

## **Annex**

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## ***Evaluation of the subsidiarity check - questionnaire***

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In order to facilitate the evaluation of this subsidiarity check during the upcoming COSAC meeting, national Parliaments are, on behalf of the Portuguese and the Slovenian Presidencies, kindly asked to reply to the following questions and send their answers to the COSAC Secretariat ([secretariat@cosac.eu](mailto:secretariat@cosac.eu)).

### *Procedure:*

1. What was the procedure used to conduct the check? Please specify with regard to the following topics:

- which committees were involved?
- did your government provide any information as part of the scrutiny process?
- in case of a bicameral system, did you cooperate with the other chamber?
- did you consult regional Parliaments?
- did you make use of external expertise?

2. Did you cooperate with other national Parliaments in the process opinion?

3. Did you publicise your findings (e. g. in a special press release?)

4. Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?

### *Findings:*

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

6. Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)

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

8. Any other observations?

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## Austria

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### ***Bundesrat and Nationalrat***

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#### **Questionnaire**

The EU-Committee of the Austrian Federal Council carried out the subsidiarity and proportionality check of the abovementioned proposal in its session of 10 January 2008. The following conclusions can be drawn:

#### ***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **Which committees were involved?**  
*The check was carried out by the EU-Committee of the Federal Council.*
- **Did your government provide any information as part of the scrutiny process?**  
*No. However, during the committee session experts from different ministries provided answers to the questions raised by the members.*
- **In case of a bicameral system, did you cooperate with the other chamber?**  
*No.*
- **Did you consult regional parliaments?**  
*No.*

**Did you make use of external expertise?**

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

**Did you cooperate with other national Parliaments in the process opinion?**

*IPEX was used to gather information on proceedings in other parliaments.*

**Did you publicise your findings (e.g. in a special press release)?**

*A summary of the proceedings, including the statement, will be published on the internet.*

**Has your Parliament lately adopted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*The Rules of Procedure already provide a valid basis for the conduction of subsidiarity checks.*

#### ***Findings:***

**Did you find any breach on the subsidiarity principle?**

*The EU-Committee of the Federal Council holds that the proposed Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism (COM (07)650) does not breach the subsidiarity and proportionality principle (see enclosed reasoned opinion).*

**Did you adopt a reasoned opinion for non-compliance? (please enclose a copy)**

*Yes.*

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

*No (see enclosed reasoned opinion).*

Any other observations?  
No.

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**Subsidiarity and proportionality check of the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism (COM (07)650)**

**Statement by the EU-Committee of the Federal Council**

The proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism (COM (07)650) does not violate the principles of subsidiarity and proportionality.

The EU-Committee of the Federal Council, however, states explicitly that substantial criminal law belongs to the basic field of national competence independently from aim and legal form of any proposed European legislation. Therefore European legislation in this field should only be passed exceptionally. Proposals for legally relevant acts concerning criminal law require on this note a substantial qualitative and quantitative statement why a European legislative act should be created and why the proposed legislation is in accordance with the principles of subsidiarity and proportionality, as compared with possible other choices of action. This statement is missing in the existing proposal or is restricted to general thoughts which will not be regarded as sufficient in the future.

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## Belgium

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### *Chambre des Députés*

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#### Questionnaire

##### **Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*The Committee on Justice was entrusted with this subsidiarity check by the Conference of the Presidents (meeting of the heads of the political groups and the Chairmen of the Committees, which organizes the parliamentary work).*
- **Did your government provide any information as part of the scrutiny process?**  
*No.*
- **In case of a bicameral system, did you cooperate with the other chamber?**  
*No.*
- **Did you consult regional Parliaments?**  
*Regional parliaments have no competences in this field.*
- **Did you make use of external expertise?**  
*The proposal to invite the EU-coordinator for the fight against terrorism and representatives of the Human Rights League as well as some academics, has been rejected by a majority of the Committee members*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicize your findings (e. g. in a special press release?)**

*Discussions and conclusions are published as an official parliamentary document.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*The parliamentary subsidiarity procedure has been enshrined in the House's Regulations, and is based on the Barroso-initiative (September 2006).*

*There is no intention to review the regulations in line with the Lisbon Treaty because it concerns a more restrictive concept on subsidiarity and proportionality.*

##### **Findings:**

**Did you find any breach of the subsidiarity principle?**

*No breach of the subsidiarity principle was found.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*A reasoned opinion (including requests for supplementary explanations) has been adopted (see report).*

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

*See nr. 6 – Request for supplementary explanations.*

**Any other observations?**

*None*

**Sénat**

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**Questionnaire:**

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

*(please find a copy of the procedure in the Belgian Senate below)*

- **Which committees were involved?**  
*The Committee on justice*
- **Did your government provide any information as part of the scrutiny process?**  
*No*
- **In case of a bicameral system, did you cooperate with the other chamber?**  
*There have been informal contacts between civil servants, the political groups prepared remarks for both Chambers. There was no formal collaboration.*
- **Did you consult regional parliaments?**  
*Regional Parliaments have no competence in this field*
- **Did you make use of external expertise?**  
*No*

**Did you cooperate with other National Parliaments in the process opinion?**

*We read the comments of other Parliaments on IPEX.*

**Did you publicise your findings?**

*On the website of the Senate and on IPEX, no specific press release.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*We extended the period of 6 weeks to 8 for the COSAC-test and intend to adapt our procedure in the same way for all documents soon.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No*

**Did you adopt a reasoned opinion on the Framework Decision?**

*Yes, please find it below.*

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

*The members of the Committee on Justice felt it could be more extensive.*

**Any other observations?**

*None*

**Conclusion of the Justice Committee:**

<p><b>4-508/2</b></p> <p><b>Sénat de Belgique</b></p> <p><b>SESSION DE 2007-2008</b></p> <p>16 JANVIER 2008</p> <p><b>Proposition de décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme</b></p> <p><b><i>Examen de la subsidiarité</i></b></p> <p><b>CONCLUSION DE LA COMMISSION DE LA JUSTICE</b></p> <p>La commission</p> <ul style="list-style-type: none"><li>• En ce qui concerne la subsidiarité:</li></ul> <p>— se rallie à la nécessité de régler au niveau européen la sanction du terrorisme en raison du caractère international du terrorisme et du caractère transfrontière de l'utilisation d'internet à des fins de terrorisme. Dans ce contexte, une définition unique des infractions terroristes permet de lutter plus efficacement contre le terrorisme. Par ailleurs, l'élargissement envisagé de la définition de l'acte terroriste ne bouleverse pas le principe acquis par la décision-cadre du 13 juin 2002 du Conseil (2002/475/JAI);</p> <p>— demande que la Commission européenne démontre de manière plus précise en quoi les législateurs nationaux ne seraient pas en mesure de réagir adéquatement par rapport à des comportements inacceptables tels que la provocation directe à commettre des délits terroristes;</p>	<p><b>4-508/2</b></p> <p><b>Belgische Senaat</b></p> <p><b>ZITTING 2007-2008</b></p> <p>16 JANUARI 2008</p> <p><b>Voorstel voor een kaderbesluit van de Raad tot wijziging van Kaderbesluit 2002/475/JBZ inzake terrorismebestrijding</b></p> <p><b><i>Onderzoek van de subsidiariteit</i></b></p> <p><b>BESLUIT VAN DE COMMISSIE VOOR DE JUSTITIE</b></p> <p>De commissie</p> <ul style="list-style-type: none"><li>• Wat de subsidiariteit betreft :</li></ul> <p>— stemt in met de behoefte de bestraffing van het terrorisme op Europees niveau te regelen, gelet op de internationale draagwijdte van het terrorisme en op het grensoverschrijdende bereik van het internetgebruik voor terroristische doeleinden. In die context biedt één enkele definitie van de terroristische misdrijven de mogelijkheid het terrorisme efficiënter te bestrijden. Tevens is de overwogen uitbreiding van het begrip terroristische daad niet strijdig met het beginsel, dat verworven is sedert het kaderbesluit van 13 juni 2002 van de Raad (2002/475/JBZ);</p> <p>— vraagt dat de Europese Commissie preciezer aantoont waarom de nationale wetgevers niet in staat zouden zijn gepast te reageren op onaanvaardbaar gedrag zoals het rechtstreeks uitlokken van het plegen van een terroristisch misdrijf;</p>
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— recommande que la Commission européenne puisse contrôler elle-même, de manière proactive, dans quelle mesure un problème se pose dans les différents États membres de l'Union européenne. La subsidiarité exige que l'on tienne compte des circonstances politiques concrètes spécifiques dans les différents États membres de l'Union européenne pour légiférer en la matière.

• En ce qui concerne la proportionnalité:

— émet des réserves en l'absence d'éléments suffisants permettant d'évaluer la pertinence et tous les effets des mesures proposées, en particulier l'incrimination de la « provocation publique à commettre une infraction terroriste » telle que définie dans la proposition de décision-cadre et l'incrimination des actes préparatoires aux trois nouvelles infractions visées par la proposition;

— souhaite qu'il soit démontré que les mesures envisagées — et en particulier les incriminations précitées — n'excèdent pas ce qui est nécessaire pour atteindre les objectifs poursuivis, et ne portent pas atteinte aux droits et libertés fondamentaux tels que la liberté d'opinion, d'expression, d'association et la liberté de la presse. À cet égard, la commission relève, de façon plus générale, l'absence à ce jour d'un équilibre entre la coopération sur le plan sécuritaire et la coopération sur le plan des droits et libertés individuelles au sein de l'Union;

— s'interroge sur l'extension proposée alors que l'article 1<sup>er</sup> de la décision-cadre de 2002 (définition de l'infraction terroriste) n'est pas transposé dans la législation nationale de sept pays de l'Union, dont l'Allemagne, l'Italie et le Royaume-Uni;

— souhaite qu'une analyse soit effectuée quant à l'applicabilité de cette nouvelle définition de l'infraction terroriste par les magistrats des États membres. La définition proposée est, en effet, différente de celle contenue dans la Convention du Conseil de l'Europe sur la prévention du terrorisme qui vise, en son article 5, § 2, «

— beveelt aan dat de Europese Commissie zelf pro-actief nagaat in welke mate er zich in de verschillende landen van de Europese Unie een probleem stelt. De subsidiariteit vergt dat men rekening moet houden met de verschillende concrete politieke omstandigheden in de verschillende EU-landen om in deze materie te legifereren.

• Wat de evenredigheid betreft :

— maakt voorbehoud omdat er onvoldoende gegevens zijn om het nut en alle gevolgen van de voorgestelde maatregelen te evalueren, in het bijzonder van de strafbaarstelling van « het publiekelijk uitlokken van het plegen van een terroristisch misdrijf » zoals dat in het voorstel van kaderbesluit gedefinieerd wordt en van de strafbaarstelling van de voorbereidende handelingen voor de drie, in het voorstel opgenomen nieuwe misdrijven;

— wenst dat wordt aangetoond dat de overwogen maatregelen — in het bijzonder de vermelde strafbaarstellingen — niet verder gaan dan wat nodig is om de nagestreefde doeleinden te bereiken, en de fundamentele rechten en vrijheden, zoals de vrijheid van mening, de vrije meningsuiting, de vrijheid van vereniging en de persvrijheid, niet schenden. Hierbij wijst de commissie er meer algemeen op dat tot dusver in de Unie geen evenwicht is bereikt tussen de samenwerking inzake veiligheid en de samenwerking inzake individuele rechten en vrijheden;

— stelt zich vragen bij de voorgestelde uitbreiding, gelet op het feit dat artikel 1 van het kaderbesluit van 2002 (het begrip terroristisch misdrijf) niet is omgezet in de nationale wetgeving van zeven landen van de Unie, waaronder Duitsland, Italië en het Verenigd Koninkrijk;

— wil dat een studie wordt gemaakt van de toepasbaarheid van de nieuwe definitie van een terroristisch misdrijf door de magistraten van de lidstaten. De voorgestelde definitie is immers niet dezelfde als die van artikel 5, § 2, van het Verdrag van Europa, namelijk « het publiekelijk uitlokken van het plegen van een terroristisch misdrijf, wanneer zulks op onwettige en opzettelijke wijze gebeurt »



la provocation publique à commettre une infraction terroriste lorsqu'elle est commise illégalement et intentionnellement ». La commission s'interroge sur les raisons de cette différence;	(vertaling). De commissie vraagt zich af waarom dat verschil er is;
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<p>— souhaite disposer d'une analyse du coût budgétaire d'une telle extension;</p> <p>— rappelle qu'il s'impose de respecter strictement le principe de légalité, ce qui requiert une définition claire du champ d'application de l'incrimination;</p> <p>— demande à la Commission européenne d'expliquer pourquoi elle a jugé préférable d'ériger en infraction pénale distincte ce qui relève de la participation criminelle, à savoir la provocation publique à commettre un crime ou un délit (cf. article 66 du Code pénal belge), plutôt que d'apporter une précision à l'article 4, § 1, de la décision-cadre en visant les modes d'incitation à commettre une infraction terroriste.</p>	<p>— wil dat een studie wordt gemaakt van de budgettaire kost van dergelijke uitbreiding;</p> <p>— wijst erop dat een strikte naleving van het legaliteitsbeginsel zich opdringt, wat impliceert dat het toepassingsgebied van de strafbaarstelling duidelijk wordt aangegeven;</p> <p>— vraagt de Europese Commissie toe te lichten waarom ze er de voorkeur aan heeft gegeven te voorzien in een aparte strafbaarstelling van een handeling die onder de « strafbare deelneming » valt (te weten het uitlokken van een misdaad of een misdrijf « door woorden in openbare bijeenkomsten of plaatsen gesproken » — artikel 66 van het Belgisch Strafwetboek), in plaats van in artikel 4, § 1, van het kaderbesluit een precisering aan te brengen aangaande de manieren om tot een terroristisch misdrijf aan te zetten.</p>
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**La procédure de contrôle de subsidiarité au Sénat de Belgique:**

Calendrier	événement	action à entreprendre
Jour 1	Réception d'un document européen (législatif ou consultatif)	Communication au service juridique pour un avis sur la compétence du Sénat
Avant le Jour 7	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.

Avant le jour 14	Communication de l'avis sur la compétence du Sénat	Si le Sénat s'estime compétent, notification via le site IPEX par le correspondant IPEX aux parlements belges
Avant le jour 28	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.
Avant le jour 35	Examen de l'avis sur la subsidiarité par la séance plénière du Sénat	Le Sénat se prononce en séance plénière sur les conclusions du rapport de la (des) Commission(s) compétente(s) et/ou le Comité d'avis.
Jour 35	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.
Jour 42	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.

***National Assembly***

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**Questionnaire:**

***Procédure:***

**Quelle a été la procédure utilisée pour le contrôle?**

- **Quelles commissions ont été impliquées?**  
*La Commission des affaires juridiques, la Commission de la sécurité intérieure et de l'ordre public, la Commission des droits de l'homme et des affaires religieuses et la Commission des affaires européennes.*
- **Votre gouvernement a-t-il fourni des informations relatives à la procédure d'examen?**  
*Le Gouvernement a fourni un avis contenant des informations sur le contenu de l'acte, la position cadre et une évaluation d'impact sur le droit national. Les commissions permanentes ont entendu des experts du Ministère de la Justice et du Ministère de l'Intérieur.*
- **Pour les parlements bicaméraux, avez-vous coopéré avec l'autre chambre?**  
*Sans objet. Le Parlement bulgare est monocaméral.*
- **Avez-vous consulté les Parlements régionaux?**  
*Sans objet.*
- **Avez-vous bénéficié d'une expertise extérieure?**  
*Oui, un professeur de droit a été consulté.*

**Avez-vous collaboré avec d'autres Parlements nationaux dans le processus?**

*Oui, avec le Parlement français*

**Avez-vous publié vos conclusions?**

*Le rapport de la Commission des affaires européennes est publié sur la page Internet du Parlement.*

Votre Parlement a-t-il adapté ses procédures pour se mettre en conformité avec le futur Traité de Lisbonne, ou envisage-t-il de le faire à l'avenir?

*Le Parlement bulgare envisage d'adopter une procédure spécifique avant l'entrée en vigueur du Traité de Lisbonne.*

***Conclusions:***

**Avez-vous découvert un quelconque manquement au principe de subsidiarité?**

*Non*

**Avez-vous adopté un avis motivé sur la décision-cadre?**

*Non*

**Avez-vous trouvé les justifications de la Commission au sujet du principe de subsidiarité satisfaisantes?**

Oui

**Avez-vous d'autres remarques?**

*La Commission des Affaires européennes estime en outre que le contenu de la décision-cadre devrait correspondre à celui de la Convention du Conseil de l'Europe pour la prévention du terrorisme.*

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**Extrait du rapport de la Commission des Affaires européennes concernant l'examen de la subsidiarité de la proposition de décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme [COM (2007) 650]**

Lors de la réunion du 17 janvier 2008, la Commission des Affaires européennes du Parlement bulgare a examiné la proposition décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme [COM (2007) 650] du 6.11.2007. Au cours de la réunion, il a été souligné que la proposition de décision-cadre avait été examinée par la Commission des Affaires juridiques le 16 janvier 2008. Dans son rapport, la Commission estime, eu égard à l'importance des mesures, prises en conformité avec le principe de subsidiarité, que la République de Bulgarie devrait soutenir les efforts de créer des normes relatives à la lutte contre le terrorisme au niveau européen. Après l'adoption de la décision-cadre, le Gouvernement devrait présenter un avis sur la nécessité d'apporter des modifications à la législation existante et faire des propositions en ce sens.

La proposition de décision-cadre a été examinée par la Commission de la Sécurité intérieure et de l'Ordre public lors de sa réunion du 16 janvier 2008. Elle a exprimé son accord de principe avec la position du Gouvernement, en soutenant l'adoption de l'acte.

La Commission des Droits de l'homme et des Affaires religieuses s'est prononcée le 17 janvier 2008. Il est mentionné dans son avis que la proposition de décision-cadre est conforme au principe de subsidiarité. La Commission approuve la position du Gouvernement, exprimée lors du Conseil JAI des 6 et 7 décembre 2007.

A la suite des débats, la Commission des Affaires européennes est arrivée à la conclusion que la proposition de décision-cadre respecte le principe de subsidiarité, défini à l'art. 5 du traité CE. Etant donné que la menace terroriste a un caractère international et exige des efforts coordonnés des Etats membres, les objectifs de la décision-cadre ne pourraient pas être atteints de manière suffisante par les Etats membres, agissant individuellement. La motivation de la Commission européenne à l'égard du principe de subsidiarité est considérée comme suffisante.

La Commission des Affaires européennes estime que la proposition de décision-cadre est conforme au principe de proportionnalité, consacré à l'art. 5 du traité CE, puisqu'elle ne va pas au-delà de ce qui est nécessaire pour atteindre l'objectif recherché et elle respecte la Convention européenne des droits de l'homme, ainsi que la Charte des droits fondamentaux de l'Union européenne.

La proposition de décision-cadre est en conformité avec le texte de la Convention du Conseil de l'Europe pour la prévention du terrorisme, ratifiée par la Bulgarie (Loi de ratification du 15 juin 2006). La Commission des Affaires européennes soutient la position, présentée par le Gouvernement, selon laquelle le contenu de la décision-cadre devrait correspondre à celui de la Convention du Conseil de l'Europe pour la prévention du terrorisme.

Le rapport de la Commission des Affaires européennes a été adopté à l'unanimité.

**Président de la Commission des Affaires européennes  
MLADEN TCHERVENIAKOV**

**Chamber of Deputies**

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**Questionnaire:**

*Procedure:*

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **Which committees were involved?**  
*Only one committee was involved in the subsidiarity check – the Committee for European Affairs of the Czech Chamber of Deputies.*
- **Did your government provide any information as part of the scrutiny process?**  
*Yes, a vice-minister of justice was present at the session and introduced the framework position of the government.*
- **In case of a bicameral system, did you cooperate with the other chamber?**  
*No, each chamber proceeded according to its own Rules of Procedure.*
- **Did you consult regional Parliaments?**  
*No.*
- **Did you make use of external expertise?**  
*No, we made use of the internal expertise of the Parliamentary institute.*

**Did you cooperate with other national Parliaments in the process opinion?**  
*No.*

**Did you publicise your findings (e. g. in a special press release?)**  
*Our findings are available for public, we have not publicized them in any special way.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**  
*No.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**  
*No.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**  
*Yes. Please find it below.*

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

**Any other observations?**  
*No.*

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**Letter from Petr Krill Vice-Chairman, Committee for European Affairs**

PARLIAMENT OF THE CZECH REPUBLIC  
Chamber of Deputies  
Petr Krill Vice-Chairman, Committee for European Affairs

Prague, 18th January 2008

Dear Madame/ Sir,

I would like to inform that according to the Conclusions of the XXXVIII COSAC taking place from 14 to 16 October 2007 in Portugal, the Committee for European Affairs of the Chamber of Deputies of the Parliament of the Czech Republic has decided to conduct a subsidiarity check on the proposal for a Council Framework Decision on combating terrorism (document No. 14960/07, COM(2007) 650 final).

The respective document was included in the agenda of the 30th session of the Committee and was scrutinized on 17 January 2008. According to the Rules of Procedure of the Chamber of Deputies a vice-minister of justice was present at the session to introduce the government's framework position.

After the hearing of the rapporteur's review and after the discussion the Committee has taken cognizance of the proposal for a Council Framework Decision on combating terrorism and has declared that this document conforms to the principle of subsidiarity. I enclose the relevant resolution in the Czech language.

Yours faithfully,

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**Senate****Questionnaire*****Procedure:*****What was the procedure used to conduct the check?**

*Two Committees were involved in the subsidiarity check in the Czech Senate: The Committee on Foreign Affairs, Defence and Security as the committee responsible for matters of III. pillar issues which requested the opinion of the Committee on European Affairs. Information on the issue was provided by the Ministry of Justice as the Government department responsible. Both chambers have dealt with the subsidiarity check separately, no formal coordination took place. There are no regional parliaments to consult. The expertise was provided by the European Union Unit and Advisor of the Committee on EU Affairs, no external expertise was made use of.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*Not particularly, the deliberations were publicized through standard means.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*No, the Senate has not adapted its procedures to the Lisbon Treaty. This will be considered only after ratification of the Treaty in the Czech Republic.*

**Did you find any breach of the subsidiarity principle?**

*The committees involved did not identify any breach of subsidiarity principle. The need to cooperate on the EU level in fighting international terrorism in the areas and particular ways covered by the Framework Decision was found to be legitimate and in line with the subsidiarity principle.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*As there were no inconsistencies with the subsidiarity principle, nor other reservations with regard to the proposal, the responsible Committee on Foreign Affairs, Defence and Security upon receiving an opinion from the Committee on European Affairs has taken note of the proposal for a Framework Decision with no reservation as regards the subsidiarity principle. Such committee resolution signals a conclusion of scrutiny of the dossier by the Senate; no plenary debate will take place.*

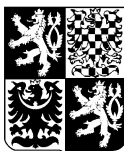
**Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?**

*Yes, the Commission's justification was found reasonable and satisfactory.*

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**Resolution from the Czech Senate:**

**THE PARLIAMENT OF THE CZECH REPUBLIC  
SENATE**



**6<sup>th</sup> term**

**112<sup>th</sup> RESOLUTION**

**COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND SECURITY**

**delivered on the 22<sup>th</sup> meeting held on 16 January 2007  
on Proposal for Council Framework Decision amending Framework Decision  
2002/475/JHA on combating terrorism**

**Following introductory from:**

Mgr. Martin Moulis, Deputy Minister of Justice and Mgr. Lucie Kresslová from the Department of the EU of the Ministry of Justice, and the rapporteur's report by Senator Tomáš Jirsa and after a debate

**The Committee:**

**Takes note of** the Proposal for Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism;

**Authorises** the committee chairperson, Senator Richard Sequens, to submit this resolution to the President of the Senate of the Parliament of the Czech Republic

**Richard Sequens, Committee Chairperson.**

**Tomáš Jirsa , Committee Rapporteur.**

**Rostislav Slavotínek, Committee Verifier.**

**Folketinget**

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**Report from the Folketinget on the experience of the subsidiarity and proportionality check on the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*The European Affairs Committee.*
- **did your government provide any information as part of the scrutiny process?**  
*Yes, on 18 November 2007 the Minister of Justice submitted a subsidiarity memorandum explaining the details of the proposal and its position as regards the compliance of the proposal with the subsidiarity principle.*
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*-*
- **did you consult regional Parliaments?**  
*No. There are no regional parliaments with legislative powers in Denmark.*
- **did you make use of external expertise?**  
*No*

**Did you cooperate with other national Parliaments in the process opinion?**

*No*

**Did you publicise your findings (e. g. in a special press release?)**

*No*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*It is currently planning to do so.*

*Findings:*

**Did you find any breach of the subsidiarity principle?**

*No.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

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The following opinion was adopted by the European Affairs Committee:

**“Opinion adopted by the European Affairs Committee of the Danish Parliament  
18 January 2008**

**on the Commission’s proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism**

The COSAC has requested the European Affairs Committee to conduct an assessment of whether the “*proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism*” complies with the subsidiarity principle.

The purpose of the proposal is to bring Framework Decision 2002/475/JHA on combating terrorism in line with the Convention of the Council of Europe on the prevention of terrorism (Warsaw, 16 May 2005). The Framework Decision obliges the Member States to incriminate the following actions:



- public provocation to commit a terrorist offence
- recruitment for terrorism
- training for terrorism.

Since the purpose of the proposal is to update the EU-legislation in order to align it with the European Convention, which Denmark ratified in 2006, Denmark's legislation is already in line with the content of the proposal.

A majority of the European Affairs Committee composed of The Conservatives, The Liberal Party, The Social Democrats, The Social-Liberal Party, The New Alliance, The Socialist People's Party and The Red-Green Alliance finds that since the proposal is not deemed to affect the content of Danish law in the area concerned as a consequence of the incorporation into Danish law of a similar act adopted within a European context, there is no basis for conducting an assessment of whether the said proposal complies with the subsidiarity principle.

**Minority opinions:**

One political party has wished to express a minority opinion.

The Danish Peoples' Party refers to the memorandum from the Danish Government, which states that Denmark has already implemented the content of the proposal in Danish law in so far as the proposal aims at updating the Framework Decision to align it with the European Convention which Denmark ratified in 2006. The subsidiarity principle in the treaty on the European Union provides that decisions are to be taken as closely as possible to the citizen. The fact that Denmark has been capable of implementing the legal order set out in the proposal without the involvement of the European Union, shows that EU-legislation is not necessary in order to implement the said measure. Consequently, the Danish Peoples' Party finds that the proposal does not comply with the subsidiarity principle.

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

Yes

**Any other observations?**

No

**Riigikogu**

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*Procedure:*

What was the procedure used to conduct the check? Please specify with regard to the following topics:

- which committees were involved?  
*The European affairs committee and the Legal affairs committee were involved*
- did your government provide any information as part of the scrutiny process?  
*Yes, the ministry of Justice provided its opinion on the 3rd of January on the Council of the EU draft framework Decision amending the Framework Decision 2002/475/JHA on combatting terrorism:*
- in case of a bicameral system, did you cooperate with the other chamber?  
*No Estonia has a unicameral parliament*
- did you consult regional Parliaments?  
*Estonia has no regional parliament*
- did you make use of external expertise?  
*No, we did not*

Did you cooperate with other national Parliaments in the process opinion?

*No, we did not*

Did you publicise your findings (e. g. in a special press release?)

*No, we did not*

Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?

*No it has not, and is not planning to do so.*

*Findings:*

Did you find any breach of the subsidiarity principle?

*No*

Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)

*Yes, see below.*

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

*Yes*

Any other observations?

***None.***

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**Minutes no. 43 of the sitting of the European Union Affairs Committee of the Riigikogu**

Tallinn, Toompea

Friday, 18 January 2008

Beginning at 10.00 a.m., end at 11.51 a.m.

**Chair:** Marko Mihkelson

**Minutes taken by:** Piret Valler

**Participants present:** Raivo Järvi, Marko Mihkelson, Sven Mikser, Keit Pentus, Hanno Pevkur, Rein Ratas, Urmas Reinsalu, Taavi Rõivas, Evelyn Sepp, Jüri Tamm, Olev Aarma (Councillor), Malle Kuuler (Councillor), Kristi Sõber (Councillor)

**Alternate members:** Mart Nutt (alternate member for T.Veskimägi), Marek Strandberg (alternate member for A. Lotman)

**Absent:** Enn Eesmaa, Mailis Reps, Ester Tuiksoo

**Persons invited:**

Ülle Raig, Counsellor to the Penal Law and Procedure Division of the Ministry of Justice; Kristi Värk, Counsellor on European Union Affairs to the Secretary General of the Ministry of Justice

**AGENDA:**

**2. Providing opinion and an assessment of compliance with the principle of subsidiarity  
Proposal for a Council Framework Decision amending the Framework Decision  
2002/475/JHA on combating terrorism**

**DECISIONS TAKEN:**

2.1. To agree with the assessment of the Legal Affairs Committee, according to which the Proposal for a Council Framework Decision is in line with the principle of subsidiarity;

2.2. To support, in accordance with the opinion of the Legal Affairs Committee, the positions of the Government of the Republic on the Proposal for a Council Framework Decision amending the Framework Decision 2002/475/JHA on combating terrorism adopted on 3 January 2008.

Marko Mihkelson  
Chair:

Piret Valler  
Minutes taken

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**Opinion of the Legal affairs committee**

Marko Mihkelson  
Chairman of the European Union Affairs Committee

**Opinion**

14 January 2008

**The positions of Estonia on the Proposal for a Council Framework Decision amending the Framework Decision 2002/475/JHA on combating terrorism, presented on 4 January 2008 by the Government of the Republic.**

The Legal Affairs Committee of the Riigikogu has studied the named Framework Decision and the positions of the Government of the Republic presented at the sitting of 14 January 2008. The Committee agrees with the positions of the Government of the Republic and the proposals contained in the Framework Decision.

The Legal Affairs Committee believes that the Proposal for the named Framework Decision is in line with the subsidiarity principle.

Yours sincerely,

Ken-Marti Vaher  
Chairman of the Legal Affairs Committee

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**MINUTES OF THE SITTING**

Tallinn, Stenbock House

3.01.2008

Agenda Item No. 15

**Estonia's positions on the Council of the EU draft Framework Decision amending the Framework Decision 2002/475/JHA on combating terrorism**

1. In principle, to agree with the Council of the EU draft Framework Decision amending the Framework Decision 2002/475/JHA on combating terrorism. Estonia's representatives at different levels of the Council of the European Union should express the following positions:

- to consider important that the legislation on combating terrorism is regulated to the maximum extent at the EU level and the harmonisation of the acts of Member States is thus guaranteed;

- the Framework Decision should as much as possible correspond to the Council of Europe Convention on the Prevention of Terrorism of 2005, its principles, and preserve the balance achieved in the Convention between the penal law on the one hand and the rights and liberties of persons on the other hand;

- in addition to the adoption of the Framework Decision, Member States should be encouraged to accede to the Council of Europe Convention on the Prevention of Terrorism of 2005. Adoption of the Framework Decision should not hinder accession to the Convention.

2. The State Secretary must present the draft of amending the above-mentioned Framework Decision to the Board of the Riigikogu and make known the position of the Government of the Republic regarding it.

Andrus Ansip  
Prime Minister

Heiki Loot  
State Secretary

**Eduskunta**

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**Questionnaire:**

**Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

*No especial subsidiarity check has been initiated for the COSAC exercise. The proposal will be scrutinised in accordance with the Eduskunta's normal procedures.*

*The scrutiny to be used in this case is specified in section 96 of the Constitution according to which the Government is required to communicate to the Grand Committee all EU proposals that fall within the competence of the Parliament according to the Constitution, as soon as possible to enable early scrutiny and parliamentary input. The purpose of the scrutiny is to authorise the Government's negotiating position with respect to the proposal. Subsidiarity is examined but is, as a matter of historical experience, of minor interest.*

*Due to fact that the explanatory memorandum from the Government on this specific proposal was sent to the Eduskunta only on 18th of January 2008 the handling is still on-going in the sectoral committees and the final position of the Eduskunta is not yet known.*

- **which committees were involved?**

*The committees involved most likely are the Legal Affairs Committee, who give its opinion to the Grand Committee, which adopts the Eduskunta's position.*

- **did your government provide any information as part of the scrutiny process?**

*The Government provided an extensive explanatory memorandum on the issue.*

- **in case of a bicameral system, did you cooperate with the other chamber?**

-

- **did you consult regional Parliaments?**

-

- **did you make use of external expertise?**

*The sectoral committees will organise extensive hearings with external experts*

**Did you cooperate with other national Parliaments in the process opinion?**

*No, no formal contact with other national Parliaments is foreseen.*

**Did you publicise your findings (e. g. in a special press release?)**

*The findings of the sectoral committees and the position of the Grand Committee will be published as parliamentary documents in due course. The press is informed as a matter of course.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*The intention is that the necessary adaptations of the Eduskunta's rules of procedure will be adopted at the same time as the Lisbon Treaty is approved. Draft amendments were prepared in connection with the Constitutional Treaty; they received political support from all parties, and can thus be implemented rapidly.*

**Findings:**

***Since the final position of the Eduskunta is not available yet, the following questions cannot be answered at the moment.***

Did you find any breach of the subsidiarity principle?

Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)

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

Any other observations?

**Assemblée nationale**

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**Questionnaire:**

**Procédure:**

**Quelle a été la procédure utilisée pour le contrôle? Veuillez préciser en fonction des points suivants:**

- **Quelles commissions ont été impliquées?**  
*La Délégation pour l'Union européenne ; la commission spécialisée compétente au fond n'est pas intervenue car la Délégation a considéré qu'il n'y avait pas lieu à avis motivé.*
- **Votre gouvernement a-t-il fourni des informations relatives à la procédure d'examen?**  
*Oui.*
- **Pour les parlements bicaméraux, avez-vous coopéré avec l'autre chambre?**  
*Non.*
- **Avez-vous consulté les Parlements régionaux?**  
*Non.*
- **Avez-vous bénéficié d'une expertise extérieure?**  
*Non.*

**Avez-vous collaboré avec d'autres Parlements nationaux dans le processus?**

*Non mais on a utilisé IPEX pour connaître les décisions des autres Parlements.*

**Avez-vous publié vos conclusions (par exemple dans un communiqué de presse spécialisé)?**

*Le compte rendu de la réunion de la Délégation au cours de laquelle a eu lieu le test est disponible sur le site Internet de l'Assemblée nationale.*

**Votre Parlement a-t-il adapté ses procédures pour se mettre en conformité avec le futur Traité de Lisbonne, ou envisage-t-il de le faire à l'avenir?**

*La procédure interne, telle que définie par un échange de lettres entre le Président de la Délégation pour l'Union européenne et le Président de l'Assemblée, reste la même, à ce stade (la Délégation pour l'UE peut adopter un projet d'avis, qui est ensuite transmis à la commission compétente au fond). Seul le délai change (de six à huit semaines, ce qui laisse désormais 4 semaines à la Délégation pour l'UE et 4 semaines à la commission compétente).*

**Conclusions:**

Voir document joint

**Avez-vous découvert un quelconque manquement au principe de subsidiarité?**

*Non*

**Avez-vous adopté un avis motivé sur la décision-cadre? (Dans ce cas veuillez joindre une copie).**

*Non*

**Avez-vous trouvé les justifications de la Commission au sujet du principe de subsidiarité satisfaisantes?**

*Oui*

**Avez-vous d'autres remarques?**

*Aucune*

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**Communication de MM. Jérôme Lambert et Didier Quentin Test de subsidiarité sur la proposition de décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme**

**I. Un test des nouvelles dispositions du traité de Lisbonne sur la subsidiarité et la proportionnalité**

**A. Un test résultant des décisions récentes de la COSAC**

L'examen de la proposition de décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme est un « test » résultant des décisions de la COSAC (Conférence des organes spécialisés dans les affaires communautaires), prises lors de la réunion des présidents qui s'est tenue à Lisbonne les 11 et 12 juillet 2007 et de la réunion de la COSAC des 14, 15 et 16 octobre 2007 à Estoril.

La proposition devra également être examinée au titre de l'article 88-4 de la Constitution mais les deux procédures sont indépendantes.

La COSAC de Berlin en mai 2007 avait décidé que deux contrôles de subsidiarité et de proportionnalité au moins seraient organisés chaque année. En 2006, deux tests ont été menés : l'un sur la proposition de règlement sur la compétence et les règles relatives à la loi applicable en matière matrimoniale (le 19 septembre 2006) et l'autre sur la proposition de directive sur l'achèvement du marché intérieur des services postaux de la Communauté (le 22 novembre 2006). Seul ce dernier test a donné lieu à l'adoption d'un avis motivé et à une réponse de la Commission européenne.

L'origine du choix de la proposition de décision-cadre pour faire l'objet du test de subsidiarité est une proposition faite par le Sénat tchèque et le Parlement des Pays-Bas en avril 2007, à partir d'un examen du programme législatif de la Commission pour 2007.

La COSAC a recommandé que cet examen permette de **tester l'application des nouvelles dispositions du traité de Lisbonne contenues dans le protocole n°2 sur l'application des principes de subsidiarité et de proportionnalité** annexé au traité.

**B. Le traité de Lisbonne consacre le rôle des parlements nationaux dans le contrôle du respect du principe de subsidiarité**

L'article 11 du traité sur l'Union européenne, tel que modifié par le traité de Lisbonne, dispose que « *les parlements nationaux contribuent activement au bon fonctionnement de l'Union [...] en veillant au respect du principe de subsidiarité* ». Un protocole (de même valeur juridique que les Traités) annexé est consacré à l'application du principe de subsidiarité et de proportionnalité.

Destinataire, en même temps que le Conseil et le Parlement européen, de tous les projets d'actes législatifs présentés par la Commission, qui doit veiller à les motiver au regard des principes de subsidiarité et de proportionnalité, chaque parlement national peut, dans les huit semaines (au lieu de six dans le traité constitutionnel), adresser aux présidents du Parlement européen, du Conseil et de la Commission un « avis motivé » exposant les raisons pour lesquelles il estime que le projet en cause n'est pas conforme au principe de subsidiarité.

Bien que le protocole n°2 ne le précise pas, la COSAC a décidé lors de sa réunion d'Estoril que le point de départ du délai pour le présent test serait la mise à disposition de la proposition législative dans toutes les langues de l'UE, soit le 26 novembre dernier. Le contrôle doit donc être achevé le 21 janvier 2008.

D'après les informations fournies par le site IPEX, sept chambres ont commencé l'examen de la proposition et à ce stade, seul le Sénat tchèque a estimé qu'elle était contraire à la subsidiarité. Le Sénat français l'a examinée le 12 décembre dernier et a conclu qu'elle était conforme à la subsidiarité.

La procédure interne à l'Assemblée nationale reste celle définie à la suite d'un échange de lettres entre le Président de la Délégation et le Président de l'Assemblée : la Délégation peut adopter un « projet d'avis » qu'elle communique à la Présidence, qui le renverra à la



commission compétente. L'extension du délai à huit semaines laisse dorénavant quatre semaines à la Délégation et quatre semaines à la commission compétente pour se prononcer. Deux points doivent être soulignés :

– L'avis est « négatif » : **les parlements nationaux ne rendent des avis que lorsqu'ils estiment que la subsidiarité est enfreinte**. Dans la procédure interne à l'Assemblée, cela implique que lorsque la Délégation estime qu'un texte n'est pas contraire au principe de subsidiarité, aucun avis n'est déposé et la commission compétente n'est pas saisie.

– **Il ne porte que sur le respect du principe de subsidiarité**, en vertu duquel, selon le 3 de l'article 5 du TUE modifié, « *l'Union intervient seulement si, et dans la mesure où, les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les États membres, tant au niveau central qu'au niveau régional et local, mais peuvent l'être mieux, en raison des dimensions ou des effets de l'action envisagée, au niveau de l'Union* » et non sur celui, plus large, de proportionnalité selon lequel « *le contenu et la forme de l'action de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs des traités* ».

En cela, **le champ du contrôle est plus restrictif que la procédure informelle mise en place, à l'initiative de la Commission, à partir du 1er septembre 2006**, grâce à laquelle 138 avis ont été émis par 24 parlements nationaux sur 27 propositions. Les conclusions du Conseil européen des 15 et 16 juin 2006 avaient en effet fixé des lignes directrices extrêmement larges en approuvant l'engagement de la Commission de rendre « directement accessibles aux parlements » toutes ses nouvelles propositions et ses documents de consultation et en offrant aux parlements nationaux la faculté de formuler dans ce cadre des observations « eu égard en particulier [donc pas seulement] aux principes de subsidiarité et de proportionnalité ». L'étendue de l'objet de ce contrôle est cependant inversement proportionnel à sa portée juridique. La Commission doit seulement examiner « avec toute l'attention requise » les avis parlementaires. Tel n'est pas le cas de la nouvelle procédure.

La nouveauté essentielle tient en effet à la **portée juridique accordée aux avis parlementaires**.

Lorsqu'un tiers (un quart dans l'espace de liberté, de sécurité et de justice) des parlements nationaux (une voix par chambre dans les parlements bicaméraux, deux voix dans les monocaméraux) émet un avis de non conformité, la Commission doit réexaminer son texte et motiver son éventuel maintien. C'est le « carton jaune ».

Lorsque la moitié des parlements nationaux émet un avis de non conformité, la Commission doit réexaminer son texte et motiver son éventuel maintien. Le cas échéant, le Conseil et le Parlement européen doivent, en première lecture, examiner si le projet est conforme au principe de subsidiarité et peuvent le rejeter à la majorité de 55% des membres du Conseil ou à la majorité des suffrages exprimés au Parlement européen. C'est le « carton orange », qui est une nouveauté par rapport au traité constitutionnel.

En toute fin de la procédure législative, le traité de Lisbonne, comme le faisait le traité constitutionnel, accorde aux parlements nationaux la faculté de former, dans les deux mois qui suivent la publication d'un acte législatif, un recours motivé auprès de la Cour de justice de l'Union européenne pour non conformité au principe de subsidiarité afin d'en demander l'annulation. C'est le « carton rouge ».

## **II. La proposition de décision-cadre vise à renforcer la capacité de l'Union européenne en matière de lutte contre le terrorisme**

### **A. Une proposition s'inscrivant dans une série d'initiatives récentes de la Commission**

Souhaitant renforcer la capacité de l'Europe à protéger ses citoyens contre la menace terroriste, **la Commission a proposé le 6 novembre 2007 une série d'initiatives relatives à la lutte contre le terrorisme** (« paquet » terrorisme) : une communication sur l'intensification de la lutte contre le terrorisme<sup>1</sup>, la présente proposition de modification de la décision-cadre de 2002, une proposition de décision-cadre relative à l'utilisation des données des dossiers passagers (PNR) à des fins répressives<sup>2</sup> et enfin une communication relative à l'amélioration de la sécurité des explosifs<sup>3</sup>.

### **B. La proposition vise à inclure de nouvelles infractions liées au terrorisme dans la décision-cadre du 13 juin 2002**

<sup>1</sup> COM (2007) 649 final

<sup>2</sup> COM (2007) 654 final

<sup>3</sup> COM (2007) 651 final

**La décision-cadre du Conseil du 13 juin 2002 relative à la lutte contre le terrorisme**, adoptée à la suite des attentats du 11 septembre 2001, constitue **la base de la politique de l'Union en matière de lutte contre le terrorisme**. Elle fixe un cadre pour la coopération judiciaire en matière de terrorisme, en **rapprochant la définition des infractions terroristes dans tous les Etats membres** et en prévoyant que les peines requises devront être plus sévères que pour les mêmes actes commis dans le cadre d'une infraction de droit commun. Bien que la Commission ait proposé initialement une harmonisation des sanctions, aucun accord sur ce sujet n'a pu intervenir et **seules les infractions liées à un groupe terroriste font l'objet de peines harmonisées** (la décision-cadre fixe le « minimum du maximum » des peines encourues). Selon l'article 5, paragraphe 1, les autres infractions doivent faire l'objet de « *sanctions pénales effectives, proportionnées et dissuasives, susceptibles d'entraîner l'extradition* », ce qui implique des peines d'au moins un an d'emprisonnement<sup>4</sup>.

La présente proposition vise à **inclure dans les infractions liées aux activités terroristes définies par la décision-cadre du 13 juin 2002 la provocation publique à commettre une infraction terroriste, le recrutement pour le terrorisme et l'entraînement pour le terrorisme**. Elle ne vise pas à harmoniser les sanctions pour ces infractions, auxquelles s'appliquerait l'article 5, paragraphe 1, de la décision cadre de 2002 déjà cité. Il est précisé que pour qu'un acte soit passible de poursuites, il n'est pas nécessaire qu'une infraction terroriste soit effectivement commise.

La **provocation publique à commettre une infraction terroriste** est définie comme la diffusion ou toute autre forme de mise à disposition du public d'un message, avec l'intention d'inciter à la commission d'un acte terroriste, lorsqu'un tel comportement, qu'il préconise directement ou non la commission d'infractions terroristes, crée un danger qu'une ou plusieurs de ces infractions puissent être commises.

Le **recrutement pour le terrorisme** est le fait de solliciter une autre personne pour commettre un acte terroriste.

Enfin, **l'entraînement pour le terrorisme** est le fait de fournir des instructions pour la fabrication ou l'utilisation d'explosifs, d'armes à feu, d'autres armes ou de substances nocives ou dangereuses, ou pour d'autres méthodes ou techniques spécifiques, en vue de commettre un acte terroriste en sachant que la formation dispensée a pour but de servir à la réalisation d'un tel objectif.

### **C. La volonté d'améliorer la lutte contre le terrorisme et ses nouveaux canaux**

La Commission motive sa proposition par **la volonté d'améliorer les moyens de lutte contre le terrorisme et ses nouveaux canaux, notamment la diffusion de la propagande et du savoir-faire terroristes par Internet**. L'analyse d'impact qui accompagne la proposition s'attache à démontrer que la décision-cadre de 2002 (en particulier les dispositions relatives à l'incitation et celles concernant la participation aux activités d'un groupe terroriste) n'impose pas de rendre punissable une partie significative de la diffusion de messages encourageant la commission d'infractions terroristes ou fournissant du savoir-faire terroriste, qu'elle se fasse par le biais d'un site Internet, d'un forum de discussion ou que les messages soient adressés à des personnes en vue d'un recrutement. Les législations nationales sont jugées également insuffisantes face à la diffusion de propagande et de savoir-faire terroristes.

La proposition vise à **aligner la définition des infractions terroristes de la décision-cadre de 2002 sur la Convention du Conseil de l'Europe pour la prévention du terrorisme**, signée à Varsovie le 16 mai 2005 et entrée en vigueur le 1<sup>er</sup> juin 2007. Cette convention a été signée par 25 Etats membres de l'UE (dont la France le 22 mai 2006) et elle est actuellement en cours de ratification dans les différents Etats membres ; la Bulgarie, la Roumanie, la Slovaquie et le Danemark l'ont déjà ratifiée et en France, un projet de loi de ratification a été déposé au Sénat le 8 novembre 2007.

La Convention prévoit que les Etats parties érigent en infraction pénale la provocation publique à commettre une infraction terroriste, le recrutement et l'entraînement pour le terrorisme et adoptent les mesures nécessaires pour qu'elles soient passibles de peines effectives, proportionnées et dissuasives.

**Il convient de souligner qu'en France, la Convention du Conseil de l'Europe ne nécessitera pas de modification de la législation interne**. L'article 24, alinéa 4 de la loi du

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<sup>4</sup> Voir le premier rapport fondé sur l'article 11 de la décision-cadre du 13 juin 2002 relative à la lutte contre le terrorisme, SEC (2004) 688

29 juillet 1881 sur la liberté de la presse réprime la provocation directe aux actes de terrorisme et l'apologie de ces actes. Ces faits sont punis de 5 ans d'emprisonnement et 45 000 euros d'amende.

Le recrutement et l'entraînement pour le terrorisme sont incriminés par le biais de l'association de malfaiteurs dans le but de préparer un acte de terrorisme (article 421-2-1 du Code pénal), punie par 10 ans d'emprisonnement et 225 000 euros d'amende.

Par rapport à la Convention du Conseil de l'Europe, la Commission met en avant les avantages d'une intégration des infractions concernées dans la décision-cadre de 2002 : le cadre institutionnel plus intégré de l'Union européenne (procédure d'adoption plus rapide, mécanismes de suivi, interprétation commune par la Cour de justice), le régime des sanctions pénales, les règles de compétence obligatoires, le déclenchement des mécanismes de coopération de l'UE (décision du Conseil 2005/671 JAI sur l'échange d'information et la coopération relatifs aux infractions terroristes), l'application automatique du mandat d'arrêt européen.

### **III. La proposition de décision-cadre est conforme aux principes de subsidiarité et de proportionnalité**

La base juridique de la proposition est triple. L'article 29 du Traité UE dispose que la lutte contre le terrorisme est un moyen pour l'Union d'assurer un niveau élevé dans un espace de liberté, de sécurité et de justice ; l'article 31 e) prévoit que l'action en commun dans le domaine de la coopération judiciaire en matière pénale vise à « *adopter progressivement des mesures instaurant des règles minimales relatives aux éléments constitutifs des infractions pénales et aux sanctions applicables dans les domaines de la criminalité organisée, du terrorisme et du trafic de drogue* » ; enfin, l'article 34 b) prévoit l'adoption de décisions-cadres dans le domaine de la coopération policière et judiciaire en matière pénale.

La lutte contre le terrorisme est également l'une des priorités du programme de La Haye pour le renouveau européen dans le domaine de la liberté, de la sécurité et de la justice, adopté par le Conseil européen en novembre 2004. Les Etats membres ont alors souligné qu'une réponse globale est indispensable pour combattre le terrorisme.

**Les aspects transnationaux du terrorisme sont évidents** : plus que jamais, le terrorisme est un phénomène mondial. **Le développement d'Internet, son utilisation à des fins criminelles ignorent également les frontières. Il paraît donc légitime et souhaitable que l'Union européenne intervienne dans ces domaines.** L'action de l'Union présente des avantages certains, en raison de ses dimensions et des mécanismes qu'elle implique, en particulier l'application du mandat d'arrêt européen.

Par ailleurs, **l'intervention de l'UE ne saurait être qualifiée d'excessive, dans la mesure où la proposition ne prévoit pas d'harmonisation des sanctions**, mais implique seulement, comme on l'a vu, des peines minimales d'un an d'emprisonnement, ce qui est très inférieur aux peines encourues en droit français pour les mêmes infractions.

**Les mesures proposées ne sont pas non plus excessives par rapport aux libertés fondamentales. La définition des infractions établit clairement un lien avec les actes terroristes.** En particulier, la définition de la provocation publique au terrorisme, qui serait susceptible d'entrer en conflit avec la liberté d'expression, prévoit l'existence d'une intention spécifique d'inciter à la commission d'un acte terroriste et d'un danger qu'une infraction terroriste soit commise.

Il convient de souligner que la conciliation entre la protection des droits fondamentaux et la répression des infractions liées au terrorisme fait l'objet d'un considérant qui précise que « *rien dans la présente décision-cadre ne peut être interprété comme visant à réduire ou à entraver des libertés ou des droits fondamentaux tels que la liberté de réunion, d'association ou d'expression, le droit au respect de la vie privée et familiale, y compris le droit au respect de la confidentialité de la correspondance* ».

Enfin, la proposition ne crée **pas d'obligation nouvelle pour les fournisseurs de services de télécommunications et les opérateurs** par rapport aux mécanismes existants prévus par les directives sur le commerce électronique et sur la conservation des données<sup>5</sup>. Ainsi, la directive sur le commerce électronique prévoit que les États peuvent instaurer l'obligation, pour les opérateurs de sites, d'informer dès que possible les autorités publiques compétentes d'activités illicites alléguées qu'exerceraient des internautes. De la même manière, les États membres peuvent prévoir l'obligation, pour les fournisseurs d'hébergement, de communiquer

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<sup>5</sup> Directives 2000/31/CE du 8 juin 2000 et 2002/58/CE du 12 juillet 2002

aux autorités compétentes les informations permettant d'identifier les propriétaires des pages hébergées, ainsi que de retirer les informations illégales. La directive sur la conservation des données prévoit que les autorités publiques compétentes peuvent demander aux fournisseurs d'accès de fournir les données relatives au trafic et les données de localisation, ainsi que les données connexes nécessaires pour identifier l'abonné ou l'utilisateur dans le but de prévenir, rechercher ou poursuivre des infractions pénales.

En conséquence, il vous est proposé de considérer que ce texte est conforme au principe de subsidiarité et qu'il n'y a donc pas lieu à avis motivé de la part de l'Assemblée nationale.

## **Sénat**

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### **Questionnaire:**

#### ***Procedure :***

**What was the procedure used to conduct the check ? Please specify with regard to the following topics:**

- **which committees were involved ?**  
*Dans le cas du Sénat, c'est la délégation pour l'Union européenne, dont les travaux ont un caractère transversal et qui a pour mission générale de suivre les travaux conduits par les institutions de l'Union, qui examine les textes européens au regard de la subsidiarité et de la proportionnalité dans le cadre du dialogue avec la Commission européenne. C'est donc naturellement elle qui a procédé à l'examen de la proposition de décision-cadre relative à la lutte contre le terrorisme au cours de sa réunion du 12 décembre 2007.*
- **did your government provide any information as part of the scrutiny process ?**  
*Oui sous la forme d'une fiche d'impact.*
- **in case of a bicameral system, did you cooperate with the other chamber ?**  
*Non.*
- **did you consult regional Parliaments ?**  
*Non.*
- **did you make use of external expertise ?**  
*Non.*

**Did you cooperate with other national Parliaments in the process opinion ?**

***Non.***

**Did you publicise your findings ?**

*Les observations que la délégation pour l'Union européenne du Sénat adopte au cours de ses réunions sont publiées de deux manières :*

*– quelques jours après leur adoption, sur les pages consacrés à l'Europe sur le site internet du Sénat (<http://www.senat.fr/europe/r12122007.html#toc6>) ainsi que sur le site IPEX ;*

*– dans « les Actualités de la délégation pour l'Union européenne ». Cette publication, qui paraît environ une fois par mois, rend compte de l'ensemble des débats et auditions menées par les sénateurs au sein de la délégation et présente l'analyse des textes européens soumis au Sénat.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so ?**

*Le Sénat n'a pas encore adapté sa procédure en fonction des dispositions du traité de Lisbonne.*

**Résultats :**

**Did you find any breach of the subsidiarity principle ?**

*La délégation pour l'Union européenne du Sénat a estimé que cette proposition de décision-cadre ne portait pas atteinte au principe de subsidiarité.*

*Sans remettre en cause le rôle prééminent joué par les États membres pour prévenir les menaces terroristes et poursuivre les auteurs d'actes terroristes, la délégation a estimé qu'une lutte efficace contre le terrorisme passait nécessairement par une action vigoureuse au niveau de l'Union européenne. Elle a indiqué qu'une telle action pouvait apporter une réelle plus-value, comme l'avait mis en évidence la décision-cadre relative à la lutte contre le terrorisme adoptée peu après les attentats du 11 septembre 2001. Elle a ajouté que ce texte contenait une définition commune du terrorisme et prévoyait une harmonisation des sanctions relatives à la direction ou à la participation à un groupe terroriste, alors que seuls six États membres disposaient jusqu'ici d'une législation spécifique sur le terrorisme.*

*La délégation pour l'Union européenne a également considéré que cette proposition de décision-cadre devrait permettre d'aligner le droit de l'Union européenne sur la convention du Conseil de l'Europe du 16 mai 2005 pour la prévention du terrorisme, en ce qu'elle prévoit de rendre punissables, par les États membres, la provocation publique à commettre une infraction terroriste ainsi que le recrutement et l'entraînement pour le terrorisme.*

**Did you adopt a reasoned opinion on the Framework Decision ? (please enclose a copy)**

*Les considérants qui ont amené la délégation à considérer que cette décision-cadre respectait les principes de subsidiarité et de proportionnalité sont disponible ci-dessous.*

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

*La délégation pour l'Union européenne a reconnu l'effort de la Commission pour motiver sa proposition, tant au regard de la subsidiarité que de la proportionnalité.*

**Any other observations ?**

*Non.*

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**Décision-cadre relative à la lutte contre le terrorisme**  
**(COM (2007) 650 final)**

**Que dit cette proposition de décision-cadre ?**

Cette proposition tend à harmoniser les dispositions nationales relatives aux provocations publiques à commettre une infraction terroriste ainsi qu'au recrutement et à l'entraînement pour le terrorisme. Il s'agit de faire en sorte que tous les États membres érigent ces agissements en infractions graves, y compris lorsqu'ils sont commis au moyen d'Internet, et qu'ils infligent des peines pénales dont l'emprisonnement à leurs auteurs.

**Comment la proposition est-elle motivée au regard de la subsidiarité et de la proportionnalité ?**

Pour motiver sa proposition au regard de la subsidiarité, la Commission européenne s'appuie sur le caractère intrinsèquement international et transfrontière du terrorisme qui implique une réponse au moins en partie internationale. Or, les différences de traitement juridique dans les États membres font obstacle à la coordination des efforts requise au niveau de l'Union européenne et compliquent la coopération au niveau international.

Au titre de la proportionnalité, la Commission rappelle que la décision-cadre laissera aux États membres la compétence quant à la forme et aux moyens à mettre en œuvre et qu'en outre elle

ne crée aucune obligation nouvelle pour les services de télécommunications et les opérateurs. Les dispositions de la directive sur le commerce électronique et de la directive sur la conservation des données ne seront pas modifiées.

**Quelle appréciation pouvons-nous porter sur la motivation avancée par la Commission européenne ?**

Même si les États membres conservent une responsabilité éminente pour prévenir les menaces terroristes et poursuivre les auteurs d'actes terroristes, il est incontestable qu'une lutte efficace contre le terrorisme passe par une action vigoureuse au niveau de l'Union européenne. Une telle action peut apporter une réelle plus-value, comme l'a mis en évidence la décision-cadre relative à la lutte contre le terrorisme qui a été adoptée peu après les attentats du 11 septembre 2001. Cette décision-cadre prévoit que l'incitation à des infractions terroristes et la complicité en la matière doivent être rendues punissables par les États membres. Elle leur impose en outre de déclarer pénalement responsables les personnes qui dirigent un groupe terroriste ou participent à ses activités. Mais la Commission européenne fait valoir que ces dispositions ne s'appliquent pas explicitement à la diffusion de propagande et de savoir-faire terroristes, notamment par Internet.

Or, dans le cadre du Conseil de l'Europe, la convention du 16 mai 2005 pour la prévention du terrorisme a bien prévu que la provocation publique à commettre une infraction terroriste ainsi que le recrutement et l'entraînement pour le terrorisme devraient être passibles de poursuites dans les États qui y sont parties.

Dès lors, il semble indispensable d'aligner le droit de l'Union européenne sur la convention du Conseil de l'Europe. Une définition plus large du terrorisme empêchera les terroristes de profiter des lacunes et des divergences dans les législations nationales. Elle permettra de mieux prendre en compte au niveau de l'Union européenne l'utilisation d'Internet par les groupes terroristes.

**C'est pourquoi il ne paraît pas possible de contester ou de critiquer cette proposition de décision-cadre au titre de la subsidiarité ou de la proportionnalité.**

***Bundestag***

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**Questionnaire:**

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**
- **did your government provide any information as part of the scrutiny process?**
- **in case of a bicameral system, did you cooperate with the other chamber?**
- **did you consult regional Parliaments?**
- **did you make use of external expertise?**

*Committees involved were the Legal Affairs Committee as the committee responsible and the Foreign Affairs Committee, the Internal Affairs Committee, the Committee on Human Rights and Humanitarian Affairs and the Committee on the Affairs of the European Union in an advisory capacity.*

*The German Bundestag has in principle used the “normal” procedure provided for the scrutiny of EU documents. There were some differences, however: Firstly, special attention was given to the strict time frame foreseen in the Protocol on the application of the principles of subsidiarity and proportionality as annexed to the draft Treaty of Lisbon. Secondly, the Committees involved have, after completion of the subsidiarity check, reserved their right to continue their deliberations on the substance of the proposal. Normally, the scrutiny procedure is completed after the Committees have issued a statement or formally taken note of the proposal. Thirdly, the result of the scrutiny procedure was communicated, by letter of the President of the Bundestag, to the Presidents of the European Commission, the European Parliament and the Council. A separate letter will be sent to the Federal Chancellor shortly.*

*The Federal Government has provided the Bundestag with a short description of the proposal and a comprehensive assessment by the Federal Ministry of Justice. No further external expertise was made use of.*

*There was no cooperation with the German Bundesrat. Regional parliaments were not consulted.*

**Did you cooperate with other national Parliaments in the process?**

*No. However, a short summary of the report of the Legal Affairs Committee and the decision of the Bundestag will be published on the IPEX website.*

**Did you publicise your findings (e. g. in a special press release?)**

*The report of the Legal Affairs Committee and the decision of the Bundestag are both publicly available on the Bundestag website.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*Deliberations on adapting the Bundestag’s Rules of Procedure are currently under way.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No.*

**Did you adopt a reasoned opinion on the Framework Decision?**

No. However, a letter of the President of the German Bundestag was sent to the Presidents of the European Commission, the European Parliament and the Council, stating that there were no concerns regarding the respect of the principle of subsidiarity but that there were concerns with regard to the principle of proportionality.

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

The Legal Affairs Committee found the reasoning satisfactory. However, the Committee on the Affairs of the European Union stressed its advisory statement that the Commission did not demonstrate clearly enough that there are loopholes in the penal codes of the Member States regarding the fight against terrorism. This would seem necessary with respect to the first criterion of the subsidiarity principle, namely that the Community shall take action, "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States".

**Any other observations?**

Both the Legal Affairs Committee and the Committee on the Affairs of the European Union – in full knowledge of the scope of the subsidiarity checking mechanism foreseen in the Treaty of Lisbon – decided to include observations on proportionality in their statement. It was pointed out that the proposed framework decision duplicates to a large extent the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 and that, with regard to the proportionality principle, due consideration should have been given on joint efforts, by all Member States, to ratify this convention, instead of proposing a new framework decision. These observations will also be communicated to the Federal Chancellor.

**Bundesrat**

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**Questionnaire:**

**Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- which committees were involved?
- did your government provide any information as part of the scrutiny process?
- in case of a bicameral system, did you cooperate with the other chamber?
- did you consult regional Parliaments?
- did you make use of external expertise?

*After the Bundesrat secretariat had received the legislative proposal in German language from the German government on 14 November 2007 it was distributed to the committee secretariats. In addition to the competent EU committee the Director of the Bundesrat declared two sectoral committees responsible for the deliberations of the proposal (the committee on legal affairs and the committee on internal affairs).*

*The committee on legal affairs and the committee on internal affairs deliberated the proposal in its sessions on 5 December 2007. Both recommended to the plenary to take notice of the proposal. A breach of the principles of subsidiarity and proportionality were not found.*

*The committee on Questions of the European Union adopted the same recommendation to the plenary in its session on 7 December 2007 based on the deliberations of the two sectoral committees involved.*

*The plenary took notice of the proposal in its session on 20 December 2007.*

*The Federal Government sent three reports on the results of the ongoing negotiations on EU-level till the end of November 2007.*



*A mutual exchange with the German Bundestag on the stage of proceedings took place.*

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

*External actors were not involved in the examination.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No. The IPEX system was used but provided no sufficient information on the findings of other parliaments when the committee deliberations took place.*

**Did you publicise your findings (e. g. in a special press release?)**

*No*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*At present the Bundesrat checks whether adaptations of its proceedings to the subsidiarity check mechanism foreseen in the Lisbon Treaty are necessary.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*No*

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

*The committee on legal affairs scrutinized the Commission's justification and found it satisfactory.*

**Any other observations?**

*No*

## **Chamber of Deputies**

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### **Questionnaire:**

#### **Procedure:**

##### **Which Committees were involved?**

*After receiving the translated text of the proposal by the European Commission on November the 23<sup>rd</sup>, the Speaker of the Hellenic Parliament convened a joint meeting of the Standing Committee for Public Administration, Public Order and Justice and the Special Standing Committee for European Affairs, according to the Standing Orders of our Parliament (article 41B, "Opinions on legislative acts of the European Union"). Further on, the political groups appointed rapporteurs, from the members of the afore mentioned Committees. The Joint Committees held two sessions, on 11 and on the 16<sup>th</sup> of January 2008.*

##### **Did your Government provide any information as part of the scrutiny process?**

*Representatives of the competent Ministries (Minister and Under Secretary of Home Affairs and Secretary General of the Ministry of Justice) have been invited and were present during the sessions of the Joint Committees.*

##### **Did you make use of external practice?**

*We were advised by the Presidium's experts.*

##### **Did you cooperate with other national Parliaments in the process of opinion?**

*We contacted the secretariat of the French National Assembly and viewed (through IPEX) the contributions of Parliaments having already dealt with the subject.*

##### **Did you publicise your findings?**

*Yes. We sent a summary of the procedures and the final opinion that was adopted to all the Members of the Hellenic Parliament and we issued a press release on the site of the Hellenic Parliament.*

##### **Has your Parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or it is planning to do so?**

*It is planning a wide range of modifications in its Standing Orders, in order to adapt the regulatory framework of EU legislation scrutiny, to the new circumstances.*

#### **Findings:**

##### **Did you find any breach of the subsidiarity principle?**

*No.*

##### **Did you adopt a reasoned opinion on the Framework Decision ?**

*The majority of the Committees members adopted an opinion summarizing the conformity of the proposal with the subsidiarity principle.*

##### **Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?**

*Yes.*

##### **Any other observations?**

*The justification with regard to the principle of proportionality could be more convincing. According to the opinion of the majority of the Hellenic Parliament's Joint Committees members, an explicit reference on the respect of the Chart of Fundamental Rights and the European Convention of Human Rights should be embodied in the text of the framework decision, before final decision is reached at the Justice and Home Affairs Council.*

**National Assembly**

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**Questionnaire:****Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

*As the Hungarian language version of the proposal became available quite late on 26 November 2007, considering the timing and workload of the present parliamentary session, the involvement of other committees could not have been organized. Lawyer experts at the secretariat of the Committee on European Affairs examined the proposal in question thoroughly and presented their findings in a paper distributed among the committee members prior to the meeting. No further external expertise were used. The proposal was placed on the agenda of the Committee on European Affairs on 10 December 2007, where the representative of the Ministry of Justice and Law Enforcement was invited to present a short summary of the proposal and the opinion of the Hungarian government. Mr. Attila Piros, State Secretary of the Ministry underlined that the aim of the proposal is to ensure, that national provisions on public provocation, recruitment and training related to terrorism are harmonised in the EU, thus these forms of behaviour are punishable even when committed via Internet.*

*The Hungarian National Assembly is a unicameral parliament, and there are no regional Parliaments in Hungary.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No cooperation has been initiated.*

**Did you publicise your findings (e. g. in a special press release?)**

*No particular press publication was prepared. The minutes of each committee meeting and a short memo summarizing the main discussion points are regularly published on the website of the committee.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*The procedure of the subsidiarity check mechanism is regulated by the law on the cooperation of the Parliament and the Government in European Union affairs (Act LIII. of 2004) and the Standing Orders of the Parliament of the Republic of Hungary. Accordingly the Committee on European Affairs may examine the enforcement of the principle of subsidiarity in the draft legislations of the European Commission in accordance with the provisions of legislation of the Union. In case the Committee presumes any breach of the principle of subsidiarity, it shall inform the Speaker of Parliament thereof. The Parliament shall decide on the motion of the committee within fifteen days. The changes in the subsidiarity check mechanism the Lisbon Treaty has not brought changes in the above-mentioned procedure.*

**Findings:**

**Did you find any breach of the subsidiarity principle?**

*No breach of the principle was found. 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.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*A reasoned opinion was not adopted; the committee discussed the subsidiarity aspects of the proposal in a committee meeting. The minutes of the committee meeting contain the findings of the committee. In addition to statements emphasising the importance of the European counter-terrorism policy, several deputies have expressed concern about its efficiency and the related human rights issues. This particular proposal, while aligning the Framework decision with Council of Europe Convention on the prevention of terrorism, does not provide the same range of guarantees for freedom of expression (especially in case of indirect public provocation) as the Convention.*

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

*The relevant part of the Explanatory Memorandum discusses the essential aspects of the subsidiarity principle and the attached exhaustive impact study adequately underlines these statements. Justification of the proportionality principle however, lacks reference to the human rights issues. Considering the delicate nature of the planned legislation, it would have been advisable to include the appropriate findings of the impact study in the Explanatory Memorandum.*

**Any other observations?**

*The availability of the Hungarian language version continues to pose problems. As a three weeks delay (Commission adopted the proposal on 6 November, Hungarian language version was published on 26 November) significantly decreases the possibility of a timely reaction or inter-parliamentary cooperation, the wording of the Protocol on the role of national parliaments (Art.4.) should be clarified with regard to the exact starting point of the eight weeks period.*

## ***Houses of the Oireachtas***

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### **Questionnaire:**

#### ***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**
- **did your government provide any information as part of the scrutiny process?**
- **in case of a bicameral system, did you cooperate with the other chamber?**
- **did you consult regional Parliaments?**
- **did you make use of external expertise?**

*The subsidiarity check with regard to the draft Framework Decision on Combating Terrorism was conducted by the Joint Committee on European Scrutiny (JCES). It decided to refer the draft framework Decision to the relevant Government Department, the Department of Justice, Equality and Law Reform, and the Parliamentary Legal Advisor for their views and opinion on whether it is in conformity with the principle of subsidiarity. It also prepared a check list of the issues which should be considered when conducting a subsidiarity check. The JCES was the only Parliamentary Committee involved in the subsidiarity check and it adopted the reasoned opinion. Information on the draft Framework Decision was provided by the Government in the form of an information note as part of the usual scrutiny process carried out by the JCES as well as an opinion on the appropriateness of the proposal. As the JCES is a joint committee of the Houses of the Oireachtas it includes members of both the Dáil and the Seanad. Therefore, members of both Houses were involved simultaneously in the subsidiarity check.*

#### **Did you cooperate with other national Parliaments in the process opinion?**

*Given the timeline involved coupled with the recess of the Parliament for the Christmas period, it did not prove possible for the JCES to consult widely other national parliaments on this occasion. There was limited consolidation with the UK House of Commons and the Austrian Bundesrat. However, the JCES is of the opinion that co-operation between national parliaments with regard to subsidiarity checks is crucial in order to ensure the effective implementation of the 'yellow card' and 'orange card' procedures contained in the Lisbon Treaty. It believes that COSAC is the most appropriate vehicle for this very important co-ordination and cooperation. That said, the JCES is doubtful whether the eight period provided for in the Protocol on the Application of the Principles of Subsidiarity and Proportionality for the submission of reasoned opinions by national parliaments is sufficient to allow full and effective consultation among the parliaments.*

#### **Did you publicise your findings (e. g. in a special press release?)**

*[Decision on a press release to be decided by the JCES]. The Reasoned Opinion was posted on the website of the JCES.*

#### **Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*Under the subsidiarity check mechanism as foreseen in the Lisbon Reform Treaty, each House of the Oireachtas will have an independent vote. Both Houses of the Oireachtas have yet to decide how, if the Lisbon Reform Treaty comes into force, it wishes to carry out the subsidiarity monitoring function and will have to devise a system to ensure subsidiarity compliance is monitored effectively. It is expected, however, that the JCES will play a role as a joint committee of both Houses of the Oireachtas. The procedure followed by the JCES as part of the COSAC pilot project has been a positive experience and could offer a template for future subsidiarity checks.*

#### ***Findings:***

**Did you find any breach of the subsidiarity principle?**

No.

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

Yes, see below.

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

*The JCES found the Commission's justification to be incomplete with regard to the subsidiarity principle. It appears that the Commission did not complete all the elements of the detailed statement as required under the Protocol on the Principles of Subsidiarity and Proportionality. In particular information is lacking as regards the quantitative indicators to substantiate the proposal and a complete answer on whether the proposal takes account of the burden falling upon national authorities, economic operators and the citizen. The JCES is of the opinion that in order to be in compliance with its obligations under the Protocol, the Commission should complete a detailed comparative analysis of how the objectives of the proposal could be effected at national level, outlining its possible advantages as well as shortcomings. There should be a comparison with other possible choices of actions other than at EU level. The Commission should explain in greater detail why regional or national parliaments are not in the position to take similar effective action in a specific policy area.*

**Any other observations?**

*The JCES have found that the COSAC exercise once again highlighted a need to develop among national parliaments an agreed definition and interpretation of the principle of subsidiarity. If the new provisions of the Lisbon Reform Treaty are to be effective, national parliaments will need to work closely together and therefore they must work within agreed parameters and on the same premise. Otherwise, different interpretations of the principle of subsidiarity may lead to great disparities of opinion between each of the national parliaments with the result that the threshold will never be reached for the 'yellow card' or 'orange card' mechanism to be triggered. The JCES believes that there needs to be a focused, result orientated discussion at COSAC on the meaning of subsidiarity so that national parliaments can come to a common understanding.*

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**Joint Committee on European Scrutiny**

**Proposed Framework Decision on Combating Terrorism:  
Compliance with the Principle of Subsidiarity**

**Reasoned Opinion**

The Oireachtas Joint Committee on European Scrutiny concludes that the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism appears to comply with the principle of subsidiarity. This conclusion has been reached for the following reasons:

- the legal basis stated in the proposal would appear to be in order;
- given the international character and cross-boarder nature of terrorism, the objectives of the proposal can be achieved more effectively at the EU level as opposed to the national, regional or local level.

However, the Oireachtas Joint Committee on European Scrutiny also considers that questions remain as regards the proposals conformity with the principle of subsidiarity. These considerations include:

- the fact that action has already been taken by Member States in the form of the Council of Europe Convention on the Prevention of Terrorism, the implementation of which may

require primary domestic legislation thus meaning that the decision is being taken as close as possible to the citizen;

- the information provided by the European Commission to justify the proposal with regard to the principle of subsidiarity is incomplete, with the reasoning not substantiated by quantitative indicators or the consequences of burden. This makes it more difficult to appraise compliance with the principle of subsidiarity, indicating that the European Commission has not fulfilled its obligations under the 'Protocol on the Application of the Principles of Subsidiarity and Proportionality';
- Article 33 under Title VI of the TEU states that "This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security".

The Oireachtas Joint Committee on European Scrutiny therefore recommends that in the future the European Commission should improve its justification of a legislative proposal to include more detailed reasoning in line with its obligations under the Protocol. It should take account of all factors, undertake a detailed comparative analysis and refrain from using general political statements to justify the proposal.

**Oireachtas Joint Committee on European Scrutiny  
Dublin, 22 January 2008**

**Senato**

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**Questionnaire:**

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*The European Affairs Committee.*
- **did your government provide any information as part of the scrutiny process?**  
*Not directly, but the EU draft bill aiming at the ratification of the Warsaw Convention was useful.*
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*No.*
- **did you consult regional Parliaments?**  
*No.*
- **did you make use of external expertise?**  
*No.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*No.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*No.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy).**

*See below.*

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

*Yes.*

**Any other observations?**

*No.*



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**AVIS DE LA 14<sup>e</sup> COMMISSION PERMANENTE**  
**(Politiques de l'Union européenne)**  
**conformément à l'art. 144, alinéa 1<sup>er</sup>, du Règlement**

(Rapporteur: Mme AMATI)

Rome, le 19 décembre 2007

Sur l'acte communautaire:

**Proposition de décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme (COM(2007) 650 def., du 6 novembre 2007) (Acte communautaire n. 34)**

La Commission, après avoir examiné l'acte communautaire dont question au titre,

considérant que le nouveau *modus operandi* des terroristes rend nécessaire l'adoption d'une définition plus large de terrorisme pour les empêcher de profiter des lacunes et des divergences entre les législations nationales et que, ces dernières années, les groupes hiérarchiquement structurés ont cédé la place à des cellules semi-autonomes entretenant entre elles des liens plutôt lâches, et que ces cellules recourent de plus en plus aux nouvelles technologies – et en particulier à *Internet* – pour atteindre leurs buts;

considérant que par cette proposition la Commission européenne vise à harmoniser les dispositions nationales sur la provocation publique à commettre des infractions terroristes, sur le recrutement et l'entraînement à des fins terroristes;

constatant que ces cas de figure sont prévus par la Convention du Conseil de l'Europe sur la prévention du terrorisme, paraphée à Varsovie le 16 mai 2005 et signée par l'Italie le 8 juin 2005, et dont l'objectif fondamental est l'adoption de mesures efficaces pour la prévention et la répression des actes de terrorisme;

constatant également que le décret-loi n. 144 du 27 juillet 2005 portant mesures urgentes pour la lutte contre le terrorisme international, converti, avec modifications, en la loi n. 155 du 31 juillet 2005, a introduit en droit interne les deux nouvelles infractions de recrutement à des fins de terrorisme, y compris international, et d'entraînement à des activités à des fins de terrorisme, y compris international, respectivement aux articles 270-*quater* et 270-*quinquies* du code pénal et que ledit décret-loi a également introduit le 4<sup>e</sup> alinéa de l'article 414 du code pénal (sur la provocation au crime ou au délit), qui prévoit une augmentation de peine de la moitié si la provocation ou l'apologie concerne les crimes ou délits de terrorisme ou les crimes contre l'humanité;

constatant que la nécessité impérieuse de poursuivre le terrorisme sous toutes ses formes et manifestations, y compris indirectes et relatives à l'utilisation d'*Internet*, ne doit pas se répercuter négativement sur la liberté d'utiliser le réseau *Internet*, pas plus que les besoins de lutte contre le terrorisme et la criminalité ne doivent déterminer des formes de surveillance et de contrôle excédant les limites de compatibilité avec les principes d'un système démocratique; estimant également nécessaire que les nouvelles incriminations soient formulées de façon à ne pas affecter la liberté fondamentale de manifestation de la pensée, que garantissent l'art. 21 de la Constitution, l'art. 10 de la CEDH et l'art. 10 de la Charte des droits fondamentaux de Nice, et, comme l'a mis en évidence le Conseil Justice et Affaires intérieures du 6-7 décembre, de façon à ne pas affecter la liberté de réunion ou d'association et le droit au respect de la vie familiale;

rappelant que le Conseil Justice et Affaires intérieures susvisé des 6 et 7 décembre 2007 est convenu qu'il est un devoir d'appliquer le principe de proportionnalité dans la mise en oeuvre de la décision-cadre et qu'il est nécessaire d'insérer dans le préambule un paragraphe, repris par l'article 12 de la Convention de Varsovie, par lequel il est explicité que l'établissement, la mise

en œuvre et l'application des incriminations “ devraient en outre être subordonnés au principe de proportionnalité eu égard aux buts légitimes poursuivis et à leur nécessité dans une société démocratique, et devraient exclure toute forme d'arbitraire, de traitement discriminatoire ou raciste “;

rappelant aussi que le Parlement européen, dans sa séance du 12 décembre 2007, a adopté une résolution où il est souligné qu'un éventuel contrôle de l'Internet visant à prévenir les attaques terroristes ne doit absolument pas entraîner des restrictions à la liberté de parole lorsque celle-ci ne vise pas à provoquer des actes terroristes et lorsqu'elle ne peut raisonnablement pas conduire à ces actions, et que d'éventuelles limitations des droits et des libertés fondamentales introduites en vue de la lutte contre le terrorisme doivent être limitées en termes de durée et de portée et être sujettes au plein contrôle démocratique et juridictionnel; considérant aussi que, à la suite de la délibération de la COSAC des 14-16 octobre 2007, les Commissions des Affaires européennes des parlements des États membres de l'Union européenne sont en train d'effectuer l'examen simultané de la proposition à la lumière du mécanisme visant à vérifier le respect par elle du principe de subsidiarité, tel que dessiné par le Traité de Lisbonne;

rappelant, enfin, que, le 18 septembre 2007, le Gouvernement a présenté au Sénat le projet de loi de ratification de la Convention de Varsovie (A.S. 1799) et que, le 19 juin 2007, il a présenté à la Chambre des députés le projet de loi de ratification de la Convention du Conseil de l'Europe sur la criminalité informatique, faite à Budapest le 23 novembre 2001 (A.C. 2807), et qui constitue le premier accord international concernant les crimes commis par l'intermédiaire d'Internet ou d'autres sources informatiques;

formule, pour ce qui la concerne, un avis favorable, avec les observations suivantes:

la Commission estime que, en principe, pour assurer le bien public de la sécurité juridique il faut déployer, au niveau communautaire, tous les efforts pour parvenir à une définition commune du crime de terrorisme;

a) pour ce qui concerne l'adaptation du droit interne aux prescriptions de la proposition de décision-cadre, il est observé que les normes sanctionnatoires prévues par la proposition ont déjà été insérées dans le code pénal par le décret-loi de juillet 2005, en considération aussi de la revisitation de ces normes par le projet de loi de ratification de la Convention de Varsovie (A.S. 1799). De toute façon, la ratification par le côté italien de la Convention de Varsovie (en vigueur en tout cas depuis le 1<sup>er</sup> juin 2007) n'apportera pas atteinte à l'application de la décision-cadre de 2002, telle que modifiée par la proposition susvisée; et ce sur la base de la “clause de déconnexion”, qui permettra, pour les États membres de l'Union européenne, la prééminence des normes communautaires sur celles de la Convention (article 26, paragraphe 3, de la Convention).

b) pour ce qui concerne le fond de la proposition de décision-cadre, il est observé que l'utilisation d'un moyen de communication électronique tel qu'Internet pose des problèmes considérables aux fins de l'identification du lieu de commission des infractions qui sont commises grâce à ce moyen. La finalisation expresse de la proposition de décision-cadre qui vise à atteindre ces phénomènes criminels pourrait accroître ces difficultés. La décision-cadre de 2002 pose quelques critères pour identifier la juridiction compétente sur les infractions de terrorisme (article 9, paragraphe 2), mais c'est bien le premier de ces critères - celui “de l'État membre où les faits ont été commis” qui, par rapport à Internet, laisse non résolue la question de la juridiction compétente. À ce sujet, malgré la différence des critères que l'on peut tour à tour supposer pour la réglementation d'Internet, il faudrait fixer un critère univoque pour l'identification du *locus commissi delicti* par rapport aux faits commis par l'intermédiaire des moyens de communication électronique. Et ce sans préjudice, par ailleurs, du rôle d'Eurojust en matière de règlement des conflits potentiels de juridiction.

c) concernant le respect du principe de subsidiarité

,

sur le plan du respect de la base juridique choisie, il est observé que le domaine du terrorisme relève expressément du champ de l'article 31, paragraphe 1, lettre e), du Traité UE, conformément auquel l'action commune dans le secteur de la coopération judiciaire en matière pénale comprend l'adoption de mesures pour la fixation de normes minimales relatives aux éléments constitutifs des infractions et aux sanctions, pour ce qui est, entre autres, du terrorisme. La matière pénale relevant par ailleurs de la compétence des États membres, on a, pour le terrorisme, une concurrence de compétences avec l'Union. La proposition sous examen se situe dans ce cadre et elle est donc légitime;

sur le plan de l'impossibilité pour les États membres de réaliser de façon suffisante les objectifs de la proposition, il faut en effet souligner que la portée internationale des phénomènes terroristes liés aux développements de la dernière décennie laisse préférer, quant à l'efficacité des mesures à prendre, une approche de type intégré. Cette approche devrait prévoir des interventions d'organismes supranationaux qui harmoniseraient les normes substantielles, en vue d'éliminer les différences de réglementation entre les divers États; ces organismes fixeraient aussi pour les procédures des qualités qu'elles devraient avoir pour rendre efficace la lutte contre le terrorisme. À ce point de vue, la fixation par une décision-cadre de normes pénales minimales en matière de lutte contre le terrorisme, et qui concernent des conduites susceptibles de trouver dans *Internet* un large espace de diffusion, permet de préparer sur le territoire européen une protection pénale supplémentaire adaptée pour combattre les nouveaux *modus vivendi* des terroristes et qui, par ailleurs, empêchera ces derniers de profiter des lacunes et des divergences entre les législations nationales.

Silvana Amati

**Seima**

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**Questionnaire:**

**Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics.**

*A subsidiarity and proportionality check for the above-mentioned draft Council Framework Decision was conducted by the Saeima Defence, Internal Affairs and Corruption Prevention Committee and the Saeima European Affairs Committee.*

*The European Affairs Committee, together with the Ministry of the Interior prepared a statement, where the latter gave its opinion on the subsidiarity and proportionality in the draft Council Framework Decision.*

*The Defence, Internal Affairs and Corruption Prevention Committee consulted the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs and presented to the European Affairs Committee its opinion on the subsidiarity and proportionality in the draft Council Framework Decision.*

*Since the amendments to the Council Framework Decision on Combating Terrorism are not within the competence of Latvia's local governments, consultations with local governments were not carried out.*

*Because of the specific character of the issue, external expertise was not used in the subsidiarity and proportionality check.*

**Did you cooperate with other national parliaments in the process opinion?**

*While preparing its statement on subsidiarity and proportionality check for the draft Council Framework Decision, the Saeima European Affairs Committee did not cooperate with other EU national parliaments.*

**Did you publicise your findings (e.g., in a special press release)?**

*The conclusions were not published; however, a press release on the meeting of the European Affairs Committee during which the subsidiarity and proportionality check was discussed was prepared and sent to the Latvian news agencies.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty, or is it planning to do so?**

*Currently, the Saeima is conducting a subsidiarity and proportionality check only for those draft legislative acts which were agreed upon by the COSAC. Thus, there is no single permanent procedure yet for the subsidiarity check mechanism. It is possible that in the future this procedure will be adapted according to the Lisbon Treaty.*

**Findings:**

**Did you find any breach of the subsidiarity principle?**

*Breaches of the subsidiarity and proportionality principles were not detected.*

**Did you adopt a reasoned opinion on the Framework Decision? (Please enclose a copy.)**

*Taking into account the fact that no breaches of the subsidiarity and proportionality principles were detected, the Saeima opinion on the afore-mentioned draft Council Framework Decision was not adopted.*

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

*The justification put forward by the European Commission is satisfactory.*

**Any other observations?**

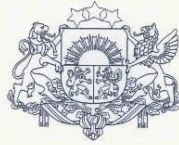
*When considering the draft Council Framework Decision's compliance with the subsidiarity and proportionality principles, the Saeima European Affairs Committee came to the conclusion that in view of the essence and the goal of the subsidiarity principle, as well as the aim set by the draft Council Framework Decision to prevent and combat national and transnational terrorism, the EU member states need to have common coordinated actions aimed at efficient and prompt international cooperation that addresses public incitements to perform terrorist attacks, recruitment of terrorists, as well as training of terrorists. Divergences in the legal regulations of particular EU member states would only hamper coordinated actions and thus would impede cooperation on the international level and a successful fight against manifestations of modern terrorism.*

*The Saeima European Affairs Committee also drew the conclusion that a uniform understanding of terrorism as a criminal act would guarantee efficient international cooperation and would make it possible to achieve the main aim, namely efficient prevention and combating of terrorism. At the same time, the current version of the Framework Decision makes it obligatory to achieve this aim by choosing the individual means in keeping with the traditions and principles of a given member state's criminal law system.*

*In view of the above mentioned facts, the Saeima European Affairs Committee considers that the European Commission has selected an adequate basis for elaboration of legal acts and that the European Commission's justification with regard to the subsidiarity and proportionality principle is satisfactory.*

*Letter from the Seima is available on next page*

**Opinion of the Saeima European Affairs Committee on the subsidiarity and proportionality check for the final wording of the Council Framework Decision COM(2007)650 amending Framework Decision 2002/475/JHA on combating terrorism**



REPUBLIC OF LATVIA SAEIMA  
EUROPEAN AFFAIRS COMMITTEE

Jēkaba iela 11, Rīga, LV 1811, LATVIA · phone: (+371) 708 7324 · fax: (+371) 708 7366 · e-mail: elk@saeima.lv

Rīga, January 21, 2008

No. 9/17-2-n/6-(9/08)

**European Commission**

E-mail: sg-national-parliaments@ec.europa.eu

**European Parliament**

E-mail: ep-np@europarl.europa.eu

**European Council**

E-mail: sgc.cosac@consilium.europa.eu

**COSAC Secretariat**

E-mail: secretariat@cosac.eu

*On the subsidiarity and proportionality check*

The participants of the Conference of Community and European Affairs Committees of Parliaments of the European Union (hereinafter – COSAC) chairpersons meeting, which took place in Lisbon on 12 July 2007, agreed to conduct a subsidiarity and proportionality check on the proposal for a Council Framework Decision on combating terrorism. This was confirmed in the Conclusions of the XXXVIII COSAC that took place from 14 to 16 October 2007 in Estoril.

Proposal for the Council Framework Decision on Combating Terrorism was adopted by the Commission on 6 November 2007.

Accordingly, the Parliament of the Republic of Latvia (Saeima) has carried out a subsidiarity and proportionality check concerning the final version of the Proposal for a Council Framework Decision COM(2007) 650 amending Framework Decision 2002/475/JHA on combating terrorism.

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 prepared by the COSAC Secretariat.

*Annex:* A copy in English (two pages) of the opinion of the Saeima European Affairs Committee regarding the observation of the principles of subsidiarity and proportionality in the 6 November 2007 proposal for the final version of the Proposal for a Council Framework Decision COM(2007) 650 amending Framework Decision 2002/475/JHA on combating terrorism.

Sincerely,

**Vaira Paegle**  
Chairperson of the Saeima  
European Affairs Committee

**Seimas**

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**Questionnaire:**

**Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**

*Three parliamentary committees were involved: the Committee on European Affairs and two specialised committees: the Committee on Legal Affairs and the Committee on National Security and Defence. The specialised committees submitted its expert conclusions to the Committee on European Affairs, which took the final decision.*

*In addition the Legal Department of the Office of the Seimas was asked to submit an opinion on the compliance of the proposal with the principles of subsidiarity and proportionality.*

- **did your government provide any information as part of the scrutiny process?**  
Yes.

*The Ministry of Justice of the Republic of Lithuania was commissioned in cooperation with other responsible institutions to draft the Governments' position on the proposal for a draft Framework decision. In addition, the Committee on European Affairs received a motivated opinion of the Ministry of Justice on the compliance of the proposal with the principles of subsidiarity and proportionality.*

*European Law Department under the Ministry of Justice presented its expert opinion on these issues.*

*The State Security Department of the Republic of Lithuania also submitted its opinion on the proposal for a Framework decision.*

- **in case of a bicameral system, did you cooperate with the other chamber?**  
No. The Seimas of the Republic of Lithuania is a unicameral Parliament.

- **did you consult regional Parliaments?**  
No.

- **did you make use of external expertise?**

*Yes. The Institute of Law, which is a scientific public institution, established by the Government of the Republic of Lithuania aiming at the coordination of the reform of the legal system and legal institutions and harmonizing it with economic and social reform of the state, was asked to submit its opinion. According to the Institute of Law, the proposal complies with the principles of subsidiarity and proportionality.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No. However, the information on the decision taken by the Austrian Parliament (Bundesrat) was distributed among the members of the Committee.*

**Did you publicise your findings (e. g. in a special press release?)**

*Under the provisions of the Statute the conclusions shall be communicated to the Government. The decision of the Committee was issued in the form of a press release.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*Current provisions of the Statute do not prohibit a proper subsidiarity check.*

**Findings:**

**Did you find any breach of the subsidiarity principle?**

*No. The Committee on European Affairs adopted the final conclusion finding no possible breach of the principles of subsidiarity and proportionality.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*No.*

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

*Yes.*

**Any other observations?**

*The Committee on European Affairs carried out the check of the conformity of the Proposal for the Framework Decision on Combating Terrorism with the principle of proportionality.*

*The Lithuanian version of the Impact Assessment was a 5-page summary of the 107 pages in the English language.*



## **Chambre des Députés**

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### **Answer to the questionnaire:**

*Procédure suivie par la Chambre des Députés dans la mise en œuvre du 4<sup>ième</sup> test de la subsidiarité de la COSAC*

*La Commission juridique a été informée par lettre du Président de la Chambre des Députés du 13 novembre 2007 que les Présidents des délégations auprès de la COSAC ont décidé de mener un nouveau contrôle du respect du principe de subsidiarité.*

*Par lettre de la Présidence du 27 novembre 2007, la Commission juridique a été formellement saisie afin de procéder, dans le cadre du quatrième test de la subsidiarité, à l'examen de la Proposition.*

*Lors de sa réunion du 8 janvier 2008, la Commission juridique a procédé à un examen détaillé de la Proposition. Aucun représentant du Ministère de la Justice n'a assisté à cette réunion.*

*Les membres de la Commission juridique n'ont pas fait appel à un expert extérieur.*

*La Chambre des Députés n'a pas collaboré avec un autre Parlement national d'un Etat membre de l'Union européenne.*

*Le détail des discussions et conclusions de la Commission juridique est consigné dans un procès-verbal qui est un document à usage strictement interne et qui n'est pas destiné à une quelconque publication. La Commission juridique n'a pas décidé de procéder à la publication d'un communiqué spécial. Les conclusions de la Commission juridique n'ont pas été discutées en séance plénière.*

*La Chambre des Députés envisage d'adapter prochainement ses procédures afin qu'elles soient conformes avec les dispositions afférentes du futur Traité de Lisbonne.*

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### **Avis de la Commission juridique de la Chambre des Députés** **(18 janvier 2008)**

Le quatrième test de subsidiarité organisé par la COSAC concerne la proposition de décision-cadre du Conseil modifiant la décision-cadre 2002/475/JAI relative à la lutte contre le terrorisme (ci-après, la « Proposition ») présentée par la Commission européenne le 6 novembre 2007.

La Proposition vise à inclure, parmi les infractions retenues dans la décision-cadre 2002/475/JAI, la provocation publique à commettre des infractions terroristes, le recrutement et l'entraînement pour le terrorisme. Comme l'indique l'exposé des motifs, la Proposition entend ainsi tenir compte, dans le cadre d'une lutte efficace contre la menace terroriste, des défis posés par les technologies modernes d'information et de communication. Aux yeux des auteurs de la Proposition, internet « constitue ainsi l'un des principaux moteurs des processus de radicalisation et de recrutement et sert également de source d'informations sur les moyens et méthodes terroristes, faisant ainsi office de 'camp d'entraînement virtuel' ».

La Commission juridique est d'avis que la Proposition satisfait aux exigences du principe de subsidiarité. D'après ce principe, une action ne doit être envisagée au niveau communautaire que si les objectifs de cette action ne peuvent pas être réalisés de manière suffisante en raison des dimensions ou des effets de l'action envisagée. En l'espèce la Proposition a pour objectif de renforcer aussi bien l'arsenal légal pour lutter contre le terrorisme, y compris lorsque celui-ci recourt à internet, que la coopération internationale en la matière.

La Commission juridique souligne la nécessité d'une action commune au niveau de l'Union européenne dans le domaine de la lutte contre les menaces terroristes. Les ramifications internationales des groupes terroristes dans leur organisation, leur recrutement ainsi que la planification et l'exécution de leurs activités criminelles sont telles qu'une coopération au sein de l'Union européenne est absolument nécessaire. Les dimensions et les effets des mesures envisagées dans la Proposition ne permettent pas à un Etat membre d'intervenir de manière suffisante.

Les explications de la Commission européenne quant au respect du principe de subsidiarité ont été considérées comme satisfaisantes et pertinentes.

La Commission juridique tient cependant à faire deux remarques :

D'abord, l'incrimination de la « provocation publique à commettre une infraction terroriste » telle qu'elle figure dans la Proposition, même si elle s'aligne presque mot pour mot sur l'article 5, paragraphe 1<sup>er</sup>, de la convention du Conseil de l'Europe pour la prévention du terrorisme du 16 mai 2005, n'est pas sans poser de problème.

Ainsi les termes de la définition retenue dans la Proposition comme quoi la « provocation publique à commettre une infraction terroriste » existe même si son auteur ne préconise pas directement la commission d'une infraction terroriste, mais « *crée un danger qu'une ou plusieurs de ces infractions puissent être commises* » risque d'être d'une application malaisée pour les juridictions appelées à connaître d'affaires terroristes en raison de la délimitation entre provocation à commettre une action terroriste, qui doit être sanctionnée, et l'exercice de la liberté d'expression, qui en tant que liberté fondamentale doit être sauvegardée.

Consciente que de la difficulté de regrouper en une définition concise des activités variées et diverses, la Commission juridique reconnaît qu'une modification ou précision de la définition de « provocation publique à commettre une infraction terroriste » figurant dans la Proposition risque d'introduire une différenciation regrettable avec la définition retenue dans la convention précitée du Conseil de l'Europe du 16 mai 2005.

Ensuite, et dans la droite ligne de la première remarque, la Commission juridique s'inquiète de la multiplication des instruments internationaux portant lutte contre le terrorisme. Les concepts utilisés dans ces différents instruments ne sont pas uniformes, les champs d'application matériel ou territorial et mécanismes de contrôle juridictionnel ne le sont pas non plus. Contrairement à leurs objectifs, une telle multiplication risque d'alourdir la lutte contre le terrorisme et rendre la coopération internationale plus difficile à organiser.

#### *Procédure suivie par la Chambre des Députés dans la mise en œuvre du 4<sup>ième</sup> test de la subsidiarité de la COSAC*

La Commission juridique a été informée par lettre du Président de la Chambre des Députés du 13 novembre 2007 que les Présidents des délégations auprès de la COSAC ont décidé de mener un nouveau contrôle du respect du principe de subsidiarité.

Par lettre de la Présidence du 27 novembre 2007, la Commission juridique a été formellement saisie afin de procéder, dans le cadre du quatrième test de la subsidiarité, à l'examen de la Proposition.

Lors de sa réunion du 8 janvier 2008, la Commission juridique a procédé à un examen détaillé de la Proposition. Aucun représentant du Ministère de la Justice n'a assisté à cette réunion.

Les membres de la Commission juridique n'ont pas fait appel à un expert extérieur.

La Chambre des Députés n'a pas collaboré avec un autre Parlement national d'un Etat membre de l'Union européenne.

Le détail des discussions et conclusions de la Commission juridique est consigné dans un procès-verbal qui est un document à usage strictement interne et qui n'est pas destiné à une quelconque publication. La Commission juridique n'a pas décidé de procéder à la publication d'un communiqué spécial. Les conclusions de la Commission juridique n'ont pas été discutées en séance plénière.

La Chambre des Députés envisage d'adapter prochainement ses procédures afin qu'elles soient conformes avec les dispositions afférentes du futur Traité de Lisbonne.

Luxembourg, le 18 janvier 2008

Le Président

Patrick Santer

***Tweede Kamer***

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**Questionnaire:**

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*The committees on the JHA-council of the Senate and the committee on Justice of the House of Representatives.*
  
- **did your government provide any information as part of the scrutiny process?**  
*Government sent a so-called BNC-fiche to both Houses on 21 December 2007. A fiche is a document in which government takes a preliminar position on a EU-proposal. BNC is the Dutch abbreviation of "assessment of new proposals of the Commission, and initiatives of Member-States)*
  
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*The States General have a joint committee on the subsidiarity check, which cooperates with the responsible (above mentioned) committees of both Houses. The joint committee has a coordinating role; the committees on the JHA-Council and the committee of Justice remain responsible for conducting the material subsidiarity check.*
  
- **did you consult regional Parliaments?**  
*No, regional Parliaments (i.e. provincial and municipal representative bodies) have no competence in this case.*
  
- **did you make use of external expertise?**  
*No.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*Yes, our findings were sent to the government, the Commission, the European Parliament and the Cosac-secetariat. It is also registered and published as a regular parliamentary document.*

**Has you parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*As already indicated in an earlier questionnaire, our parliament has adapted a specific procedure with regard to the subsidiarity check and it has installed a specific committee for it: the (temporary) joint committee on the subsidiarity check. These provisions do not need to be changed as a result of the Lisbon Treaty.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*Yes.*

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

*Further study by both Houses of the States General of the nature and scope of the proposed measures raised a number of questions that are as yet unanswered by the explanatory memorandum to the proposal. For a better assessment of all measures mentioned in the proposal, both Houses of the States General request the European Commission to reply to the questions formulated in the reasoned opinion.*

**Any other observations?**

No.

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**Letter to Mr Frattini:**

European Commission  
Attn. Mr F. Frattini  
Vice-President of the European Commission  
Commissioner for Justice, Freedom and Security  
B-1049 BRUSSELS  
Belgium

Dear Mr Frattini,

In accordance with the procedures adopted by them, both Houses of the States General of the Kingdom of the Netherlands have checked the proposal for a Framework Decision to amend Framework Decision 2002/475/JHA on combating terrorism (COM(2007)650) by reference to the principles of subsidiarity and proportionality. In doing so they have applied Article 5 of the EC Treaty and Protocol 30 to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality. In addition, both Houses have thus also implemented the conclusions of XXXVIII COSAC (Estoril, 14-16 October 2007), in which the draft Framework Decision for combating terrorism was designated as the subject of a subsidiarity and proportionality check by the national parliaments of the EU Member States.

On the basis of the considerations set out in this letter, both Houses have concluded that the proposal in question complies with the principles of subsidiarity and proportionality in the strict sense. Nonetheless, a further study by both Houses of the States General of the nature and scope of the proposed measures raises a number of questions that are as yet unanswered by the explanatory memorandum to the proposal. For a better assessment of all measures mentioned in the proposal, both Houses of the States General request the European Commission to reply to the questions formulated below.

Yours sincerely,

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**Reasoned Opinion:**

Yvonne E.M.A.

Timmerman-Buck  
President of the Sen of the States General

Gerdi A. Verbeet  
President of the House of Representatives  
of the States General

***Assessment of the Proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism (COM(2007)650)***

Both Houses of the States General of the Kingdom of the Netherlands have taken note of the content of Proposal for a Council Framework Decision amending Framework Decision

2002/475/JHA on combating terrorism (COM(2007)650), as published by the European Commission on 6 November 2007. Using the parliamentary procedures appropriate for this purpose, they have carried out a check of the proposal by reference to the criteria of subsidiarity and proportionality as laid down in Article 5 of the EC Treaty.

Both Houses of the States General are of the opinion that the proposal complies with the subsidiarity requirement of Article 5 of the EC Treaty. The proposal relates, after all, to an amendment to an existing framework decision. It follows that the choice of the framework decision as instrument is justified and, in the strict sense, the proposal meets the proportionality requirement of the EC Treaty.

Nonetheless, closer examination by both Houses of the States General of the nature and scope of the proposed measures raises a number of questions which are left unanswered for the time being by the explanatory memorandum to the proposal. For a better assessment of all measures mentioned in the proposal, both Houses of the States General therefore request the European Commission to reply to the questions formulated below.

One of the reasons given by the European Commission for the need to amend the Terrorism Framework Decision is the addition of the concept of 'public provocation' by reference to the increasing use of the Internet. However, the Internet was already in existence in 2002 and was much used even then. Both Houses of the States General therefore wonder whether the use of the Internet has really changed to such an extent that there is the 'political urgency' to which reference is made. What grounds has the Commission found in the evaluation of the Framework Decision on combating terrorism to make this review necessary? And does this really not have any consequences for Internet providers as stated in the explanatory memorandum to the proposal? The text of the draft Framework Decision itself leaves this open.

Both Houses would also like reasons to be given for the need for harmonised criminalisation of training and recruitment, since none appear to be given.

As a corollary, both Houses of the States General would like a further explanation of what the European Commission sees as the added value of the proposal. Can the European Commission describe situations in which the aims of this criminalisation are actually achieved? Could these situations not be combated by means of existing (European) legislation?

Another reason given by the European Commission for the present proposal is to align the Framework Decision with Convention 196 of the Council of Europe on the prevention of terrorism. The European Commission notes in the explanatory memorandum to the proposal that the exact wording of the Convention is adopted. Both Houses of the States General have noted that the definition of 'public provocation' in the proposal adopts the literal text of paragraph 1 of Article 5 of the Convention. However, Article 5, paragraph 2, of the Convention adds that the States shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence 'when committed unlawfully and intentionally'. As this addition cannot be found in the draft framework decision, both Houses of the States General consider that the formulation of this provision is too broad and general. They advocate a more precise delimitation of the concept.

Both Houses of the States General also note that it is expressly provided in Article 1, paragraph 2, of the original Framework Decision 2002/475/JHA that the Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles. The question is to what extent the definitions now proposed will be capable of enforcement in practice, in particular the term 'public provocation'. Although the European Commission notes that there is no conflict with the right to freedom of expression, as laid down for example in Article 10 of the European Convention on Human Rights (ECHR) and the Dutch Constitution, no further explanation is provided. 'Public provocation' is presented here as an abstract concept, although little can be truly abstract when the right to freedom of expression is at issue. Both Houses of the States General would therefore like to have an additional explanation of the relationship between the draft Framework Decision and the right to freedom of expression.

As regards the enforceability of the proposed measures both Houses would also make the following observations. It is often difficult to determine who is the source of statements and where they are, particularly in the case of statements published on the Internet. The most that can be done in the case of websites hosted on servers outside the European Union is to block access, provided that the identity of the sites can be established. However, experience also shows that information on blocked sites soon becomes available again on other sites. It therefore seems legitimate to ask whether the provisions formulated in the proposal are actually capable of being enforced. Both Houses would also like to know who is to be responsible for this enforcement. Is this to be a responsibility of the national law enforcement agencies or are the European agencies also to be used in this connection?

The draft Framework Decision provides in recital 15 that public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism are 'intentional crimes'. How should the word 'intentional' be interpreted? Are the Member States free to define this as they see fit? If not, what steps can be taken to ensure that the term is implemented and interpreted uniformly, or at in any event as uniformly as possible, in all Member States? These same questions apply *mutatis mutandis* to the term 'attempt' in Article 4 (2).

## Sejm

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### Questionnaire:

#### **Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

*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 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. According to the time limit specified in the Act of Cooperation the European Union Affairs Committee on its meeting on 20<sup>th</sup> of December 2007 has expressed its positive opinion. (scrutiny procedure)*

*Subsequently, conducting the subsidiarity check the European Union Affairs has discussed the document on the committee meeting on January 18<sup>th</sup> 2008. Members of the Committee were provided with the text of the Proposal, the Council of Ministers' draft positions on the Proposal and the Sejm Research Bureau opinion on the legal base, scope of the regulation, Commission's justification as well as on the conformity to the principle of subsidiarity of the given Proposal.*

- **which committees were involved?**  
*The European Union Affairs Committee, being the organ of the Sejm competent to take care of the Community matters, was.*
- **did your government provide any information as part of the scrutiny process?**  
*Yes, it did. An undersecretary of State from the Ministry of Justice 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.*
- **in case of a bicameral system, did you cooperate with the other 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.*
- **did you consult regional Parliaments?**  
*There are no regional parliaments in Poland. The existing regional representative organs are in the nature of local government bodies.*
- **did you make use of external expertise?**  
*Yes, representatives of the Legal Team of the Sejm Research Bureau worked on and presented their opinion on conformity to the principle of subsidiarity.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No, we did not.*

**Did you publicize your findings (e. g. in a special press release?)**

*The opinion of the European Union Affairs Committee is transmitted to the government. Moreover the opinion and transcript from the Committee meeting are available on the Committee web-site. The meeting was also open for a media.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**



*Polish Sejm has not adopted any changes in the Rules of Procedure in regard to the changes implemented by the Lisbon Treaty but the discussion on this issues is scheduled for the nearest future.*

**Findings:**

**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.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*The copy of the opinion is enclosed. (See Below).*

**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.*

**Any other observations?**

*During the discussion on the Commission Proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism members of the EUAC were interested in the necessary changes in the Polish law assuming the Proposal is adopted in the presented version. Part of the discussion was dedicated to the issues connected to the civil liberties in the framework of combating terrorism.*

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**Reasoned Opinion**

Andrzej Grzyb  
Chairman

**Opinion No 6**

**of the European Union Affairs Committee of the Sejm of the Republic of Poland  
on the Commission Proposal for a Council Framework Decision amending Framework  
Decision 2002/475/JHA on combating terrorism.**

**Adopted on the 12<sup>th</sup> Committee Meeting on the January 18<sup>th</sup> 2008.**

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

1- found the Commission Proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism to be in conformity to the principle of subsidiarity.

2- do not submit objections to the abovementioned proposal as well as to the attached to the proposal the position of the Council of Ministers

Andrzej Grzyb  
Chairman

## Senate

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### Questionnaire:

At the sitting on 8<sup>th</sup> January 2008 the Senate's European Union Affairs Committee carried out a subsidiarity and proportionality check following the procedure agreed by the COSAC. The check was completed and the conclusions formulated as follows:

### **Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**

*The European Union Affairs Committee, with the cooperation of the Human Rights and the Rule of Law Committee.*

- **did your government provide any information as part of the scrutiny process?**

*The government's written position on the said framework decision, submitted to the parliament, included their opinion on the compliance with the subsidiarity and proportionality principles. A government's official took part in the Committee's sitting and provided the senators with additional information.*

- **in case of a bicameral system, did you cooperate with the other chamber?**

*No.*

- **did you consult regional Parliaments?**

*No. There are no regional parliaments or any similar bodies in Poland.*

- **did you make use of external expertise?**

*Yes, the Committee had commissioned an outside expert opinion from professor Zdzisław Galicki of the Warsaw University, specialist in international law and combating terrorism. Prof. Galicki participated in the Committee's sitting.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*No.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*This subsidiarity check was based on the procedures hitherto employed. This year, before the Lisbon Treaty comes into force, the Committee is planning to work out and establish a routine cooperation with Government in terms of subsidiarity and proportionality checks.*

### **Findings:**

**Did you find any breach of the subsidiarity principle?**

*The European Union Affairs Committee came to the conclusion that the Council Framework Decision does not breach the subsidiarity and proportionality principle.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*No.*

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

*Yes.*

**Any other observations?**

*The Committee pointed out a major discrepancy, namely under the Council of Europe Convention on the Prevention of Terrorism of May 16 2005 States-Parties to the convention are obliged to establish, implement and apply criminalisation of attempted offences of “recruitment for terrorism” and “training for terrorism”, while the proposed Council framework decision does not stipulate any such obligation for UE members, which may create problems in relations between members of those two organisations.*

*The government official present at the Committee meeting promised to take into consideration the above mentioned opinion while further working on the proposal of the Council Framework decision.*

***Assembleia da República***

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***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*Committee on Constitutional Affairs and Committee on European Affairs*
  
- **did your government provide any information as part of the scrutiny process?**  
*No.*
  
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*N/A*
  
- **did you consult regional Parliaments?**  
*No.*
  
- **did you make use of external expertise?**  
*No.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*No, only on IPEX*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*Yes, with Law 43/2006 for the subsidiarity mechanism.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No*

**Did you adopt a reasoned opinion on the Framework Decision?**

*(see copy below)*

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

*Yes.*

**Any other observations?**

*None*

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**Reasoned Opinion:**

**ASSEMBLY OF THE REPUBLIC  
EUROPEAN AFFAIRS COMMITTEE**

**Opinion**

**Proposal for a Framework Decision, amending  
Framework Decision 2002/475/JHA on combating terrorism  
Com (2007) 650 Final**

**1. Preamble**

At the meeting in Lisbon on 12 July 2007, the COSAC Presidents decided to set in motion a procedure for controlling subsidiarity in relation to the Proposal for a Framework Decision of the Council 2002/475/JHA on combating terrorism (Com (2007) 650 Final). The findings of this process will be examined and discussed during the Slovenian Presidency, currently underway.

In the exercise of its powers to monitor and assess European Affairs, the European Affairs Committee (EAC) appointed the PSD Member of Parliament, Regina Bastos, as rapporteur, and at the same time the said document was forwarded to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, with a request for a report on the issues in question, dealing particularly with the principles of subsidiarity and proportionality.

**2. The Proposal for a Framework Decision**

**2.1 Background**

International terrorism poses a growing threat to the freedom and security of peoples and of democracy, undermining the rights of citizens and seriously violating the most fundamental principles of human rights. Since the Maastricht Treaty, the European Union has sought to provide its citizens with a high level of security, in an area of freedom and justice. To this end, it is also necessary for member States to concentrate on pursuing a real common policy which reinforces cooperation in the face of terrorism.

Due to their inherent potential, modern information and communication technologies constitute a fundamental element for propagating the terrorist threat and thereby exacerbating its negative effects. The Internet is a cheap, fast and easily accessible medium, reaching around the world and exerting a global impact. It has naturally been eagerly taken up by international terrorists as their preferred medium for disseminating their messages calling for violence, and serves as a prime recruiting ground for new members of their networks. It is common today for what amount to real manuals on terrorist procedure and guides to preparing terrorist materials and planning attacks to be found on the Internet.

It is therefore beyond dispute that the Internet today serves as a "virtual training ground" both for terrorists themselves and for their procedures in preparing and launching attacks. It has clearly reinforced the traditional terrorist network and contributes to an exponential increase in the difficulty of combating this global phenomenon.

As a matter of political urgency, we are therefore faced with the need for procedures and arrangements to prevent further growth in this threat to the security of the democratic world and to the values in which we believe. This Proposal serves to bring the framework decision on combating international terrorism up to date, by harmonising it with the Council of Europe Convention for the Prevention of Terrorism, altering the definition of terrorism to including public incitement to terrorist offences and recruitment and training for terrorism, on the following grounds:

1. A more integrated European Union institutional framework is provided, with the advantages deriving from this, in particular as regards the absence of lengthy procedures for signing and ratification, appropriate monitoring arrangements and common interpretation by the Court of Justice;

2. The framework decision provides for a specific set of legal rules, especially as regards to the type and degree of criminal punishments and the binding rules for determining competence, which will now apply also to the offences included in the decision;

3. The framework decision is also an essential instrument for the fight against terrorism in the Union, as the express inclusion of preparatory acts will cause the cooperation procedures provided for in this framework decision to be set in motion.

## **2.2 Description and aims of the Proposal**

The framework decision represents further progress towards a common definition of terrorist offences in all member States and assures the existence of punishments and penalties for individuals and organizations which have committed or are liable for offences of this degree of seriousness.

The European Council Convention for the Prevention of Terrorism, signed in Warsaw on 16 May 2005, determines that signatory nations will apply penalties for public incitement to terrorist offences, and for recruitment and training for terrorism.

The document under analysis here also states that Resolution 1624 of the United Nations Security Council of 14 September 2005 and the United Nations Global Counter-Terrorism Strategy, adopted on 8 September 2006, are highly important in this context. Reference should also be made to the G8 Summit of 16 July 2006 and to Decision 7/06 of the OSCE Council of Ministers "Combating the Use of the Internet for Terrorist Purposes", of 5 December 2006, as fundamental documents.

The proposal is in line with the Union's strategy and action plan on radicalization and recruitment, updating and complementing the legal framework for combating terrorism, as well as being consistent with the European Union Charter of Fundamental Rights and with the aim of assuring protection of the rights of Man and fundamental freedoms. In this regard, the Proposal points to various questions concerning the line to be drawn between the legitimate exercise of freedoms, such as the freedom of speech, association or religion and religious behaviour.

In 2006, the Commission sent one questionnaire to member States, another to media organisations and civil society institutions and a third to Europol, Cypol and Eurojust. In addition, it has held a range of talks and meetings with representatives of the media and European Internet service providers.

In the light of the findings from these three questionnaires, a number of conclusions were reached:

- It is necessary to maintain the *status quo*;
- It is fundamental to prohibit Internet service providers from allowing access to material designed for public incitement to terrorist offences, or to recruitment or training for terrorism;
- To increase the capability and expertise of police authorities to prevent the use of the Internet for terrorist purposes;
- To encourage the member States to sign and/or ratify the Council of Europe Convention for the Prevention of Terrorism;
- To review the framework decision on combating terrorism so as to introduce offences identical to those provided for in the Council of Europe Convention for the Prevention of Terrorism and to make public incitement to terrorist offences a punishable offence, together with recruitment and training for terrorism, including over the Internet.

## **2.3 Analysis of the Proposal from the European Union**

The legal grounds for the proposal in question are based on Articles 29, 31.1.e) and 34.2 of the European Union Treaty, seeking to harmonise national rules on public incitement to terrorist offences and recruitment and training for terrorism, so that these forms of behaviour are punishable throughout the Union, even when carried out over the Internet, and to assure that the provisions in force with regard to penalties, the liability of organisations, jurisdiction and criminal proceedings applicable to terrorist offences are also applicable to these types of behaviour.

### **Principle of Subsidiarity**

The phenomenon of modern terrorism is global at all levels, threatening the security of all those who believe in the values of the democratic rule of law. The global nature of the threat derives in great part from the dissemination of propaganda for mobilisation and recruitment, as well as online instructions and manuals for training and planning terrorist activities, available over the Internet, which is in general terms an international and cross-border medium. So if the threat is international, the response we should adopt should also be international, at least in part.

As stated in the Proposal, the Union's policies for combating terrorism and cybercrime require coordinated efforts from member States as well as international cooperation if the aims of these policies are to be achieved. In view of this, what we find is that the existence of varying legislation in the member States gets in the way of coordinating efforts within the Union as well as hindering cooperation at international level.

It therefore appears clear that the objectives of the Proposal under examination will be achieved more effectively through Union action, insofar as this will prevent terrorists benefiting from any loopholes or divergences which might be created by the unevenness of national legislation. At the same time, this would also help to facilitate the operational work of the police authorities against cross-border criminal activities, to lend the Union greater weight in its dealings with international authorities and to increase cooperation in the field of application of the law, not only within the Union but also externally, leading to more efficient investigations and criminal proceedings which will result in increased security.

In view of this, the Principle of Subsidiarity is not deemed to be breached by this Proposal.

### **Principle of Proportionality**

This proposal only binds member States with regard to the objectives to be achieved, leaving national authorities the power to choose how to set about this. In addition, the e-commerce directive and the data retention directive are not altered, meaning that no new duties are to be expected for the providers or operators of telecommunications services, and the industry will not be required to set up new cooperation procedures.

Accordingly, we consider that there is also no breach of the principle of proportionality on the terms on which this principle is enshrined in Article 5 of the European Union Treaty.

Given that these preconditions are met, **the European Affairs Committee is of the opinion that the aims of the Proposal will best be met through a community solution, in other words, through a framework decision based on Article 34.2 b) of the European Union Treaty.**

## **4. Conclusions**

**a.** The procedure adopted here by the Assembly of the Republic, through the European Affairs Committee, in its analysis of compliance by this pilot project with the principles of subsidiarity and proportionality, is in line with the requirements of Law 43/2006 of 25 August, on the Monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union;

**b.** The phenomenon of modern terrorism is global at all levels, threatening the security of all those who believe in the values of the democratic rule of law;

c. The proposed framework decision provides for criminalising terrorism-related offences, thereby helping to achieve a more general aim of preventing terrorism by reducing the dissemination of material which might serve to incite terrorist activities;

d. The Proposal sets out to harmonise national legislation on public incitement to terrorist offences and on recruitment and training for terrorism, so that these forms of behaviour can be punishable throughout the Union, even when carried out over the Internet, and to assure that the provisions in force with regard to penalties, the liability of organisations, jurisdiction and criminal proceedings applicable to terrorist offences are also applicable to these types of behaviour;

e. The legal grounds for the proposal in question are based on Articles 29, 31.1.e) and 34.2 of the European Union Treaty, seeking to harmonise national rules on public incitement to terrorist acts;

f. The objectives of the Proposal under examination are achieved most effectively through action at Union level, insofar as this will prevent terrorists benefiting from any loopholes or divergences which might be created by the unevenness of national legislation;

g. The proposal in question does not breach the principles of subsidiarity or proportionality;

### Opinion

In view of the considerations and conclusions set out above, and in view of the opinion of the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, the European Affairs Committee considers that there is no breach either of the principle of subsidiary or of the principle of proportionality, for the reasons stated above.

Palácio de São Bento, 15 January 2008

The Rapporteur

The Chairperson

Regina Bastos

Vitalino Canas

ANNEX: Report of the CCARFG, drawn up by the Member of Parliament, Cláudia Couto Vieira

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## ASSEMBLY OF THE REPUBLIC

### COMMITTEE FOR CONSTITUTIONAL AFFAIRS, RIGHTS, FREEDOMS AND GUARANTEES

#### REPORT AND OPINION

**Proposal for Framework Decision of the Council, amending Framework Decision 2002/475/JHA on combating terrorism**

**Com (2007) 650 Final**

#### 1. Procedure

In compliance with the requirements of Law 43/2006 of 25 August, on the monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the EU, the European Affairs Committee (EAC) forwarded the "*Proposal for a Framework Decision of the Council amending Framework Decision 2002/475/JHA on combating terrorism*", together with the respective working documents, to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, for it to pronounce on matters within the ambit of its responsibilities.



It therefore fell to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees to examine the proposal, especially as regards the principles of subsidiarity and proportionality, and to issue its opinion, to be forwarded to the European Affairs Committee.

## **2. The Proposal:**

### **Background:**

Terrorism is one of the most serious threats to democracy, the free exercise of human rights and economic and social development.

In the Maastricht Treaty, the European Union adopted the aim of providing its citizens with a high level security, in an area of freedom and justice. In order to pursue this goal, effective criminal legislation needs to be in force in all member States with a view to combating terrorism, and measures also need to be adopted to strengthen international cooperation in this field.

Framework Decision 2002/475/JHA of the Council on combating terrorism forms the basis of the European Union's counter-terrorism policy. By setting a common normative framework for all member States and arriving at a harmonised definition of terrorist offence, it has allowed the European Union's counter-terrorism policy to develop and expand, whilst assuring respect for fundamental rights and the rule of law.

The use of new technologies, as especially the Internet, as a means of communication between international networks and cells has contributed significantly to the rapid growth and development of the terrorist threat in recent years.

Modern terrorism and its methods should be combated by the EU with the same determination and resolve displayed in the fight against traditional terrorism.

### **Aims:**

The framework decision under examination provides for the criminalisation of terrorist-related offences in order to contribute to the more general aim of preventing terrorism by reducing dissemination of material which might incite people to carry out terrorist attacks.

In particular, the proposal in question seeks to arrive at a more closely shared concept of terrorist offences in all member States, so as to encompass public incitement to the committing of terrorist offences, as well as recruitment and training for terrorism, whenever carried out with criminal intent. It also seeks to assure that individuals or organisations which have committed or are liable for the offences of public incitement to terrorist offences, or of recruitment or training for terrorism, whenever carried out with criminal intent, are subject to uniform penalties.

The proposal further seeks to approve additional rules on powers, so as to assure that public incitement to the committing of terrorist offences and recruitment and training for terrorism can be effectively judged whenever their aim or outcome is the committing of a terrorist offence covered by the powers of a member State.

The European Commission has consulted interested parties and assessed the impact of the proposal through the use of questionnaires, the findings of which have been presented and debated.

## **3. Analysis of the proposal**

The legal grounds for the proposal in question are based on Articles 29, 31.1.e) and 34.2 b) of the European Union Treaty.

This proposal for alteration of the Council Framework Decision of 13 June 2002 is designed to harmonise national rules on public incitement to terrorist offences and on recruitment and training for terrorism, so that these forms of behaviour are punishable throughout the Union, even when carried out over the Internet, and to assure that the provisions in force with regard to

penalties, the liability of organisations, jurisdiction and criminal proceedings applicable to terrorist offences are also applicable to these types of behaviour.

### **Principle of subsidiarity**

Modern terrorism is, to a large extent, a global phenomenon. The dissemination over the Internet of propaganda for mobilisation and recruitment, and also of online instructions and manuals for training and planning attacks is an intrinsically international and cross-border activity.

The threat is international, meaning that at least part of the response should also be international.

EU policies for combating terrorism and cybercrime require coordinated efforts from member States as well as international cooperation if the aims of these policies are to be achieved. In view of this, what we find is that the existence of varying legislation in the member States gets in the way of coordinating efforts within the Union as well as hindering cooperation at international level.

The objectives of the proposal will be achieved more effectively through Union action, by preventing terrorists from benefiting from any loopholes or divergences which might be created by the unevenness of national legislation, by facilitating the operational work of the police authorities against cross-border criminal activities, and by establishing a common base shared by all member States, which will not only facilitate international cooperation, but also lend the Union greater weight in its dealings with international authorities.

Indeed, increased cooperation in the field of application of the law, not only within the Union but also internationally, will lead to more efficient investigations and criminal proceedings which will result in increased security.

It therefore follows that the proposal complies with the principle of subsidiarity.

### **Principle of proportionality**

The principle of proportionality, enshrined in Article 5.3 of the European Union Treaty is also complied with.

Like the principle of subsidiarity, the principle of proportionality regulates the exercise of powers exercised by the European Union. It is designed to delimit and demarcate the actions of community institutions. Under this rule, the actions of the institutions should be limited to what is strictly necessary for achieving the aims of the treaties, in other words, the intensity of the action should be related to the end pursued (prohibition of excess). This means that, when the Union has various equally effective forms of intervention at its disposal, it should choose that which permits the greatest degree of freedom to the member States.

The proposal, as a framework decision, is binding on the member States with regard to the required outcome, whilst national authorities retain the power to choose the best means of achieving this.

### **Legislative instrument**

Although the Protocol on application of the principles of subsidiarity and proportionality establishes directives as the prime legislative instruments, in this particular case a Framework Decision is in fact the most appropriate legislative instrument for achieving the desired outcome.

## **3. Conclusions**

1)The European Affairs Committee forwarded this proposal to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, in order for the latter to pronounce specifically on the principles of subsidiarity and proportionality;

2) This proposal for a Framework Decision is designed to amend Council Framework Decision 2002/475/JHA, on combating terrorism, which forms the basis of the European Union's counter-terrorism policy;

3) This proposal provides for the criminalisation of terrorist-related offences in order to contribute to the more general aim of preventing terrorism by reducing dissemination of material which might incite people to carry out terrorist attacks.

4) The proposal under examination seeks to arrive at a more closely shared concept of terrorist offences in all member States, and to assure uniform penalties, even when the offences are committed over the Internet, so as to encompass public incitement to the committing of terrorist offences, as well as recruitment and training for these purposes, whenever carried out with criminal intent;

5) The aims of this proposal cannot be sufficiently achieved through unilateral action by the member States, and can be more effectively achieved through the European Union, meaning that there is no breach of the principle of subsidiarity;

6) The proposal for a framework decision conforms to the principle of proportionality insofar as it is limited to that which is necessary to achieve these purposes;

7) Although the Protocol on application of the principles of subsidiarity and proportionality establishes directives as the prime legislative instruments, in this particular case a Framework Decision is in fact the most appropriate legislative instrument for achieving the desired outcome.

### **OPINION**

In view of the considerations and conclusions set out above, under the terms of the provisions of Law 43/2006, of 25 August, this report shall now be forwarded for consideration by the Parliamentary Committee for European Affairs.

**Palácio de São Bento, 9 January 2008.**

**The Rapporteur**

***(Cláudia Couto Vieira)***

**The Chairperson**

***(Osvaldo de Castro)***

***Chamber of Deputies***

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Report on the subsidiarity and proportionality check on the proposal for a Council Framework Decision on combating terrorism COM( 2007) 650

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
European Affairs Committee of the Parliament of Romania.  
**The Romanian Parliament's scrutiny system is under construction. The draft Rules of Procedure of the European Affairs Committee shows a slight difference between the regular scrutiny procedure and the subsidiarity check. The European Affairs Committee is empowered to check subsidiarity. Only in case of subsidiarity infringement, the motivated opinion will be voted in the plenary session, based on a proposal of the European Affairs Committee.**
- **did your government provide any information as part of the scrutiny process?**  
**The government sent to the European Affairs Committee on its request written opinions on the Framework Decision on combating terrorism, including the compliance with the subsidiarity and proportionality principles. The Ministry of Justice, the Ministry of Information Technology and Communication and the Department on European Affairs (under the Prime Minister) have been consulted within the procedure.**
- **in case of a bicameral system, did you cooperate with the other chamber?**  
**The European Affairs Committee is a joint committee composed of MP's from both chambers: the Chamber of Deputies and the Senate.**
- **did you consult regional Parliaments?**  
**Not applicable**
- **did you make use of external expertise?**  
**No**

**Did you cooperate with other national Parliaments in the process opinion?**  
**No**

**Did you publicise your findings (e. g. in a special press release?)**  
**A press release was issued concerning the EAC sitting of 30 January 2008.**

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**  
**The draft Rules of Procedure of the EAC will be amended to adapt the subsidiarity check mechanism as foreseen in the Lisbon Treaty.**

***Findings:***

**Did you find any breach of the subsidiarity principle?**  
**The EAC concluded at the sitting on 30 January 2008 that the draft Framework Decision on combating terrorism meets the subsidiarity and proportionality principles.**  
**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**  
**No**

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

**The EAC considered that the European Commission gave satisfactory explanations on subsidiarity and proportionality principles.**

**As regard subsidiarity principle, the objectives of combating terrorism cannot be sufficiently achieved by Member States' actions and can be better achieved by action of the EU due to international feature of terrorism and cross-border nature of Internet.**

**As regard proportionality principle, the Framework Decision sets the objectives to be achieved leaving to Member States' authorities to choose how to accomplish them in terms of form and means. The proposal does not go beyond what is required.**

Any other observations?

**The Council Framework Decision on combating terrorism of 13 June 2002 has already been transposed in the Romanian legal system by Law 535/2004 on combating and preventing terrorism.**

**Romania signed on 16 May 2005, in Warsaw, the Council of Europe Convention on the prevention of terrorism and ratified it by adopting the Law 411 of 9 November 2006. The Law is in force as of 1 June 2007.**

***National Council***

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**Questionnaire**

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*European Affairs Committee (the leading committee)*  
*Constitutional and Legal Affairs Committee (after being asked by the EAC it adopted the draft position concerning respective proposal for legal act)*
- **did your government provide any information as part of the scrutiny process?**  
*In accordance with the §58a of the amended Rules of Procedure of the National Council of the Slovak Republic (Law No 350/1996 Coll.) an authorized member of the government (minister of justice) referred the preliminary position concerning respective proposal for legal act to the EAC.*
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*Irrelevant within the context of the Slovak Republic*
- **did you consult regional Parliaments?**  
*No.*
- **did you make use of external expertise?**  
*No.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*According to the Act on Freedom of Information (Law No 211/2000 Coll.) the resolutions of the two committees involved in the process and the minutes of their meetings were published on the website of the National Council.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*No. This question has not been discussed yet. Scrutiny procedure is already regulated in the constitutional law and in the Rules of Procedures of the National Council of the Slovak Republic. Part of the scrutiny is the subsidiarity check. If a detailed analysis of the achievements of the Lisbon Treaty (not undertaken yet) shows necessity to adopt changes in relevant legislation, it shall be done when the Lisbon Treaty comes into force.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*No.*

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

*Yes.*

**Any other observations?**

There were experienced some problems regarding the short time limit for the scrutiny of the legal act's proposal (due to the Christmas Holidays) and there are also some terminological inexactitudes in the Slovak version of the text.

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NATIONAL COUNCIL OF THE SLOVAK REPUBLIC  
**COMMITTEE ON EUROPEAN AFFAIRS**

33<sup>rd</sup> Session

153

**Resolution**

**of the Committee on European Affairs**

from 24<sup>th</sup> January 2008

**Committee on European Affairs of the National Council of the Slovak Republic**

discussed the proposal for Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism and

*A- Takes note that:*

***according to the preliminary position of the Slovak Republic and the opinion of the Constitutional and Legal Affairs Committee (Resolution No. 311) the proposal for Council Framework Decision complies with the subsidiarity and proportionality principle;***

***B- States that:***

***the committee did not find any breach of the subsidiarity and proportionality principle and hence there is no reason to adopt a reasoned opinion;***

*C- Imposes:*

to the chairman of the committee

1. to present to the COSAC Secretariat the report on the debate of the respective proposal in the National Council of the Slovak Republic,
2. to inform the Speaker of the National Council of the Slovak Republic and the Minister of Justice of the Slovak Republic on the result of the committee debate concerning the respective proposal.

**Ivan Štefanec**

**Milan Urbáni**

Chairman of the Committee

Oľga Nachtmannová  
verifier

## **National Assembly**

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### **Questionnaire:**

#### **Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**
- **was your plenary involved?**
- **did your government provide any information as part of the scrutiny process?**
- **in case of a bicameral system, did you cooperate with the other chamber?**
- **did you consult regional parliaments?**
- **did you make use of external expertise?**

*Regarding the purpose of a conduct of a subsidiarity test, namely to increase the role of the national parliaments in the decision-making process of the EU, the Committee on EU Affairs of the National Assembly of the Republic of Slovenia adopted at its 114th regular meeting of December 7, 2007 a decision to assign the proposal of the document to the Committee on Domestic Policy, Public Administration and Justice, as a working body responsible, and to the Legislative and Legal Service of the National Assembly. The addressees of the decision conducted the check and examined the proposal in question thoroughly, and presented their findings separately.*

*The Committee on EU Affairs received the opinion of the Legislative and Legal Service of January 8, 2008. The Committee on Domestic Policy, Public Administration and Justice adopted its opinion on January 10, 2008 at its 45th urgent meeting and sent it to the Committee on EU Affairs. Both findings were presented and discussed on January 18, 2008 at the 116th regular meeting of the Committee on EU Affairs, which at the end adopted a decision on that matter. It was underlined that the proposal is in accordance with the subsidiarity principle, as laid down in the Protocol on the Application of the Principles of Subsidiarity and Proportionality enclosed in the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.*

*The plenary was not involved.*

*A Government representative, Mr Robert Marolt, the State Secretary at the Ministry of Justice, attended the meeting of the working body responsible and presented and explained position of the Government on the topic.*

*There was no cooperation with the other chamber of the Slovenian Parliament - the National Council, as the latter is in the phase of constituting itself following recent elections.*

*There are no regional parliaments in Slovenia.*

*No further external expertise was used.*

#### **Did you cooperate with other national Parliaments in the process opinion?**

*No direct cooperation has been initiated.*

#### **Did you publicise your findings (e. g. in a special press release?)**

*The findings will be released on the web page of the National Assembly as part of the minutes of the Committee on EU Affairs meeting, together with all other topics discussed in that meeting.*

*There is still a discussion on other possibilities how to make these findings public.*



**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*There were no recent adaptations of the procedures of the parliament, nor have any adaptations been planned - with regard to the foreseen mechanism in the Lisbon Treaty.*

*This was the first time that a subsidiarity test was conducted by the National Assembly solely. In prior cases the National Assembly, namely the Committee on EU Affairs has always proposed to the Government to present their position on the matter, and a working body responsible and the Committee have simply followed the Government position proposals and confirmed them at the meeting.*

*In the present case, the above-mentioned working body responsible, the Committee on EU Affairs and the Legislative and Legal Service of the National Assembly have conducted the test independently, the Government was only included as an external partner.*

**Findings:**

**Did you find any breach of the subsidiarity principle?**

*No breach of the subsidiarity principle was found.*

*Having examined the opinions of the Legislative and Legal Service, the Ministry of Justice and the Ministry of the Interior and carried out the relevant debate, the Committee on Domestic Policy, Public Administration and Justice and the Committee on EU Affairs are of the opinion that the objective of the proposed Framework Decision is the approximation of Member States' criminal laws in relation to the new forms of terrorist activity, thus preventing the possibilities for terrorists to exploit the possible advantages of certain national legislations. The proposed criminal offences are the new modus operandi of terrorist groups, exploiting modern communication means with a global reach (in particular, the Internet). Their acts reach beyond the borders of individual Member States, meaning that they have cross-border and international impacts. A single criminal law policy among the Member States in relation to terrorism is the sole condition for a successful fight against the exploitation of modern communication means.*

*Therefore, both Committees agree that the above issue be better solved at the level of the EU and not at the level of individual Member States, as only thus it will be possible to provide for an efficient fight against the exploitation of modern communication means for committing terrorist offences.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*Following the debate, the Committee on Domestic Policy, Public Administration and Justice adopted on January 10, 2008 at its 45th urgent meeting the following opinion: "The Committee on Domestic Policy, Public Administration and Justice of the National Assembly of the Republic of Slovenia is of the opinion that the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism complies with the principle of subsidiarity pursuant to the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union."*

*The Committee on Domestic Policy, Public Administration and Justice also adopted a reasoned opinion, a copy of which you can find enclosed to the questionnaire. Following the debate, the Committee on EU Affairs adopted at the 116th regular meeting of January 18, 2008 the following decision: "Having regard to the opinion of the Committee on Domestic Policy, Public Administration and Justice of 10 January 2008 and the opinion of the Legislative and Legal Service of 8 January 2008, the Committee on EU Affairs notes that the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism - No. 008-04/05-2/12 complies with the principle of subsidiarity, as provided by the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union."*  
*A reasoned opinion was not adopted here.*

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

*The Committee on Domestic Policy, Public Administration and Justice, as a working body responsible, the Legislative and Legal Service and the Committee on EU Affairs found the Commission's justification with regard to the subsidiarity principle satisfactory, as it discusses all the essential aspects of the subsidiarity principle and supports its statements with an exhaustive impact study.*

#### **Any other observations?**

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### **OPINION OF THE COMMITTEE ON DOMESTIC POLICY, PUBLIC ADMINISTRATION AND JUSTICE**

Having regard, mutatis mutandis, to paragraph two of Article 154h of the Rules of Procedure of the National Assembly (Official Gazette of the Republic of Slovenia No. 35/2002, 60/2004 and 64/2007), the Committee on Domestic Policy, Public Administration and Justice as the **working body responsible** issues the following

#### **OPINION**

**on compliance with the principle of subsidiarity pursuant to the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, with regard to the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism** At its 114th regular meeting of 7 December 2007, the Committee on EU Affairs of the National Assembly of the Republic of Slovenia adopted a decision calling upon the Committee on Domestic Policy, Public Administration and Justice to deliver its opinion on whether the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism - No. 008-04/05-2/12 complies with the principle of subsidiarity pursuant to the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

The Committee on Domestic Policy, Public Administration and Justice conducted a subsidiarity check in relation to the proposed Framework Decision at its 45th urgent meeting of 10 January 2008.

Following the debate, the Committee adopted the following **opinion**:

**The Committee on Domestic Policy, Public Administration and Justice of the National Assembly of the Republic of Slovenia is of the opinion that the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism complies with the principle of subsidiarity pursuant to the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.**

Based on the decision adopted by the Committee on EU Affairs at its 114th regular meeting of 7 December 2007, the Committee on Domestic Policy, Public Administration and Justice conducted at its 45th urgent meeting of 10 January 2008 the subsidiarity check concerning the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism, questioning whether the proposal complies with the principle of subsidiarity pursuant to the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. The proposal was presented by the European Commission on 6 November 2007. Its purpose is to update the existing Framework Decision on combating terrorism of 13 June 2002 and align it with the Council of Europe Convention on the prevention of terrorism (Warsaw, 16 May 2005). The proposal expands the definition of criminal offences related to terrorist activity under the existing Article 3 of the Framework Decision 2002/475/JHA by including offences such as public provocation to commit terrorist offences, recruitment for terrorism, and training for terrorism. This would ensure that such forms of behaviour are punishable (also when committed through the Internet) throughout the EU, and

that existing provisions on penalties, liability of legal persons, jurisdiction, and prosecution applicable to terrorist offences apply also to such forms of behaviour. Other provisions of the proposal facilitate the internal harmonisation of the provisions of the Framework Decision 2002/475/JHA with the amendments presented in the proposal. The proposal is based on Articles 29, 31(1)(e) and 34(2)(b) of the Treaty on European Union (hereinafter: TEU). The Union's objectives with regard to justice and home affairs (JHA - "the third pillar") are defined by the provision of Article 29 of TEU. One of them is the fight against terrorism in order to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States. In accordance with Article 31(1)(e) of TEU, common action includes, among others, progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the field of terrorism.

Thus, considering the opinions presented by the Legislative and Legal Service and by the representatives of the Ministry of Justice and the Ministry of the Interior, the Committee is of the opinion that the proposal is in compliance with the EU legal order.

The principle of subsidiarity is enshrined in the provision of Article 3b(3) of TEU which provides for both positive and negative criteria regarding the principle of subsidiarity. In accordance therewith, in areas that fall outside the exclusive jurisdiction of the Community, the latter will act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States at the national, regional or local levels (the negative criterion) or, by reason of the scale or effects of the proposed action, they are better achieved by the Community (the positive criterion). The two conditions or criteria must be fulfilled in a cumulative manner. The implementation of the principle of subsidiarity is explained in more detail in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. According to the provision of Article 5 of the Protocol, draft European legislative acts must be justified with regard to the principles of subsidiarity and proportionality, which is an essential aspect of the assessment of compliance of the proposed act with the principle of subsidiarity, i.e. the question whether Member States alone can not sufficiently achieve the proposal's objectives or whether they are better achieved at the level of the EU.

In accordance with the same provision, any draft European legislative act should contain a detailed statement making it possible to appraise compliance with the principle of subsidiarity. This statement should contain some assessment of the proposal's financial impact. The reasons for concluding that a Union objective can be better achieved at Union level need to be substantiated by qualitative and, wherever possible, quantitative indicators. It needs to be ensured that costs, whether financial or administrative, are minimised and commensurate with the objective to be achieved. In relation thereto, the Committee notes that the proposal's explanation contains no detailed indication of the assessment of financial impacts in the Member States and of the costs. In fact, the initial explanation only states that the proposal has no implication for the Community budget. Thus, the Committee agrees with the opinion of the Legislative and Legal Service stating that the adopted proposal will lead to a modification of regulations in terms of criminal law, which means that probably there will be no direct financial impacts. Considering the nature of the proposed instrument, the quantity indicators of the applicability at EU level are impossible to define.

The assessment of the proposed instrument as to the compliance with the principle of subsidiarity shall be carried out in terms of assessing the negative and positive criteria thereof, namely the question whether the Member States alone cannot sufficiently achieve the objectives of the proposal or whether the objectives are better achieved at the EU level. As regards the negative criterion (i.e. the Member States alone cannot sufficiently achieve the objectives of the proposal), the initial explanation stresses that modern terrorism is eminently global and that the dissemination of propaganda aiming at mobilisation and recruitment as well as instructions and online manuals intended for training or planning of attacks via the Internet have an intrinsic international and cross-border character. The threat is international, and so must be the answer. It is furthermore stated that both EU counter-terrorist and cyber-crime policies require coordinated efforts of Member States as well as co-operation at an international level in order to achieve their aims, as differences in legal treatment in the different Member

States hinder the coordinated efforts required at EU level and difficult cooperation at international level.

The positive criterion of the principle of subsidiarity (i.e. the objectives are better achieved through EU measures) is explained with a clear need to extend the current complementary efforts at national and EU level in the fight against terrorism to the new modus operandi of terrorists; the extension of the current definition of terrorism will prevent terrorists from benefiting from loopholes and divergences of national legislation; operational law enforcement work against cross-border criminal activities will be considerably facilitated, similarly to co-operation at an international level, resulting in more efficient investigations and prosecutions, leading to increased security. In relation to the proposed instrument, the Commission issued three different questionnaires in 2006 (a questionnaire to Member States; a questionnaire to the media, civil society, NGOs, etc.; and a questionnaire to Europol, Cefpol and Eurojust). In addition, conversations and meetings were held with representatives of European media and internet service providers. Finally, a conference was held on 20 March 2007, confirming that there is sufficient support for the amendment of the Framework Decision. In identifying the possibilities to achieve the relevant objective, it has been noted that both EU counter-terrorism and cyber-crime policies require coordinated efforts of Member States as well as co-operation at an international level since differences in legal treatment in the different Member States make it impossible to efficiently counter terrorism.

Having examined the opinions of the Legislative and Legal Service, the Ministry of Justice and the Ministry of the Interior and carried out the relevant debate, the Committee is of the opinion that the objective of the proposed Framework Decision is the approximation of Member States' criminal laws in relation to the new forms of terrorist activity, thus preventing the possibilities for terrorists to exploit the possible advantages of certain national legislations. The proposed criminal offences are the new modus operandi of terrorist groups, exploiting modern communication means with a global reach (in particular, the Internet). Their acts reach beyond the borders of individual Member States, meaning that they have cross-border and international impacts. A single criminal law policy among the Member States in relation to terrorism is the sole condition for a successful fight against the exploitation of modern communication means. Therefore, the Committee agrees that the above issue be better solved at the level of the EU and not at the level of individual Member States, as only thus it will be possible to provide for an efficient fight against the exploitation of modern communication means for committing terrorist offences.

Considering the above and following the debate on the proposed Framework Decision, the members of the Committee adopted the opinion that the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism complies with the principle of subsidiarity pursuant to the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

**Riksdagen**

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**Questionnaire:**

**Procedure:**

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*The Committee on Justice examined the proposal.*
- **did your government provide any information as part of the scrutiny process?**  
*Yes, oral and written information as well as an explanatory memorandum (2007/08:FPM37) from the Ministry of Justice.*
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*(Not applicable)*
- **did you consult regional Parliaments?**  
*(Not applicable)*
- **did you make use of external expertise?**  
*No.*

**Did you cooperate with other national Parliaments in the process opinion?**

*The Committee on Justice used IPEX to obtain information on the scrutiny in other parliaments. Also, e-mail correspondence with the Dutch parliament, which was very useful.*

**Did you publicise your findings (e. g. in a special press release?)**

*The findings were noted in the record from the Committee meeting and the findings were published on IPEX. Otherwise no special measures such as press releases etc.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*No. This matter is expected to be attended to this autumn in connection with preparations of the Lisbon Treaty.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**

*No breach on the subsidiarity principle was found by the majority of the Committee.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*No. However a text on the scrutiny was approved by the Committee (enclosed).*

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

*Yes.*

**Any other observations?**

*Even though proportionality was not an issue in this test the Committee notes that the fight against terrorism may only be conducted in a way that is appropriate in an open, democratic society governed by the rule of law, and that any measures must be taken with respect for human rights and in accordance with the rule of law. The proposal concerns acts that lie in a grey area bordering on rights set out in the Swedish Constitution, such as the freedoms of expression and association. In the opinion of the Committee, it is not clear from the Commission's proposal whether the proposed measures do respect these rights. The*

*Committee is therefore, with respect to the current formulation of the proposal, doubtful as to whether measures that may be undertaken on the basis of the proposal are in proportion to the desired goals.*

*More use of the IPEX-symbols already earlier during the check would have been useful. However, it was valuable with a quick answer from an involved official when the relevant IPEX-correspondent was contacted.*

- *Time shortage was experienced.*
- *Difficult to define and separate the scrutiny of subsidiarity from the examination in substance. Artificial and technical.*
- Preparations for the test a bit confusing. COSAC-conclusions as well as the preparatory e-mail talked about subsidiarity and proportionality check. In the end it turned out to be a check according to the Lisbon Treaty, which is only a subsidiarity check.

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## **RECORD COMMITTEE MEETING 2007/08:12**

### **Subsidiarity control**

Continued consideration of the testing of the subsidiarity control mechanism in relation to the Commission's proposal for the Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism.

The Committee on Justice has participated in the testing - initiated by COSAC - of the subsidiarity and proportionality control mechanisms in relation to the Commission's proposal for the Council Framework decision amending Framework Decision 2002/475/JHA on combating terrorism (COM (2007) 650 final). The proposal, which aims to increase protection against terrorism in the EU, entails that definitions of public provocation to commit terrorist offences, recruitment and training for terrorism will be included in the Framework Decision on combating terrorism together with an obligation for member states to take necessary measures to ensure that such deeds are regarded as offences linked to terrorist activities.

In connection with its consideration of the matter the Committee has obtained information from the Ministry of Justice on two occasions – 15 and 29 November 2007. An explanatory memorandum has also been presented by the Swedish Government Offices (2007/08:FPM37).

In accordance with the Committee on Justice's comments in connection with the approval of the Framework Decision on combating terrorism (Committee Report 2001/02:JuU22) the Committee considers that there is an added value in drawing up common definitions at EU level of the deeds that are to be regarded as terrorist offences and the penalties or sanctions to which these deeds may lead. In this way, a common legal area is created which facilitates police and legal cooperation aimed at preventing and combating terrorist offences. The Committee notes that terrorism is a phenomenon of an international and cross-border nature and that a common point of departure, shared by all member states, facilitates the fight against terrorism at an international level. The Committee still considers that there is an added value in regulating the issue of combating terrorism at EU level and notes that the Commission's proposal is compliant with the principle of subsidiarity.

As regards the question of whether the Commission's proposal is compliant with the principle of proportionality, the Committee notes that the fight against terrorism may only be conducted in a way that is appropriate in an open, democratic society governed by the rule of law, and that any measures must be taken with respect for human rights and in accordance with the rule of law. The proposal concerns acts that lie in a grey area bordering on rights set out in the Swedish Constitution, such as the freedoms of expression and association. In the opinion of the Committee, it is not clear from the Commission's proposal whether the proposed measures do respect these rights. The Committee is therefore, with respect to the current formulation of the proposal, doubtful as to whether measures that may be undertaken on the basis of the proposal are in proportion to the desired goals.

The representatives of the Left Party and the Green Party have registered a dissenting opinion and state the following. According to the principle of subsidiarity, an issue may only be

regulated at EU level if it gives added value in relation to regulation at the national level. We consider that the combating of terrorism should be regulated at intergovernmental level and that there is therefore no added value in regulating the proposed measures at EU level. In our opinion, therefore, the Commission's proposal is not compliant with the principle of subsidiarity. We further consider that the proposed measures are all too extensive and intrusive in relation to the desired goals. As there are no guarantees that the proposal observes respect for human rights and the exercise of constitutional rights, such as the freedoms of expression and association, we do not consider the proposal to be in compliance with the principle of proportionality.

This paragraph is immediately declared to have been approved.

Secretary, Virpi Torkkola

Approved, 29 January 2008, Thomas Bodström

***House of Commons***

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**Questionnaire:**

***Procedure:***

**What was the procedure used to conduct the check? Please specify with regard to the following topics:**

- **which committees were involved?**  
*The European Scrutiny Committee of the House of Commons.*
  
- **did your government provide any information as part of the scrutiny process?**  
*Yes, in the form of an Explanatory Memorandum from the Home Office received on 29 November 2007*
  
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*No*
  
- **did you consult regional Parliaments?**  
*No. We did however challenge the Government's assertion that the devolved administrations had no interest in the matter.*
  
- **did you make use of external expertise?**  
*No*

**Did you cooperate with other national Parliaments in the process opinion?**  
*No*

**Did you publicise your findings (e. g. in a special press release?)**  
*No. The procedure used was that which the European Scrutiny Committee uses in the scrutiny of all documents. The report on the Amendment to Framework decision 2002/475/JHA on combating terrorism was published as a chapter of the Committee's weekly report on the documents it scrutinizes.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**  
*The House of Commons has not adapted its procedures. This is a matter yet to be addressed.*

***Findings:***

**Did you find any breach of the subsidiarity principle?**  
*Yes*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**  
*Yes. Report chapter attached. See in particular para 8.16*

**Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?**  
*No*



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**Amendment to Framework Decision 2002/475/JHA on combating terrorism**

(29115) 14960/07 + ADDs 1-2 COM(07) 650	Draft Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism
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<i>Legal base</i>	Articles 29, 31(1)(e) and 34(2)(b) EU; consultation; unanimity
<i>Document originated</i>	6 November 2007
<i>Deposited in Parliament</i>	16 November 2007
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 29 November 2007
<i>Previous Committee Report</i>	None; but see (29113) 14957/07 HC 16-v (2007-08), chapter 17 (5 December 2007)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

**Background**

Following the attacks on New York and Washington DC in September 2001 the Council adopted a Framework Decision on combating terrorism on 13 June 2002. The Framework Decision contains definitions of terrorist offences and provided for penalties and rules of jurisdiction. In addition to providing for substantive offences, the Framework Decision requires Member States to make criminal the inciting, or aiding and abetting of terrorist offences and to make criminal the directing of a terrorist organisation or participation in its activities.

One of a series of measures adopted by the United Nations is UN Security Council Resolution 1624 of 2005 which calls upon States to take measures that are necessary and appropriate, and in accordance with international law, to prohibit by law incitement to commit a terrorist act or acts and to prevent such conduct. The Council agreed, in its revised Radicalisation and Recruitment Action Plan, that the Union should promote the full implementation of UNSCR 1624. In the same year, the Council of Europe adopted a Convention on the prevention of terrorism. This entered into force on 1 June 2007, having been signed by all EU Member States (except the Czech Republic and Ireland) and ratified by Bulgaria, Denmark, Romania and Slovakia. In its explanatory memorandum covering its own proposal, the Commission explains that ratification procedures are underway in the other Member States and that the text of the Convention "reflects a very fine balance and broad consensus after extensive work, including consultations and negotiations". The Council of Europe Convention requires the parties to make criminal any public provocation to commit a terrorist offence as well as recruitment and training for terrorism. The explanatory note to the Convention makes it clear that it would apply where the commission of the offences takes place by means of the internet. The Commission concludes that these provisions "cover terrorist propaganda and dissemination of bomb-making and other terrorist expertise through the internet as long as they amount to public provocation to commit a terrorist offence, recruitment or training as defined in the Convention". The Commission also notes that the Convention contains conditions and safeguards (in Article 12) which ensure respect for human rights, in particular the right to freedom of expression.

### **The draft Framework Decision**

The Commission's proposal seeks to amend Framework Decision 2002/475/JHA<sup>6</sup> by including a number of new offences linked to terrorism in a new Article 3, and to make provision for attempts to commit such offences and for rules of jurisdiction.

The first of these new offences is "public provocation to commit a terrorist offence". This is defined in Article 3(1)(a) as "the distribution, or otherwise making available, of a message to the public" with the "intent to incite" the commission of one of the offences listed in Article 1(1)(a) to (h) of Framework Decision 2002/475/JHA. There is a further requirement that such conduct "causes a danger" that one or more such offences may be committed, whether or not it directly advocates terrorist offences. The definition is therefore in the same terms as Article 5 of the Council of Europe Convention.

The second of the new offences is "recruitment for terrorism" which, according to Article 3(1)(b), means "to solicit another person to commit one of the acts listed in Article 1(1) or Article 2(2)" of Framework Decision 2002/475/JHA. The definition is, in substance, the same as that in Article 6 of the Council of Europe Convention and therefore covers both the solicitation of a terrorist offence listed in Article 1(1) and the solicitation of a person to direct a terrorist group or to participate in the activities of such a group.

The third of the new offences is "training for terrorism". According to Article 3(1)(c), this means "to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substance, or in other specific methods or techniques" where this is done for the purpose of committing one of the acts listed in Article 1(1), "knowing that the skills provided are intended to be used for this purpose". The definition corresponds to that provided in Article 7 of the Council of Europe Convention.

These new offences are in addition to those which Member States are already obliged (by Article 3) to provide for a number of "terrorist-linked" offences, namely "aggravated theft" or "extortion" with a view to committing one of the acts listed in Article 1(1), and "drawing up false administrative documents" with a view to committing one of the acts listed in Article 1(1)(a) to (h) or Article 2(2)(b).

Article 3(3) provides that an act defined in Article 3(1) and (2) is to be criminal and that "it shall not be necessary that a terrorist offence be actually committed".

A revised Article 4(2) requires the Member States to provide for attempts to commit any of the offences referred to in Article 1(1) and Article 3 to be made criminal. The drafting of the provision appears to be ambiguous, since it excludes not only the offence of possession under Article 1(1)(f)<sup>8</sup> and the offences referred to in Article 1(1)(i)<sup>9</sup> (threats to commit a terrorist offence) but also the new public provocation, recruitment and training offences under Article 3(2)(a) to (c). Since these offences are both defined in Article 3(1) and referred to in Article 3(2), it is not clear how attempts to commit such offences are to be dealt with.

Finally, the draft Framework Decision revises Article 9 by requiring Member States to provide for jurisdiction over the new public provocation, recruitment and training offences where the offence is directed towards or resulted in the carrying out of a terrorist offence listed in Article 1 and that offence is within the jurisdiction of another Member State under any of the criteria in Article 9(1)(a) to (e). (The new provision does not seem to require that the public provocation, recruitment or training should take place within the territory of a Member State, only that it is directed towards or results in a terrorist offence over which another Member State may assert jurisdiction. On its face, the provision would seem to require the laws of the UK to provide for jurisdiction on an extra-territorial basis where, for example, there has been public provocation in a third country which leads to a terrorist offence committed in for example Germany, or where the German courts may assert jurisdiction on the grounds of the German nationality or residence of an offender).

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<sup>6</sup> OJ No. L 164 of 22.6.02, p.3.

<sup>7</sup> Article 2 of 2002/475/JHA is concerned with offences related to a terrorist group.

<sup>8</sup> This makes criminal the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into and development of, biological weapons.

<sup>9</sup> This makes criminal any threat to commit any of the offences listed in Article 1(1)(a) to (h).

### **The Government's view**

In his Explanatory Memorandum of 29 November 2007 the Minister of State for Security, Counter-Terrorism, Crime and Policing at the Home Office (Tony McNulty) explains that the Government is of the opinion that the inclusion of the new offences in the revised Framework Decision is beneficial. The Minister explains that the United Kingdom has already provided for these offences and that "it would be useful if other Member States were to have the same offences which reflect the seriousness with which the EU should treat terrorism".

The Minister further explains that the offence of "public provocation to commit a terrorist offence" is provided for in the law of the UK by section 1 of the Terrorism Act 2006, which creates the offence of encouragement of terrorism. The Minister adds that the recruitment offence (i.e. soliciting a person to commit a terrorist offence) is partly provided for in the common law offence of soliciting and partly by the offences created by sections 11, 12 and 15 to 18 of the Terrorism Act 2000 relating to the direction and membership of a proscribed organisation, and that the offence of training for terrorism is provided for by section 54 of the Terrorism Act 2000 in relation to weapons training and by section 6 of the Terrorism Act 2006 in relation to training for terrorism.

In relation to the principle of subsidiarity, the Minister states that EU Member States are affected by each others' vulnerabilities, that terrorist networks may operate across borders so that "working together in the EU, both collectively and bilaterally, is essential if we are to reduce the common threat and our vulnerability to it". The Minister adds that primary responsibility for combating terrorism lies with the Member States, but that the EU "has an essential supporting role especially in establishing minimum legal standards".

The Minister does not directly address the question of why it is necessary to include these new offences in a Framework Decision when provision is already made for them in a Council of Europe Convention which the UK has signed, along with most other Member States. The Minister does, however, indicate that he agrees with the Commission's three main arguments on this point. The Minister summarises these arguments as follows:

"i) the European Union has the advantage of a more integrated framework that enables the speedy implementation of these offences in EU law — in particular, no lengthy procedures of signature and ratification like for Council of Europe Conventions, application of proper follow-up mechanisms and common interpretation by the European Court of Justice.

ii) the Framework Decision provides for a specific legal regime, in particular in respect of the type and level of criminal penalties and compulsory rules on jurisdiction which will be applicable to the newly integrated offences.

iii) the Framework Decision is a key instrument in the EU policy against terrorism: the explicit inclusion of these specific preparatory acts therefore triggers the European Union cooperating mechanisms. This means that other institutions are enabled by their own terms of reference to act on these offences and this includes Europol, Eurojust amongst others."

Finally, the Minister explains that the proposal would require no change in UK legislation and that the Government is content with the current text as drafted.

### **Conclusion**

**We recall that the principle of subsidiarity permits the EU to take action "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States". Whilst we accept that terrorist networks may operate across national borders and that, consequently, bilateral and collective cooperation between States is desirable, even essential, the Minister's explanations are not convincing to show that it is likewise essential for the EU to intervene by adopting a Framework Decision when the Council of Europe has already adopted a Convention achieving the same result, and with a greater geographical reach. In our view, to act in this way is not consistent with the principle of subsidiarity.**

**The Minister adopts the Commission's reasoning for preferring an EU Framework Decision, but this reasoning is open to question. We ask the Minister to explain if he considers that the process of ratifying the Council of Europe Convention is inherently likely to be "lengthy" when compared with the process of implementing a Framework Decision.**

We also ask the Minister to explain what he meant by a “proper follow-up mechanism”, given the difficulties which the Government has already had in explaining the UK’s position on implementation of Framework Decision 2002/475/JHA on combating terrorism, and on which we reported on 5 December. We also ask the Minister to explain his reference to “common interpretation” by the ECJ, when the UK (along with a number of other Member States) has not made a declaration under Article 35 EU conferring an interpretative jurisdiction on the ECJ.

We also ask the Minister to explain the extent to which his acceptance of the Commission’s argument relating to a “specific legal regime” for terrorism could affect the principle that, (as the Minister explained in relation to the Commission’s report on the implementation of Framework Decision 2002/475/JHA, and with which we agreed), “the perpetrators of terrorism are prosecuted using the ordinary criminal law”.

We note that, as with the EM on the Commission’s report on the implementation of Framework Decision 2002/475/JHA, the Minister states that there is no interest of the devolved administrations in this matter as “counter-terrorism is not devolved”. However, it is to be inferred from the Minister’s comments on that report that the subject-matter of this proposal also concerns the administration of the ordinary criminal law, which is not a reserved matter. We therefore ask the Minister if the devolved administrations have been consulted on the preparation of the present Explanatory Memorandum.

We also ask the Minister to explain in more detail how attempts to commit the envisaged new offences will be dealt with in the proposal and to explain the extent to which it will require the UK to provide for extra-territorial jurisdiction.

We shall hold the document under scrutiny pending the Minister’s reply.

From: **THE LORD GRENFELL**  
Chairman of the Select Committee on the European Union



COMMITTEE OFFICE  
HOUSE OF LORDS  
LONDON SW1A 0PW  
Tel: 020 7219 6083  
Fax: 020 7219 6715

10 January 2008

**EUROPEAN UNION SELECT COMMITTEE**  
**Testing the subsidiarity check mechanism of the Lisbon Treaty:**  
**The Framework Decision on Combating Terrorism**

Please find attached the answers from the House of Lords EU Select Committee's Sub-Committee E (Law and Institutions) to the questionnaire for the COSAC subsidiarity check on the Framework Decision on Combating Terrorism.

If you require any further information, please do not hesitate to contact the Select Committee's office at the number above.

**GRENFELL**

COSAC Secretariat  
[secretariat@cosac.eu](mailto:secretariat@cosac.eu)

**Questionnaire:**

**Procedure:**

**What was the procedure used to conduct the check?**

*The proposal was examined, on the basis of Government information and internal legal advice, in a meeting of the relevant EU scrutiny committee of the House of Lords.*

*Please specify with regard to the following topics:*

- **which committees were involved?**  
*The House of Lords EU Select Committee's Sub-Committee E (Law and Institutions).*
- **did your government provide any information as part of the scrutiny process?**  
*The Government provided an explanatory memorandum on the framework decision.*
- **in case of a bicameral system, did you cooperate with the other chamber?**  
*The scrutiny conducted by the two Houses is entirely independent, but there was informal discussion between legal advisers of the two Houses.*
- **did you consult regional Parliaments?**  
*No.*
- **did you make use of external expertise?**  
*No.*

**Did you cooperate with other national Parliaments in the process opinion?**

*No.*

**Did you publicise your findings (e. g. in a special press release?)**

*The Committee wrote to the Minister with its conclusions. That letter will be published in due course in the Committee's regular compilation of letters to the Government, and will be published on the Sub-Committee's pages on the UK Parliament website. IPEX will be updated to show the proposal as cleared from scrutiny.*

**Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?**

*The House of Lords will review its procedure with regard to the effects of the Lisbon Treaty in the course of 2008.*

**Findings:**

**Did you find any breach of the subsidiarity principle?**

*No.*

**Did you adopt a reasoned opinion on the Framework Decision? (please enclose a copy)**

*No. The Committee agreed the attached letter to the Minister.*

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

*Yes.*

**Any other observations?**

*No.*

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13 December 2007

**Doc 14960/07: Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism**

This proposal was considered by Sub-Committee E (Law and Institutions) at its meeting of 12 December 2007.

We note that you are broadly content with the Framework Decision as drafted. Given that there is an existing legal framework here and that the new offences mirror those contained in the Council of Europe Convention on the prevention of terrorism, the amendments proposed appear sensible.

We understand that the UK has not yet ratified the Council of Europe Convention and would be grateful to hear the reasons for the delay.

On the question of human rights, we were disappointed by the absence of analysis in your EM, where you simply conclude that the proposal is 'in line with Article 10'. We would in future expect a more detailed explanation of the human rights position, particularly where, as in the present case, this is controversial. It is necessary to ensure that any offence does not have an adverse effect on freedom of expression. We note the conclusions of the Joint Committee on Human Rights in its report *The Council of Europe Convention on the Prevention of Terrorism* (First Report of Session 2006-07, HL Paper 26, HC 247) and agree that the Commission's proposed offence of public provocation to commit a terrorist offence appears to address human rights concerns with the inclusion of the need for intent and the need for a danger that the offence will in fact be committed.

We are content to release the proposal from scrutiny.

I am copying this letter to Michael Connarty MP, Chairman of the Commons European Scrutiny Committee; and to Alistair Doherty, Clerk to the Commons Committee; Michael Carpenter, Legal Adviser to the Commons Committee; Les Saunders (Cabinet Office); and Eldon Ward, Departmental Scrutiny Co-ordinator.

**GRENFELL**

Tony McNulty MP  
Minister for Security, Counter-Terrorism, Crime and Policing