM(2006) 594 final?
 - Temporary committee on subsidiarity (a joint committee of both the Senate and the House of Representatives) (short TCS)
 - Standing committee on Economic Affairs of the Senate
 - The standing committee on Economic Affairs of the House of Representatives was informed, but could not publish an advise due to elections recess.
2. Was your plenary involved?

Yes, both the plenary of the Senate and the plenary of the House of Representatives were involved
3. Were any other administrative services of your parliament involved in the process?

Yes, staff of the supporting committees
4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

See Annex I
5. Did your government provide any information as part of the scrutiny process?

Yes, on 15 November 2006 the Dutch government sent a scrutiny document of COM(2006) 594, a so called BNC-fiche.
6. Did your national parliament consult regional parliaments with legislative powers?

Not applicable
7. Were any other external actors involved in the examination?

No, but a notification of the procedure was published on the website to generate responses of civil society
8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Yes, the Temporary committee on subsidiarity is especially installed to coordinate and to tune the subsidiarity check in both chambers. The committee's ultimate goal is that both chambers of Parliament express the same views as regards to whether the Commission proposal complies with the principles of subsidiarity and proportionality. In case of divergence of views between the committees of both chambers, the TCS mediates in order to reach consensus.
9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Yes

Findings:

10. Did you find any breach on the subsidiarity principle?

No

11. Did you find any breach on the proportionality principle?

No

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

Although both chambers did not find any breach on the principles of subsidiarity and proportionality, a reasoned opinion concerning the check on subsidiarity and proportionality of COM(2006) 594 final was sent to the Dutch government. The reasoned opinion is attached in Annex II

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Yes

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes. As regards the principle of proportionality, both Chambers note that by taking the proposed measures the European Commission is seeking to strike a balance in order to achieve both aims of the proposed Directive simultaneously, namely completion of the internal market in postal services and guaranteeing a universal postal service. In the negotiations on the measures in the proposed Directive, the balance between the two objectives and the resulting measures should be maintained. To this end the two Chambers will closely monitor the negotiations on this proposed Directive at European level and, if desired, consult with the Dutch Government on the chosen approach and the course of the negotiating process. They also intend to involve the present proposal for a Directive closely in the parliamentary consideration of the bill for the full liberalisation of the postal market and the guarantee of the universal postal service (Postal Act 20..., Parliamentary Papers 30536).

15. Did you encounter any specific difficulties during the examination?

The proposal was published during the elections recess of the House of Representatives of the States-General. Therefore there was not a separate advice of the standing committee on Economic Affairs of the House of Representatives. They were however consulted and the final advice was put the vote in both chambers of the States General.

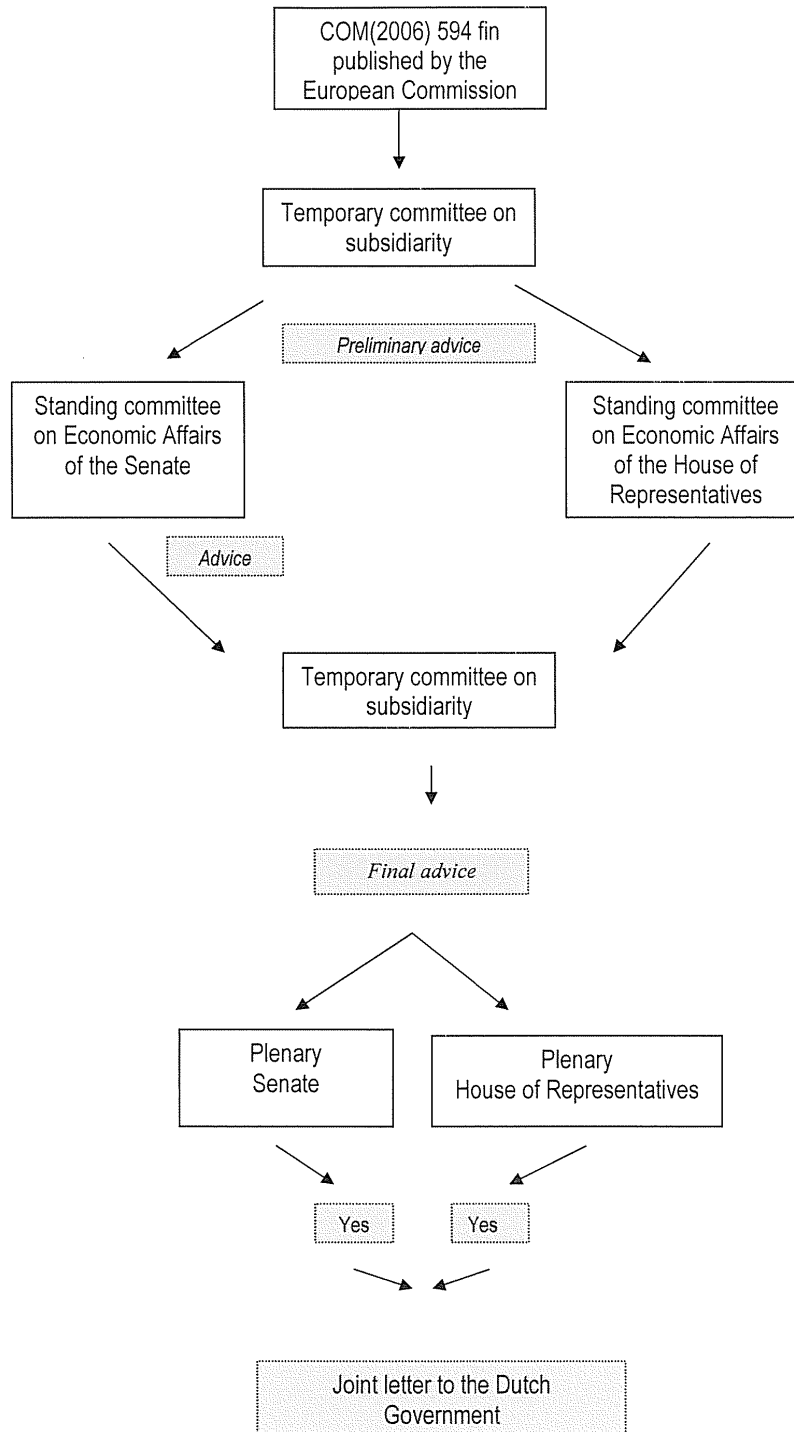
16. Any other comments?

Yes, during the scrutiny procedure we checked the IPEX-website several times. Only a few National Parliaments provided information on the progress in their scrutiny procedure. We consulted the point of view of the House of Commons and the House of Lords in the UK. At their request, we provided our French colleague of the Assemblée Nationale with the preliminary advice of the standing committee on Economic Affairs of the Senate. We sent the Austrian Parliament our final opinion on COM(2006) 594 final.

It goes without saying that the information exchange via IPEX-website is of the utmost importance.

ANNEX I

PROCEDURE SCRUTINY ON SUBSIDIARITY AND PROPORTIONALITY



ANNEX II

Final Opinion

Conclusion

Both Chambers of the States General consider that the Community is competent to take the measures proposed in the amended Directive. They also conclude that what is proposed complies with the principle of subsidiarity. As regards the principle of proportionality, both Chambers note that by taking the proposed measures the European Commission is seeking to strike a balance in order to achieve both aims of the proposed Directive simultaneously, namely completion of the internal market in postal services and guaranteeing a universal postal service. In the negotiations on the measures in the proposed Directive, the balance between the two objectives and the resulting measures should be maintained. To this end the two Chambers will closely monitor the negotiations on this proposed Directive at European level and, if desired, consult with the Dutch Government on the chosen approach and the course of the negotiating process. They also intend to involve the present proposal for a Directive closely in the parliamentary consideration of the bill for the full liberalisation of the postal market and the guarantee of the universal postal service (Postal Act 20..., Parliamentary Papers 30536). The above-mentioned points are briefly explained below.

Competence

Both Chambers of the States General note that the Community is competent under Articles 47 (2), 55 and 95 of the EC Treaty to take the proposed measures for the completion of the internal market for postal services.

They also note that the Directive's recitals refer to Articles 2 and 16 of the EC Treaty. Article 2 of the EC Treaty sets out the objectives of the Community and the means by which they are to be achieved. Article 16 of the EC Treaty provides that by establishing a common market the Community and the Member States have a shared responsibility for ensuring the proper operation of services of general economic importance. Although these articles are not strictly relevant to the issue of competence, they do provide the broader treaty framework for the present proposal and also indicate what objectives must be achieved by it. The proposed Directive therefore also contains a number of proposals that are specifically designed to safeguard the universal (postal) service provision in the Member States.

As the Community is empowered under the EC Treaty to take the measures proposed in the Directive, and the Community and the Member States, each within their respective powers and within the scope of application of the EC Treaty, ensure that services of general economic importance are given the opportunity to fulfill their missions, the issues of subsidiarity and proportionality gain in importance.

Subsidiarity

Both Chambers note that the subsidiarity principle has been fulfilled and endorse the views of the European Commission on this point. They agree with the European Commission that it is evident in practice that there are major (undesired) differences between the Member States in the regulation of the postal market and that the aims of liberalising the internal postal market and guaranteeing universal postal services can be better achieved at Community level owing to the scale and consequences of the proposed measures. It should nonetheless be noted that some Member States already have a fully liberalised postal market and that the current Postal Directive does allow the Member States the scope to decide to liberalise this market of their own volition.

Proportionality

Both Chambers consider that the instrument of the Directive and the measures proposed in it are proportional. The proposed Directive is necessary in order to be able to amend the existing Directive and to regulate (in more detail) a 'service of general economic importance'. Quite apart from these considerations a directive must be regarded as the most appropriate legislative instrument in view of the two chief objectives of the proposal. These can be achieved only by means of the harmonised legislative framework provided by the proposed Directive. Harmonisation takes place at European level where this is necessary to complete the internal market, and the Member States retain the scope for regulation at national level where possible and necessary to safeguard the universal postal service.

At the same time, however, both Chambers note that the measures contained in the proposed Directive come within the area of tension between the two specified objectives: completion of the internal market for postal services on the one hand and the guaranteeing of the universal service on the other. The proportionality issue therefore in fact also concerns the contribution which the proposed measures make – in their mutual relationship – to the simultaneous achievement of the two objectives. The Chambers consider this observation to be relevant in particular to the provisions of Article 4 of the proposed Directive (concerning the qualified designation of the universal service providers), Article 7 (4) (which enables Member States to arrange for postal companies other than the designated universal service provider to contribute to the net costs of the universal service), Article 9 (concerning the conditions for authorisation procedures, including individual permits, for services which come within the scope of the universal service) and Article 11 bis (which provides for transparent and non-discriminatory access to parts of the postal infrastructure).

Taking this into account the two Chambers have formulated the political intentions mentioned above under the heading 'Conclusion'. These provide for intensive dialogue with the Dutch Government during the negotiations for the present proposal for a Directive and for this proposal to be taken into account in the parliamentary consideration of bill 30536 (Postal Act 20..).

Poland: Chamber



Warsaw, 8th December 2006

THE 5TH SEJM OF
THE REPUBLIC OF POLAND

The European Union Affairs Committee

Report

**on the test on conformity to the principle of subsidiarity of
the ‘Proposal for a Directive of the European Parliament and of the Council amending
Directive 97/67/EC concerning the full accomplishment of the internal market of
Community postal services (COM(2006) 594)’**

In order to implement the decisions made in Vienna in February 2006 by the chairmen of the Community and European Affairs Committees, the Polish Sejm’s European Union Affairs Committee, at its meeting on 5th December 2006, scrutinized conformity to the principle of subsidiarity of the ‘*Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (COM(2006) 594)*’. At the same time, the Committee considered the above COM(2006) 594 proposal for a legal instrument under the procedure of Article 6 para. 3 of the Act of 11th March 2004 on Cooperation of the Council of Ministers with the Sejm and the Senate in Matters Related to the Republic of Poland’s Membership in the European Union, published in the *Dziennik Ustaw* (Journal of Laws) 2004, No. 52, item 515 (scrutiny procedure), and expressed its position on these two questions in the opinion No. 42. The report on that scrutiny was based on the recommendations of the COSAC presidency, presented in its *Aide-memoire*.

Procedures:

- 1. Which committees were involved in examining the Commission proposal for a Regulation on the applicable law and jurisdiction in divorce matters and what role did each committee play?**

The European Union Affairs Committee, being the organ of the Sejm competent to take care of the Community matters, was.

2. Was your plenary involved?

No plenary discussion was held on the above matter at a Sejm sitting. It was the European Union Affairs Committee who gave its opinion on the matter. On the basis of the Act of 11th March 2004 on Cooperation of the Council of Ministers with the Sejm and the Senate in Matters Related to the Republic of Poland's Membership in the European Union, the Committee is the organ of the Sejm competent to take care of the matters concerning Poland's membership in the European Union.

3. Were any other administrative services of your parliament involved in the process?

Yes, representatives of the Legal Team of the Sejm Research Bureau worked on their opinion on conformity to the principle of subsidiarity.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

As soon as we received the proposal, two deputies-co-reporters were assigned to prepare their respective opinion on that proposal, primarily from the point of view of the need to examine it under the procedure provided for in Article 6 para. 3 of the Act on Cooperation (scrutiny), but also from the point of view of its conformity to the principle of subsidiarity.

Moreover, also the Sejm Research Bureau experts were assigned to prepare an opinion on conformity of the above proposal to the principle of subsidiarity.

At the Committee meeting on 5th December 2006, an opinion on the above proposal's conformity to the principle of subsidiarity was given by a representative of the Sejm Research Bureau, by a representative of the Ministry of Transport and by the deputies-co-reporters. The ensuing discussion concerned both the proposal's conformity to the principle of subsidiarity as well as to Article 6 para. 3 of the Act of 11th March 2004 on Cooperation of the Council of Ministers with the Sejm and the Senate in Matters Related to the Republic of Poland's Membership in the European Union (*Dziennik Ustaw*, 2004, No. 52, item 515). Next, the draft opinion presented by the Committee Chairman was put to a vote.

Ultimately, the Committee passed the opinion No. 42 that you will find enclosed.

5. Did your government provide any information as part of the scrutiny process?

Yes, it did. A Secretary of State from the Ministry of Transport came to the Committee meeting and presented and substantiated the government's position on the conformity of the proposal discussed to the principle of subsidiarity.

6. Did your national parliament consult regional parliaments with legislative powers?

There are no regional parliaments in Poland. The existing regional representative organs are in the nature of local government bodies.

7. Were any other external actors involved in the examination?

At the Committee meeting present were employees of the Sejm Research Bureau, representatives of the government and of the European Commission Representation in Poland.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No, we did not. The two chambers of the Polish parliament (the Sejm, and the Senate) carried out the subsidiarity test independently of each other.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

The Constitutional Treaty is a dead letter.

10. Did you find any breach of the subsidiarity principle?

No, we did not. The Committee found the proposal discussed to be in conformity to the principle of subsidiarity.

11. Did you find any breach of the proportionality principle?

No, we did not. In its opinion, the Committee did not take a position on this particular issue. From the preceding discussion it results however that the Committee did not discern any irregularities in this regard.

12. Did you adopt a reasoned opinion for non-compliance? (If yes, please enclose a copy with your report to the COSAC secretariat.)

Does not apply.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Yes, the European Commission's explanation given in the proposal should be recognized as consistent and sufficient.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes, the European Commission's explanation given in the proposal should be recognized as consistent and sufficient.

15. Did you encounter any specific difficulties during the examination?

No, we did not.

16. Any other comments?

No, no other comments.

/-/ Karol Karski
Chairman
of the European Union Affairs Committee

Opinion No 42
of the European Affairs Committee of the Sejm of the Republic of Poland
on the Proposal for a Directive of the European Parliament and of the Council
amending Directive 97/67/EC concerning the full accomplishment of the internal market
of Community postal services (COM(2006) 594 final)”
adopted on its meeting on 5th December 2006 r.

The European Affairs Committee of the Sejm of the Republic of Poland:

1. considers Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (COM(2006) 594 final)” to be in the conformity with the principle of subsidiarity;
2. does not have any reservations to the proposal referred above, as well as to the relevant governmental draft position.

Chairman
/-/ Karol Karski

Poland: Senat

SENAT OF THE REPUBLIC OF POLAND

Report on the subsidiarity and proportionality check of the proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (COM (2006)594).

At the sittings on November 15 and December 6, 2006 the Senate's European Union Affairs Committee carried out the subsidiarity and proportionality check following the procedure agreed by the COSAC. The check was completed and the conclusions formulated as follows:

1. Which committees were involved in examining the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services and what role did each committee play?

Two committees participated in the check: the European Union Affairs Committee and the National Economy Committee.

2. Was your plenary involved?

No.

3. Were any other administrative services of your parliament involved in the process?

The Information and Documentation Office, within its remit, commissioned an outside expertise provided to the Senate committees involved.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

At a sitting on 15 November, 2006 the European Union Affairs Committee adopted a plan for the subsidiarity and proportionality check. The committee decided to:

- **involve the National Economy Committee**
- **to seek an outside expertise,**
- **to designate a senator-rapporteur who, relying on experts' opinions, would propose a draft opinion for the committees.**

On Dec. 6 a joint committee sitting was held with the representatives of the government and the state's public enterprise "Poczta Polska" (Polish Post), as well as academics and the experts.

The representative of the Ministry of Transport, which is responsible for the postal services' market, presented the government's position on the proposed directive. The two committees acquainted themselves with opinions and

comments of the experts, representatives of “Poczta Polska”, the senator-rapporteur, and a discussion took place. The committees adopted an opinion on the conformity of the said directive with the subsidiarity and proportionality rules.

5. Did your government provide any information as part of the scrutiny process?

The government submitted its official position on the proposed directive, the government’s representative took part in the sitting and provided the senators with additional information.

6. Did your national parliament consult regional parliaments with legislative powers?

Does not concern since there are no regional bodies with legislative powers in Poland’s constitutional system.

7. Were any other external actors involved in the examination?

The joint committee sitting was attended by the government’s representatives, as well as officials from state-owned enterprise „Poczta Polska” and a specialist from a research. The committees had been presented with two written opinions by external experts.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No, each chamber, ie. the Sejm and the Senate, conducted its own subsidiarity and proportionality check.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty’s entering into force?

So far the European Union Affairs Committee has carried out three subsidiarity and proportionality checks. Each scrutiny exercise followed the same procedure, which is expected to be practised also in the future.

Findings:

10. Did you find any breach on the subsidiarity principle?

Upon the completion of the scrutiny exercise, the European Union Affairs Committee and the National Economy Committee have agreed that the proposed directive on postal services does not breach the subsidiarity principle.

11. Did you find any breach on the proportionality principle?

The European Union Affairs Committee and the National Economy Committee have not find any breach of the proportionality principle.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

The committees did not adopt an opinion for non-compliance with subsidiarity and proportionality principles..

13. Did you find the Commission’s justification with regard to the proportionality principle satisfactory?

The Commission's justification has been regarded as satisfactory.

14. Did you encounter any specific difficulties during the examination?

One of the main issues addressed during the examination was the fixed date for the full opening up of the postal services' market, ie. 1 January 2009. From the accompanying opinions it becomes evident that the said date may be difficult to meet on the Polish postal services' market.

REPORT, CONCLUSIONS AND OPINION

COSAC Pilot project

Control of the observance of the principles of subsidiarity and proportionality on the European Commission's proposal on the full accomplishment of the Internal Market for the Postal Services (2006/MARKT/006)

I – On the Report

1. Preliminary Note

1. COSAC in London (October 2005) decided that a **second**¹¹ **pilot project** would be carried out to check (in six weeks – Treaty of Amsterdam) the parliamentary systems with an analysis of the observance, by the legislative proposals of the European Commission, of the **principles of subsidiarity and proportionality**;
2. Following the European Commission's presentation of its Legislative Programme and Work Programme for 2006 (November 2005), the national Parliaments informed COSAC of the proposals they considered interesting for the purpose of the check;
3. The meeting of Presidents of the Commissions of European Affairs of the EU (February 2006) concluded that the **two proposals** mentioned the most by the 18 parliaments which answered and on which they would carry out **pilot projects** were:
 - a) on the rules relating to the law applicable in matrimonial matters (**divorce**), on the latter (proposal by the European Commission of 17 July 2006) and
 - b) on the full accomplishment of the Internal Market of the **Postal Services**;
4. On 27 September, with the participation of the Assembly of the Republic (European Affairs Commission and 1st Commission), the pilot project on the rules relating to the law applicable in matrimonial matters (**divorce**) was concluded. The results of this check were presented and analysed in COSAC in Helsinki on 20 and 21 of November;
5. With regard to the Directive of the European Commission to the European Parliament and to the Council modifying Directive 97/67/CE relating to the full accomplishment of the **Internal Market of the Community Postal Services** (COM/2006/0594), this was published by the European Commission on 18 October. The Assembly of the Republic (European Affairs Commission and COPTC) took part in the analysis of this pilot project. The results of this check will be presented to the Secretariat of COSAC on 11 December 2006.

¹¹ The first pilot project, on a proposal of the European Commission concerning the Third Railway Package, was carried out in March 2005, at a time when the Assembly of the Republic was dissolved and, therefore, did not take part.

2. Procedure adopted by the Assembly of the Republic

On 18 October, Directive 97/67/CE on the full accomplishment of the **Internal Market of the Community Postal Services** was published by the European Affairs Commission.

On 2 November, the European Affairs Commission analysed and debated the issues related with the Pilot Project on the Postal Services. It decided on the methodology to adopt and appointed the MP Ana Maria Rocha (PS) as Rapporteur. On the same date the European Affairs Commission sent an official letter to COPTC, a Specialised Parliamentary Commission on the matter, to prepare the respective Opinion in articulation with the European Affairs Commission.

In the meeting of 7 November, COPTC analysed the issue and appointed the MPs Horácio Antunes (PS) and Jorge Costa (PSD) as rapporteurs for the monitoring of this matter.

On 21 November, the Chairman of the Board of Directors of CTT – the Post and Telecommunications Office was informally requested for this organism to pronounce on the matter in question. The information requested was received on 22 November (attached). On 28 November, the Secretary of State for Public Works and Communications was also contacted for this reason, and who also similarly sent us the information requested.

On 24 November, a work meeting was held with the MP rapporteur of the European Affairs Commission.

On 28 and 29 November, the MP rapporteurs of both Commissions met.

On 5 December, the Report/Opinion was placed before the Parliamentary Groups.

3. On the Proposal of the European Commission

3.1 Motivation

With regard to the formulation of the legal bases which surround this issue, the chronology of the acts adopted was as follows:

- 1992: the European Commission presented the White Paper for the development of the single market for the Postal Services (COM/91/476);
- 1994: Resolution of the Council of February on the development of the Community Postal Services (COM/93/247);
- 1997: 1st Postal Directive (2002/39/CE);
- 1998: Report of the European Commission on the application of the competition rules of the postal sector and on the assessment of certain measures of the States in relation to the Postal Services (98/C39/02);

- 1999: 1st reduction of the 'reserved area';
- 2002: 2nd Postal Directive;
 - 1st report of the Commission to the European Parliament and to the Council on the application of the Postal Directive (COM/2002/632);
- 2003: 2nd reduction of the 'reserved area';
- 2004: 2nd report of the Commission to the European Parliament and to the Council on the application of the Postal Directive (COM/2004/102);
- 2006: 3rd reduction of the 'reserved area';
 - Prospective study of the Commission on the impact of the universal service on the full accomplishment of the internal market for Postal Services in 2009;
 - 3rd report of the Commission to the European Parliament and to the Council on the application of the Postal Directive;
 - Proposal which confirms, if appropriate, the date 2009 for the full accomplishment of the internal markets for Postal Services or deciding on any other steps for this;
- 2009: Date established as the objective for the accomplishment of the internal market for Postal Services, subject to confirmation.

In terms of a legal basis, article 16 of the European Community Treaty (ECT) is invoked, which points out the position which services of general economic interest occupy within the various common values of the Union and their importance in economic and territorial cohesion, while striving for these services to be able to operate based on principles and in conditions which would allow them to fulfil their missions.

The objective of the action of the Union in this area is to complete the internal market for the Postal Services ensuring, through an appropriate regulatory structure, that high quality, efficient and reliable Postal Services can be provided throughout the whole Union.

This implies the definition, on a Community level, of a universal postal service conceived as a minimum group of services of specific quality which should be provided in all of the Member States at accessible prices for the benefit of all consumers, irrespective of their geographic location.

The prospective study carried out by the Commission, related with the preparation of this Directive proposal, demonstrates that the 'reserved area should cease to be the preferred solution for the financing of the universal service. This evaluation takes into account the interest of the Community and of its Member States in accomplishing the internal market, as much from the perspective of obtaining growth and employment as from that of providing an efficient service of general economic interest for all its users.

In this way, the date of 1 January 2009 was given as the final stage of the process of accomplishing the internal market for Postal Services.

3.2 Description and objective of the Proposal

The Proposal of the Commission COM (2006/594), aims to reconcile a two-sided objective: the gradual and controlled opening of the postal market to competition with that of a sustainable guarantee of the provision of the universal postal service, set out by the Council in the Resolution of 7 February 1994 on the development of the community Postal Services. It is therefore intended to maintain the universal service, while at the same time improving quality and increasing the possibilities of choice for the consumers and companies of the European Union.

With the fundamental objective of ensuring the lasting provision of a universal postal service in similar conditions throughout the Community, this Directive requires the Member States to provide a high quality universal service, which includes a distribution and collection at least five days per week for all citizens of the EU.

Besides this, it further increases the protection of the consumer and accentuates the importance of the role of the national regulatory authorities. In fact the obligation to guarantee Postal Services at tolerable prices remains, together with the possibility for Member States of imposing a single tariff for certain types of delivery, such as private postal sendings. In the likelihood of it being necessary to cover a part of the net cost of the provision of the universal service, the Member States can choose from a range of options, including, for example, state aid, public contracts, compensation funds and cost sharing, it being up to them to decide which model is best adapted to their needs.

The possibility also remains of granting general authorisations for the provision of services which are included in the universal service or not.

It is also considered that the total opening of the market will contribute towards extending the postal markets in general; it will also contribute towards maintaining sustainable employment and quality for the providers of the universal service, as well as facilitating the creation of new jobs with other operators and in related economic activities. This Directive proposal does not prejudice the competence of the Member States from regulating the labour conditions in the sector of the Postal Services.

A transposition period is also contemplated in the Directive proposal, as well as a considerable period of time necessary for the introduction of effective competition which can be used for the benefit of the Member States in order to proceed with the modernisation and restructuring of the providers of the universal service as necessary.

In order to ensure that the liberalisation of the market continues to benefit all users, in particular the consumers and small and medium sized companies, the Member States should also monitor and supervise the evolution of the market, as well as taking the appropriate regulatory measures to ensure that accessibility to Postal Services continues to satisfy the needs of the users, specifically ensuring, whenever appropriate, a minimum number of services at the same point of access.

In accordance with the obligation established by article 7.3 of the Postal Directive, the European Commission presented a prospective study which evaluates the impact produced

on the universal service by the full accomplishment of the internal market for Postal Services in 2009, as well as, within the terms of article 23 of the Directive, the 3rd report on the application of the Postal Directive.

This proposal for the alteration of the Postal Directive was prepared based on the results of the public consultation launched by the European Commission on 10 November 2005 on the future of the Postal Services in the European Union, and based on the studies which the Commission was obliged to perform by the Postal Directive, specifically, a study on regulatory models, a study on the development of competition and a study on the impact on the universal service of the full accomplishment of the internal market for Postal Services.

This alteration to the Directive proposal constitutes the final stage in a long process of reform, during which large areas of the postal markets of the EU were already opened up to competition, with very positive results.

3.3 In relation to Portugal

- The European Council held in Lisbon in March 2000, during the Portuguese Presidency of the Council of the European Union, presented two decisions relating to the Postal Services which were aimed at the adoption of a strategy for eliminating the obstacles to services, including the Postal Services, and the acceleration of the process of liberalisation in sectors such as the Postal Services, aimed at accomplishing an effective common internal market.

- The entities consulted for the preparation of this report/opinion, assumed the importance of the accomplishment of a common internal market of the Postal Services, provided that both the continuity of the provision of the universal service within the terms of the Directive proposal and its respective economic or financial viability were safeguarded.

- The CTT stated that upon accomplishing the proclaimed total liberalisation of the postal market, some measures of a legislative and regulatory nature should be established, safeguarding some essential aspects:

- The current dimension of the universal service: most of the services provided by the CTT are included in the area of the universal service. It is suggested that the group of services which comprise this universal service be re-evaluated, prior to the implementation of the Directive;

- System of prices/principle of the uniform tariff: this system should be geared towards cost, with differentiated tariffs being implemented according to distance, the concentration of traffic and/or the value added by the clients. In this way, the CTT believe that the concept of an individual delivery tariff contemplated in the Directive proposal under analysis should be subject to careful definition, as with the respective scope of application;

- Financing of the cost of the universal service: with the cessation of the reserved area, the cost of the obligations of the individual service should be financed through an alternative system, defined beforehand and which is feasible, ensuring economic and financial viability with the existence of a level playing field for all operators in the market;

- Licensing Regime: licensing should be clear and objective, safeguarding the protection of the users (confidentiality and inviolability, data protection, quality, etc), and also the development of non-discriminatory competition;

- Access to postal infrastructures and to services: this access should have a contractual basis, with rules of transparency and non-discrimination;

- It should also be noted that this Directive proposal constitutes one of the topics considered to be a priority by the Portuguese Presidency of the Council of the European Union which will take place in the 2nd semester of 2007.

4. Analysis of the Proposal of the European Commission

- Legal base

The legal base of the proposal invoked is article 16 of the European Community Treaty (ECT), which points out the position which services of general economic interest occupy within the common values of the Union and their importance in economic and territorial cohesion, while striving for these services to be able to operate based on principles and in conditions which would allow them to fulfil their missions.

- Principle of subsidiarity

Within the terms of the second paragraph of article 5 of the Treaty of the European Union,

“In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.”

The objective of this principle is to ensure that decisions are taken as closely as possible to the citizens, pondering if the action to be taken on a community scale is justified in view of the possibilities offered on a national, regional or local level. This is a principle according to which the Union should only act when its action is more effective than an action undertaken by the Member States, except when dealing with exclusive competences of the Union.

In the situation under consideration the objectives of the action proposed are specifically the accomplishment of a common internal market for Postal Services, safeguarding a common level of universal service and quality for all users and the establishment of harmonized principles for the regulation of the Postal Services which could not be satisfactorily achieved by the Member States, and which, due to the dimension and effects of the action to be taken, can therefore be more effectively made on a Community level.

In this way, it is considered that the objectives proclaimed in this Directive proposal, which aim to fully accomplish the internal market for the Postal Services of the EU, will be best achieved through community action.

It is therefore concluded that there appears to be no violation of the principle of subsidiarity in this proposal.

- Principle of proportionality

This principle is included in the third paragraph of article 5 of the Treaty of the European Union,

“The action of the Community should not go beyond what is necessary to achieve the objectives of this Treaty”

As with the principle of subsidiarity, the principle of proportionality regulates the exercise of the competences exercised by the European Union. It aims to frame and contextualise the actions of community institutions. Pursuant to this rule, the action of the institutions should be limited to what is strictly necessary to achieve the objectives of the treaties, in other words, the intensity of the action should be related with the purpose pursued (prohibition of excess). This means that when the Union has various equally effective methods of intervention, it should choose that which allows the greater liberty to the Member States.

It is our opinion that the proposal under analysis is in accordance with the principle of proportionality, being limited to what is necessary to achieve its objective.

The MP Rapporteur of the European Affairs Commission

(Ana Maria Rocha)

The MP Rapporteurs of COPTC

**(Horácio Antunes)
Costa)**

(Jorge

II – CONCLUSIONS AND OPINION OF THE EUROPEAN AFFAIRS COMMISSION

1. The procedure adopted by the Assembly of the Republic in the analysis of the observance of the principles of subsidiarity and of proportionality, related with this pilot project, is in accordance with the provisions set down in Law 43/2006 of 25 August, relating to the monitoring, assessment and pronouncement by the Portuguese Parliament within the scope of the process of constructing the European Union.
2. Article 16 of the European Community Treaty (ECT), points out the position which services of general economic interest occupy within the various common values of the Union and their importance in economic and territorial cohesion, while striving for these services to be able to operate based on principles and in conditions which would allow them to fulfil their missions.
3. The purpose aimed at by the proposal will be best pursued by the community instances, in view of the insufficient unilateral action of the Member States to attain an identical objective. From this we conclude that there does not appear to be any violation of the principle of subsidiarity.
4. Similarly, it appears to us that the proposal respects the principle of proportionality as it does not go beyond what is necessary to achieve its objective.
5. Attached, and forming part of this report/opinion, is the reply to a standard questionnaire prepared and sent by the Secretariat of COSAC to the National Parliaments.

OPINION

In view of the considerations stated and the conclusions of the above report, the European Affairs Commission is of the opinion that there is no violation of the principle of subsidiarity in the proposal under analysis and in as much as the objective to be achieved will be more effectively achieved through community action.

Furthermore, this Commission considers that the proposal analysed also respects the principle of proportionality as both its content and the legislative instrument to be used are limited to what is necessary to achieve the proposed objectives.

Palácio de S. Bento, 4 December 2006

MP Rapporteur of the European Affairs Commission
The President of the European Affairs Commission

(Ana Maria Rocha)

(Vitalino Canas)

Annexes:

- I. Answers to the questionnaire prepared by the Secretariat of COSAC on the pilot project.

Questions to be answered in relation to the Pilot Project on the observance of the principles of subsidiarity and proportionality on the proposal of the European Commission of the full accomplishment of the Internal Market for Postal Services (2006/MARKT/006)

Procedures:

1. Which Commissions were involved in the assessment and what was the role of each of them?

The Commissions involved were the European Affairs Commission, which coordinates the process, and the Commission of Public Works, Transport and Communications (COPTC), which worked together in order to prepare the opinion on the matter in question.

2. Was there the participation of the Plenary?

Within the terms of Law 43/2006, of 25 August, on the *Monitoring, assessment and pronouncement by the Assembly of the Republic on the scope of the process of construction of the European Union*, the participation of the Plenary in the monitoring of the European legislative proposals is possible in three situations:

- in the case of the pronouncement of the Assembly of the Republic on matters of its reserved legislative competence (article 2);
- when it is a case of an opinion on conformity with the principle of subsidiarity (Article 3);
- and in the context of the assessment of proposals of community acts of a regulatory nature (article 7).

With regard to articles 2 and 3, which apply to this case, the Law defines that, in the case of a fundamented urgency, the founded opinion of the European Affairs Commission is sufficient. Thus, and given the urgency of the deadline for replying to the questionnaire of the Pilot project, this was the procedure adopted.

3. Did other Administrative Services of the Parliament participate in the process?

No.

4. Can you describe the procedure used in the analysis with regard to the Commissions and other Services, as well as the chronology of their participation?

2 November – the European Affairs Commission analysed and debated the issues related with the Pilot Project on the Proposal to alter the Postal Services Directive of 18 October. In this meeting, the European Affairs Commission decided on the methodology to adopt and appointed the MP Ana Maria Rocha (PS) as Rapporteur of this Commission;

2 November – the European Affairs Commission sent an official letter to COPTC, the Specialised Parliamentary Commission on this matter, for due articulation with regard to the preparation of the Opinion;

7 November –COPTC analysed the question and appointed the MPs Horácio Antunes (PS) and Jorge Costa (PSD) as rapporteurs for the monitoring of this matter;

21 November - the MP Rapporteur made informal contact with the Chairman of the Board of Directors of the CTT (Portuguese Postal Services) for this organism to pronounce on the matter in question. The requested information was received on 22 November (attached).

24 November – work meeting with the MP Rapporteur of the European Affairs Commission.

28 November – the MP Rapporteur made informal contact with the Secretary of State of Public Works and Communications to obtain additional information on the matter in question.

On 28 and 29 November, the MP Rapporteurs of both Commissions met.

5 December – The Report/Opinion was subject to the assessment of the Parliamentary Groups.

5. Did the Government provide any information in the control mechanism framework?

The MP Rapporteur, Ana Maria Rocha (PS) contacted the Office of the Deputy Secretary of State of Public Works and Communications, the competent member of the Government in these matters, in order to request additional information on the matter. The Government provided information relating to the future calendarisation of the discussions on this matter under the German Presidency of the Council of the European Union. The Assembly of the Republic was also informed that ANACOM (the regulatory body of the sector in Portugal) was preparing a detailed technical analysis of the issue, in order to contribute towards the preparation of the national position on the matter, for the purpose of which it asked for contributions from the concessionaire of the universal service (CTT), from the entities qualified to exercise postal activity, from the representative associations of the sector and from consumer associations.

6. Did the Government consult the regional parliaments which have legislative powers?

No. Within the terms of article 229.2 of the Constitution of the Portuguese Republic, *The organs with supreme authority shall always obtain the opinion of the organs of regional government on those matters within their powers that affect the autonomous regions.*

This requirement does not apply to the matter in question, and so it was not necessary to consult the Legislative Assemblies of the Autonomous Regions.

7. Were there other participants in the process?

Yes, the CTT (Portuguese Postal Service).

8. In the case of a bi-cameral system, was the analysis carried out with the coordination of both chambers?

Not applicable.

9. Was the procedure used for this pilot project in accordance with the procedure which the Parliament in question expects to use after the Constitutional Treaty comes into force?

The procedure adopted is that set out in Law 43/2006, of 25 August on the monitoring, assessment and pronouncement of the Assembly of the Republic within the scope of the process of the construction of Europe (which is attached to this report).

In any case, this Commission believes that it does not appear appropriate at this stage to frame the question in this way, in as much as the procedure to adopt within the framework of a future Constitutional Treaty still requires confirmation.

Observations:

10. Does Parliament consider that the principle of subsidiarity was violated?

The intended goal of the proposal will be better pursued by the community instances, in as much as this aims to fulfil the objectives of completing the accomplishment of the internal market for Postal Services through the creation of an appropriate regulatory structure on a Community level, pursuant to Directives 97/67/CE and 2002/39/CE. This being the case it does not appear that there has been any violation of the principle of subsidiarity.

11. Does Parliament consider that the principle of proportionality was violated?

The proposal analysed also respects the principle of proportionality, as both its content and the legislative instrument to be used (Directive), are limited to the proposed objective, leaving the competence as to the form and means to achieved the intended objectives to the national instances. This being the case it does not appear that there has been any violation of the principle of proportionality.

12. Was the opinion which Parliament issued on the non-conformity fundamented?

Not applicable.

13. Does Parliament consider the explanatory note of the Commission on subsidiarity to be satisfactory?

Yes, although it considers that it would be useful for the analysis of the observance of subsidiarity if the explanatory note could go into the existing legal bases for the adoption of this Directive in greater detail.

14. Does Parliament consider the explanatory note of the Commission on proportionality to be satisfactory?

Yes.

15. Were any specific difficulties encountered during the analysis?

No.

16. Other comments?

It should be noted that the Postal Directive establishes a Committee to assist the Commission in the exercise of its competences of execution, in relation to the procedure of 'Comitology'. Taking into account the attention which has been given to the involvement of the National Parliaments in the monitoring of this matter, specifically in COSAC's 6th Biannual Report and in view of the recent Decision 2006/512/CE, it is considered that also in this case the subsequent monitoring to be performed by the National Parliaments in this area should be analysed.

Slovenia

Report from national parliaments on experience of the subsidiarity and proportionality check:

The Presidency has asked for the following points to be covered in the reports from national parliaments:

Procedures:

1. Which committees were involved in examining the Commission proposal for a Directive of the European parliament and the Council amending Directive 97/67/EC, concerning the full accomplishment of the internal market of Community postal service and what role did each committee play?

Both the National Council and the National Assembly of the Republic of Slovenia were involved in examining the Commission proposal for a Postal Directive. In the National Council, the proposal was discussed by its Commission for International Relations and EU Affairs that sent its opinion to the National Assembly. In the National Assembly, the proposal was first discussed by the working body responsible - the Committee on Economics - that sent its opinion to the competent Committee on EU Affairs. The Committee on EU Affairs discussed the proposal and the assessment of subsidiarity and proportionality, and took account of the opinions of the Government, the National Council, and the working body responsible.

2. Was your plenary involved?

No. In this case, according to the Act on the Cooperation between the National Assembly and the Government in EU Affairs, the decision of the Committee on EU Affairs was equal to a decision of the National Assembly.

3. Were any other administrative services of your parliament involved in the process?

All technical departments that are normally in charge of the preparation and conduct of meetings of working bodies were involved in the process.

4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

The proposal was received in the National Assembly on 18 October 2006 after its publication by the European Commission. The Committee on EU Affairs decided to examine the proposal in terms of its compliance with the principles of subsidiarity and proportionality and the Government was requested to send an assessment of the compliance of the proposal with such principles. On 21 November 2006 the Government sent its assessment of the compliance of the proposal with the principles of subsidiarity and proportionality. First, the assessment and the proposal were discussed by the National Council's Commission for International Relations and EU Affairs that sent its opinion to the competent Committee on EU Affairs. The working body responsible - the Committee on Economics - discussed the proposal on 6 December 2006. The meeting was also attended by the expert services of the competent Committee on EU Affairs. The competent Committee on EU Affairs discussed the proposal in terms of its compliance with the principles of subsidiarity and

proportionality on 12 December 2006. The Committee took note and account of the opinion of the National Council and of the opinion of the working body responsible, i.e. the Committee on Economics.

5. Did your government provide any information as part of the scrutiny process?

Yes. See the reply under Question 4.

6. Did your national parliament consult regional parliaments with legislative powers?

No, as there are no regional parliaments in Slovenia.

7. Were any other external actors involved in the examination?

No.

8. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Yes. See the reply under Question 4.

9. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Not really - we also found out that following this procedure, amendments to the Rules of Procedure of the National Assembly and maybe also to the Act on Cooperation between the Government and the National Assembly in EU Affairs would be necessary.

Findings:

10. Did you find any breach on the subsidiarity principle?

No. All the players - the Government, the National Council, and the National Assembly i.e. the working body responsible and the competent Committee on EU Affairs - established compliance of the proposal with the principle of subsidiarity.

11. Did you find any breach on the proportionality principle?

No. The opinions of the key players involved were uniform.

12. Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

13. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

Yes.

14. Did you find the Commission's justification with regard to the proportionality principle satisfactory?

Yes.

15. Did you encounter any specific difficulties during the examination?

We encountered no specific difficulties. See the reply under Question 9.

16. Any other comments?

No other comments.

Sweden

The Committee on Transport and Communications in the Swedish Parliament has considered the Directive on Postal Services. The following text was approved 7 December.

Subsidiarity control of the new Directive on Postal Services

The Committee is currently considering COM (2006) 594 final – Proposal for a directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services. The proposal involves an adaptation of the current postal services directive to the extent that is necessary for a liberalised postal services market. The Commission notes in its proposal for amendments that all the interim targets of the postal services directive have been met and that developments so far have shown no reason to extend the time limit set in the proposal for an amended postal services directive. The conclusion is that it is possible to maintain high-quality, universal postal services and also introduce an internal market for postal services as from 1 January 2009.

In connection with the Committee's consideration of the matter, comments have been obtained from the Ministry of Industry, Employment and Communications and the Swedish Post and Telecom Agency. A background brief has also been presented by the Swedish Government Offices (2006/07:FPM18).

The Committee notes that the new postal services directive has been implemented in Sweden through the amendments to the Postal Services Act (1993:1684) which came into force on 1 July 1998. A gradual liberalisation has not been relevant in Sweden since the monopoly on the Swedish postal services market was already abolished in 1993. Regulations corresponding to those currently proposed, concerning access to the postal infrastructure, were incorporated into the Postal Services Act in 1999.

The Committee considers the proposal for the new Directive on Postal Services to be compatible with the principle of subsidiarity.

Report on Subsidiarity and Proportionality Check – Postal Services

Procedures

1. The Committee on Transport and Communications examined the proposal.
2. The plenary was not involved.
3. Yes, the Secretariat of the Chamber/EU-coordination and the IPEX-correspondent were also involved.
4. The procedure:
 - I. The proposal in Swedish was received and recorded by *the Secretariat of the Chamber* 31 October 2006 (in English 20 Oct) and distributed to the committee responsible for postal services – the Committee on Transport and Communications.
 - II. *The Committee on Transport and Communications* scrutinised the proposal. Info about the scrutiny was submitted to IPEX by the Committee Secretariat. The secretariat also used IPEX to obtain information on the scrutiny in other parliaments.
 - III. To get more information the committee invited representatives [political level?] from the Ministry of Industry, Employment and Communications as well as the Swedish Post and Telecom Agency to a committee meeting (closed meeting).
 - IV. The Committee found that the proposal did comply with the subsidiarity principle.
 - V. The scrutiny was finished 7 December. The findings were noted in the records from the Committee meeting, submitted to the Secretariat of the Chamber and published on IPEX.
5. Yes. An explanatory memorandum and orally (see above)
6. (not applicable)
7. Information was obtained also from the Swedish Post and Telecom Agency.
8. (not applicable)

9. No. New rules have been proposed for subsidiarity control but they depend on the Constitutional Treaty and will not come into force unless the new treaty does.

Findings

10. No breach on the subsidiarity principle was found.
11. Proportionality was not examined.
12. No. However, a text on the scrutiny was approved by the Committee (enclosed).
13. Yes.
14. (Not relevant since proportionality was not examined)
15. No (apart from language problems when looking for info on IPEX, but that was solved through personal contacts with official responsible in the relevant parliament)
16. Very useful with references on IPEX to officials involved in the scrutiny of a particular dossier in different parliaments.

UK: House of Commons

Subsidiarity and Proportionality Check on the Commission proposal for the full accomplishment of an Internal Market on Postal Services.

The Finnish Presidency has asked for the following points to be covered in the reports from national parliaments:

Procedures:

30. Which committees were involved in examining the Commission proposal for a Regulation on the applicable law and jurisdiction in divorce matters and what role did each committee play?

In line with the standard procedures of the House of Commons for scrutinising EU legislation, the proposal was considered by the European Scrutiny Committee which decided to clear the document from scrutiny with a report to the House.

31. Was your plenary involved?

No.

32. Were any other administrative services of your parliament involved in the process?

No.

33. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

The proposals 14368/06 and 14357/06 were deposited in the UK Parliament by the Government on 31 October 2006. 14371/06 was deposited on 10 November 2006. The UK Government submitted Explanatory Memoranda (EM) to Parliament on the proposals on 8 November and 20 November.

The proposals and the EMs were considered by the European Scrutiny Committee on 22 November and a report paragraph on the proposals was agreed by the Committee.

34. Did your government provide any information as part of the scrutiny process?

Yes. They submitted two Explanatory Memoranda.

35. Did your national parliament consult regional parliaments with legislative powers?

No.

36. Were any other external actors involved in the examination?

No.

37. In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

There was no formal coordination, but the officials of the European committees of the two Houses exchanged information.

38. Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

The procedure for this check was part of the standard procedures of the European Scrutiny Committee for scrutinising EU legislation.

Findings:

The European Scrutiny Committee concluded that there were no major subsidiarity implications. In particular the proposal did not break new ground as compared with Directives 97/67/EC and Directive 2002/39/EC and indeed the Commission had in a number of areas proposed a less prescriptive approach than hitherto.

UK: House of Lords

Report from the House of Lords on experience of the subsidiarity and proportionality check: The Commission's Proposal for the full accomplishment of the Internal Market for Postal Services.

The House of Lords has completed its scrutiny of the Commission's proposal on postal services. Below is a summary of our process covering the points requested by the Finnish Presidency questionnaire:

Procedures:

- 1. Which committees were involved in examining the Commission proposal on postal services and what role did each committee play?*

The proposal was deposited in parliament and sifted by Lord Grenfell, the Chairman of the EU Select Committee, to the Internal Market Sub-Committee (Sub-Committee B). Sub-Committee B examined the proposal and reported back to the Chairman, who wrote to the responsible UK Minister.

- 2. Was your plenary involved?*

No.

- 3. Were any other administrative services of your parliament involved in the process?*

The Legal Adviser to the Select Committee was consulted, and the Lords Representative in Brussels prepared a note for the Sub-Committee.

- 4. Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?*

The proposals 14368/06 and 14357/06 were deposited in both Houses of Parliament by the UK Government on 31 October 2006. 14371/06 was deposited on 10 November 2006.

The UK Government submitted Explanatory Memoranda (EM) to Parliament on the proposals on 8 November and 20 November.

Lord Grenfell sifted the proposals and EMs to Sub-Committee B on 22 November.

Sub-Committee B considered these documents at its meeting on 6 December, and cleared them from scrutiny.

5. *Did your government provide any information as part of the scrutiny process?*

Yes: two Explanatory Memoranda were provided.

6. *Did your national parliament consult regional parliaments with legislative powers?*

Yes, at an official level the Lords consulted with the Scottish Parliament and the Welsh Assembly.

7. *Were any other external actors involved in the examination?*

No.

8. *In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?*

There was informal coordination between the relevant officials.

9. *Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?*

The procedure followed was the standard procedure for EU scrutiny in the House of Lords.

Findings:

10. *Did you find any breach on the subsidiarity principle?*

No.

11. *Did you find any breach on the proportionality principle?*

No.

12. *Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)*

No.

13. *Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?*

Yes, and the UK Government also agreed.

14. *Did you find the Commission's justification with regard to the proportionality principle satisfactory?*

Yes, as above.

15. *Did you encounter any specific difficulties during the examination?*

No.

16. *Any other comments?*

The Committee were of the opinion that the proposal did not break new ground when compared to the earlier Directives in 1997 and 2002. In particular, we noted that the UK has already fully liberalised its postal services and thus the proposals did not have significant implications for the UK market.

In 2000, Sub-Committee B conducted an inquiry into the 2002 proposal¹² when we strongly supported the further liberalisation of postal services in the EU. This remains our view.

¹² *"The Further Liberalisation Of Community Postal Services"* published in December 2000 and available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200001/ldselect/lducom/6/601.htm>

6 December 2006

14357/06 COM(2006) 594 + ADD 1 SEC(2006) 1291 + ADD 2 SEC(2006) 1292: A proposed Council Directive of October 2006 amending Directive 97/67/EC, concerning the full accomplishment of the internal market of Community postal services

Sub-Committee B considered this document, and your explanatory memorandum, at its meeting on 4 December 2006.

As you may recall, Sub-Committee B published a report in 2000 entitled: *The Further Liberalisation of Community Postal Services*. In our report, we were clear that “Further liberalisation is both desirable and unavoidable because it introduces competition. Competition is needed in order to improve services and efficiency.” This remains our view.

We welcome the proposal to complete the internal market in postal services by 2009, and share the Commission’s concern that such a date should not slip. We would be grateful if you could keep us informed of any progress in negotiations in this area.

We are content to lift scrutiny at this stage.

I am copying this letter to Michael Connarty MP, Chairman of the Commons European Scrutiny Committee, Alistair Doherty, Clerk to the Commons Committee, Michael Carpenter, Legal Adviser to the Commons Committee, Les Saunders (Cabinet Office) and to Alison Bailey, Departmental Scrutiny Co-ordinator.

GRENFELL

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