

November 2008

**Report on the Results  
of the Subsidiarity Check  
on the Proposal for a Council Directive  
on Implementing the Principle of Equal Treatment  
between Persons Irrespective of Religion or Belief,  
Disability, Age or Sexual Orientation**



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# 1. Introduction

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This report, prepared by the COSAC Secretariat, presents the results of the second subsidiarity check conducted under the provisions of the Treaty of Lisbon and coordinated by COSAC.<sup>1</sup> The report summarises the procedures, findings and experiences of the subsidiarity checks carried out by the national parliaments or chambers of the Member States of the European Union. It aims to facilitate an exchange of views and best practices between the parliaments within the COSAC framework.

## **1.1 Background**

Based on proposals submitted by national parliaments, the COSAC Chairpersons at their meeting on 18 February 2008 in Ljubljana agreed to carry out a subsidiarity check on the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation<sup>2</sup>.

This decision was confirmed in the Conclusions of the XXXIX COSAC that took place on 7 and 8 May 2008 in Brdo pri Kranju<sup>3</sup> under the Slovenian Presidency.

COSAC decided that, in order to allow national parliaments the opportunity to test the practical application of the new provisions on subsidiarity envisaged in the Treaty of Lisbon, the check should be conducted according to the provisions of Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality (henceforth "the Protocol").

The COSAC Secretariat was asked to prepare all necessary arrangements for this subsidiarity check which had to be conducted by national parliaments within a period of eight weeks following the publication of the draft legislative act in all official languages of the European Union. The results of this subsidiarity check were to be discussed under the French Presidency<sup>4</sup>.

The Commission adopted the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (henceforth "the Proposal") **on 2 July 2008**. The final language version was published on **9 July 2008**.

## **1.2 Procedure for the subsidiarity check**

The subsidiarity check was carried out by national parliaments according to their own rules and procedures. However, the Protocol stipulates a set framework for the subsidiarity checks by national parliaments which has to be followed for a national parliament's reasoned opinion to qualify for the 'yellow card' and 'orange card' mechanisms outlined in the Protocol.

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<sup>1</sup> The first subsidiarity check under the Treaty of Lisbon was conducted on the Commission Proposal for a Framework Decision on Combating Terrorism COM(2007) 650 final. See the COSAC Secretariat report at: <http://www.cosac.eu/en/info/earlywarning/Test/reldoc/>.

<sup>2</sup> The initial title of the Proposal was a Proposal for a Directive implementing the principle of equal treatment outside employment (2008/EMPL/017)". Upon adoption, it was changed into the current one.

<sup>3</sup> See Conclusions of the XXXIX COSAC, paragraph 1.3.

<http://www.cosac.eu/en/meetings/Ljubljana2008/ordinarymeeting/>

<sup>4</sup> See Conclusions of the XXXIX COSAC, paragraph 1.3.

### 1.2.1 Timing

Article 6 of the Protocol gives national parliaments eight weeks to examine the subsidiarity implications of a proposal and to submit reasoned opinions outlining a breach of the principle of subsidiarity "from the date of transmission of a draft legislative act, in the official languages of the Union".

**On 2 July** the COSAC Secretariat informed national parliaments about the adoption by the Commission of the Proposal. At the same time the COSAC Secretariat distributed an *aide mémoire* for the subsidiarity check, which included background information and a questionnaire.

**On 9 July** the COSAC Secretariat informed national parliaments that the Proposal was available in all the official languages of the European Union and that the subsidiarity check clock was now ticking. The deadline for the completion of the check was set for **4 September 2008**.

An exchange of views and best practices on the experiences of national parliaments during this subsidiarity check will take place at the XL COSAC Meeting on 3-4 November 2008 in Paris.

### 1.2.2 Reasoned opinions

Under Article 6 of the Protocol any national parliament or any chamber of a national parliament may, within a period of eight weeks, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does NOT comply with the principle of subsidiarity. It is for each national parliament or any chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers.

National parliaments taking part in the current subsidiarity check were asked to transmit their findings to these EU Institutions and to the COSAC Secretariat.

### 1.3 Participation

For the first time in the history of subsidiarity (and proportionality) checks coordinated by COSAC this check took place during the summer parliamentary recess - during July and August. This was determined by the date of the publication of the Commission's Proposal on 2 July 2008. By the deadline of 4 September 2008, **17** parliaments or parliamentary chambers from **13** Member States<sup>5</sup> had concluded the check and sent their reports to the COSAC Secretariat answering the questionnaire (henceforth "the participating parliaments"). Additional **15** parliaments or parliamentary chambers from **13** Member States started the subsidiarity check, but due to the summer recess had difficulties in completing it within the set deadline<sup>6</sup>. In some of these parliaments the check is still on-going. Some parliaments

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<sup>5</sup> The Bulgarian *Narodno Sabranie*, the *Vouli Ton Antiprosopon* of Cyprus, the Estonian *Riigikogu*, the French *Assemblée nationale*, the Hellenic *Vouli Ton Ellinon*, the Irish *Houses of the Oireachtas*, the Italian *Senato della Repubblica*, the Luxembourg *Chambre des Députés*, the Polish *Sejm* and the *Senat*, the Portuguese *Assembleia da República*, the Romanian *Camera Deputatilor* and the *Senatul*, the Slovenian *Državni svet*, the UK House of Commons and the House of Lords.

<sup>6</sup> The Austrian Parliament, the Belgian *Sénat*, the Czech *Poslanecká Sněmovna* and the *Senát*, the Danish *Folketinget*, the Dutch *States-General*, the French *Sénat*, the German *Bundesrat*, the Hungarian *Országgyűlés*, the Italian *Camera dei Deputati*, the Latvian *Saeima*, the Lithuanian *Seimas*, the Slovakian *Národná Rada*, the Slovenian *Državni zbor*.

decided not to participate. The COSAC Secretariat received replies from the total of 33<sup>7</sup> parliaments or parliamentary chambers from 23 Member States.

**The complete replies of the parliaments and parliamentary chambers including the reasoned opinions are presented in the Annex, which is published as a separate document.**

#### **1.4 Procedures applied by national parliaments**

The Committees on European Affairs were the lead committees in the subsidiarity checks in most of the participating parliaments or chambers, i.e. in the total of 15. In the Luxembourg *Chambre des Députés* the lead committee was the Committee on Family, Equality of Chance and Youth.

In three cases chambers decided to hold a joint committee meeting: (i) the Hellenic *Vouli Ton Ellinon* held the joint meeting of the Special Standing Committee on European Affairs, the Standing Committee on Social Affairs and the Standing Committee on Public Administration, Public Order and Justice; (ii) the Slovenian *Državni svet* held a joint meeting of the Commission for International Relations and European Affairs and the Commission for Social Care, Labour, Health and the Disabled; and (iii) the Polish *Senat* held a joint meeting of the Committee on European Affairs and the Committee on Human Rights and on the Rule of Law.

In five cases, the Committees on European Affairs asked for the opinions of sectoral committees: (i) in the Bulgarian *Narodno Sabranie* the Committee on Human Rights and Religious Affairs was involved; (ii) in the Romanian *Camera Deputatilor* the Committee on Human Rights, Cults and National Minorities Issues together with the Committee on Equal opportunities for Women and Men; (iii) in the Romanian *Senatul* the Committee on Human Rights, Cults and National Minorities Issues, and the Committee on Equal opportunities; (iv) in the Portuguese *Assembleia da República* the Committee on Ethics, Society and Culture; and (v) in the UK House of Lords the Social Policy Sub-Committee of the EU Committee.

In six cases, the Committees on European Affairs carried out the subsidiarity check alone. These were the *Vouli Ton Antiprosopon* of Cyprus, the Estonian *Riigikogu*, the French *Assemblée nationale*, the Irish *Houses of the Oireachtas*, the Polish *Sejm* and the UK House of Lords.

In the vast majority of cases governments provided the participating parliaments or chambers with written information in a form of an explanatory memorandum or a government position, as well as oral evidence during committee meetings.

In two cases, regional parliaments were consulted. The UK Parliament contacted the Devolved Assemblies, of which the National Assembly of Wales submitted its opinion to the House of Lords. Secondly, the Austrian *Bundesrat*, which decided to involve more stakeholders in the current subsidiarity check and therefore did not meet the eight week deadline, heard the opinion of the President of the Diet of Lower Austria, who is currently the chair of the Conference of Presidents of Austrian Diets, at its EU Committee meeting.

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<sup>7</sup> The Finnish *Eduskunta* sent a reply, but did not participate in this subsidiarity check.

Only in one case were non-governmental organisations effectively involved. This was the Irish Parliament which received the opinion of three bodies representing civil society: the Irish Human Rights Commission, the Equality authority and the Iona Institute (a religious based NGO dedicated to strengthening civil society).

The Lithuanian *Seimas* which, because of the summer recess failed to meet the deadline, also approached a number of NGOs working in the field of social integration for people with disabilities, e.g. the Lithuanian Association of the Deaf, the Lithuanian Welfare Society for the Mentally Disabled, the Lithuanian Union of Persons with Disabilities and the Lithuanian association of the Blind and Visually Handicapped. The Dutch *States-General* which also received opinions of NGOs.

In the case of bicameral parliaments, the two chambers cooperated formally only where there was a joint Committee on European Affairs. These were the Irish *Houses of the Oireachtas* and the Romanian Parliament and the Dutch *States-General*. Another two bicameral parliaments engaged in a less formal coordination: the French *Assemblée nationale* and the *Sénat* exchanged information, while the two Houses of the UK Parliament “had some coordination, but not consultation”.

The existing procedures of three participating parliaments were consistent with the requirements for the subsidiarity mechanism under the Treaty of Lisbon. These were the Bulgarian *Narodno Sabranie*, the Hellenic *Vouli Ton Ellinon*, and the Portuguese *Assembleia da República*. The Parliaments of Cyprus and Romania, the French *Assemblée nationale*, the Italian *Senato della Repubblica*, the Polish *Sejm* and *Senat* as well as the UK House of Lords are planning or have already started consideration of new procedures for the monitoring of the compliance of the Community proposals with the principle of subsidiarity. In other parliaments or chambers the subsidiarity check was according to the regular scrutiny procedures.

## 2. Results of the Check

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### 2.1 The principle of subsidiarity

The Irish *Houses of the Oireachtas* was the only participating parliament that found a potential breach of the principle of subsidiarity. In the opinion of the *Oireachtas* Joint Committee on European Scrutiny, “**some parts** of the proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation **may** violate the principle of subsidiarity”. In its Reasoned Opinion of 29 July 2008, the Committee singled out two issues that arise in this respect:

- “1. **There may be certain aspects of the scope of the proposed directive that may be best left to Member States, while others have clear advantage if action is taken at Community level.** The test of subsidiarity (necessary and clear benefit) would need to be applied to the measures proposed by reference to each sector, for example education, as the Community has greater competence in some sectors than in others and the necessity and clear benefits tests may be met more clearly in some sectors than in others.

2. Application of the principle of subsidiarity according to the guidelines set out in the Treaties requires extensive consultation by the Commission, except in cases of particular urgency or confidentiality. While there have been consultations, by means of opinion polls, discussions with equality bodies, and organisations representative of civil society and business interests, **there was no consultation with most Member States, including Ireland, prior to the announcement of the Commission's proposals on 2 July 2008.**"

In addition, in its Reasoned Opinion the *Oireachtas* Joint Committee on European Scrutiny recommended that COSAC consider in its final report:

- “the practical and logistical difficulties that arise when a proposal being tested on subsidiarity grounds is one published heading into the summer recess period for most parliaments;
- if agreement can be reached on a common definition and/or interpretation of what the ‘principle of subsidiarity’ means as different interpretations 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.”

One other chamber found a breach of the principle of subsidiarity. **The Czech *Senát*** in its 485<sup>th</sup> Resolution of 18 September 2008 found that “the proposal for a directive in its present form does not comply with the principles of subsidiarity and proportionality”. In the *Senát's* opinion “state level regulation [would be] adequate, as it reacts to the needs and conditions of the individual Member States more flexibly and better corresponds with the existing norms and customs.” In addition, “competence infraction into exclusive powers of state level regulation can be best avoided if the European Commission concentrates in the given case at non-legislative activity.”

However, since the decision of the plenary session of the Czech *Senát* was taken after the 4 September deadline, it cannot be taken into account for the purposes of this exercise.

The Czech *Senát* and the Dutch *States-General* were the only parliament and chamber which involved their plenary deliberations in the subsidiarity check.

As a result, the opinion of the Irish *Houses of the Oireachtas* (which carries two votes) would be insufficient to trigger any of the mechanisms laid out in the Protocol. According to the Protocol the minimum votes needed to trigger the 'yellow card' mechanism is 1/3 of all the votes allocated to national parliaments, i.e. 18 votes out of 54.

## **2.2 Reasoned opinions**

Apart from the Irish *Houses of the Oireachtas*, two other participating parliaments issued reasoned opinions. These were the Luxembourg *Chambre des Députés* and the Portuguese *Assembleia da República*. In contrast to the *Oireachtas*, the latter expressed their overall support for the Commission's initiative.

The Committee on Family, Equality of Chance and Youth, speaking on behalf of the Luxembourg *Chambre des Députés*, in its reasoned opinion of 28 July 2008, indicated that it can “in principle give its agreement for a new directive, because it proposes to take care of all the discrimination on an ‘equal basis’, i.e. without a hierarchy of the motifs”. The Committee was of the opinion that the Proposal conformed with the principle of subsidiarity, because a certain degree of harmonisation of measures aimed at fighting discrimination at European Union level was necessary. However, the Committee pointed out that the Commission also had an alternative of amending existing Directives.

The Committee on European Affairs of the Portuguese *Assembleia da República* was of the opinion that the Proposal "does not violate the principle of subsidiarity, since the objective will be more efficiently reached by means of a community action".

In addition, the Czech *Senát*, the Danish *Folketinget*, the Dutch *States-General* and the German *Bundesrat* issued reasoned opinions; however, these were not agreed by the 4 September deadline. In addition, the Opinion of the Committee on European Affairs of the Danish *Folketinget* contains minority opinions which indicate a breach of the principle of subsidiarity<sup>8</sup>.

### **2.3 Justification with regard to the principle of subsidiarity**

There were several participating parliaments or chambers that found the justifications of the Commission with regard to the principle of subsidiarity not entirely sufficient.

The Joint Committee on European Scrutiny, speaking on behalf of the Irish *Houses of the Oireachtas*, found the Commission’s justification “not completely satisfactory” since “a test of subsidiarity should have been undertaken for each of the measures proposed in the proposal by reference to each sector such as education, health services etc.”

The Romanian Parliament was of the opinion that the Commission’s justification did not contain full details, item by item, as to the Commission’s effort to comply with the subsidiarity principle.

The Hellenic *Vouli Ton Ellinon*, although in general satisfied with the justifications, in its Opinion called upon the Commission “to proceed to clarification of certain general concepts that could be misinterpreted<sup>9</sup>.”

The Bulgarian *Narodno Sabranie* pointed out that in the opinion of its Directorate for European Affairs, the justifications of the Commission “are not satisfactory”, as “the arguments allowing concluding that a goal of the Union is better realised at the European level are not supported by enough quantitative and qualitative arguments.”

Also, although the Polish *Sejm* found the justification satisfactory, its Bureau of Research of the Chancellery expressed concerns as to the content of the justifications. In particular the

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<sup>8</sup> See the Annex for the Opinion of the Committee on European Affairs of the Danish *Folketinget*, dated 26 September 2008

<sup>9</sup> See the Annex for the Opinion of the Joint Meeting of the Standing Committee for Social Affairs, Standing Committee for Public Administration, Public Order and Justice, Special Standing Committee for European Affairs, dated 27 August 2008.

requirement concerning quantitative and qualitative indicators was not fully complied with. In addition the information contained in the justification of the Proposal was found to be too general as to fully allow formulating an opinion concerning conformity of the Proposal with the principle of subsidiarity.

The European Affairs Committee of the Portuguese *Assembleia da República* in its Report and Formal Opinion pointed out, that “the position by Portugal within the scope of the Committee’s negotiations was that this proposal could have been more ambitious. On the other hand, doubts were also raised concerning the text of Article 4<sup>10</sup> of the proposal which <...> needs to be better explained”.<sup>11</sup>

The European Scrutiny Committee of the UK House of Commons concluded that the Proposal, provided it respects the limits of Community competence, appeared to be compatible with the principle of subsidiarity. Nevertheless the Committee decided to wait for a further note from the Government on its consideration of whether the Community has competence to legislate on some of the matters covered by the draft Directive.

It is also worth mentioning that although the UK House of Lords found the Commission’s justification satisfactory, the National Assembly for Wales, which submitted to the Lords its opinion on the compliance of the Proposal in question with the principle of subsidiarity, considered that “the justification was insufficiently detailed.”

The remainder of the participating parliaments and chambers found the Commission’s justification satisfactory.<sup>12</sup>

The French *Assemblée nationale* in its report of 22 July 2008 stated that the Proposal, as it is currently drafted complies with the principle of subsidiarity. However, the *Assemblée nationale* stressed that it is contingent on Article 3(4) guaranteeing "the secular nature of the state, State institutions or bodies or education, or concerning the status and activities of churches and other organisations based on religion or belief" remaining in the final legislation without amendment. Therefore, any reworking of the Article by the European Parliament or the Council would be likely to affect the opinion of the *Assemblée nationale*.

## **2.4 The principle of proportionality**

The current COSAC check concerned exclusively the principle of subsidiarity<sup>13</sup>. Although the title of Protocol No.2 of the Treaty of Lisbon is "Protocol on the application of the principles of subsidiarity and proportionality", the principle of proportionality only concerns the activities of the EU Institutions.

This is made clear by textual analysis of the relevant provisions of the Treaty of Lisbon. Article 12 of the Treaty on European Union provides that "national parliaments contribute

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<sup>10</sup> Article 4 of the Proposal concerns the equal treatment of people with disabilities

<sup>11</sup> See the Annex for the Report and Forman Opinion of the European Affairs Committee of the Portuguese *Assembleia da República*, dated 3 September 2008

<sup>12</sup> The *Vouli Ton Antiprosopon* of Cyprus, the Estonian *Riigikogu*, the Italian *Senato della Repubblica*, the Luxembourg *Chambre des Députés*, the Polish *Senat*, the Slovenian *Državni zbor* and the Slovenian *Državni svet*, the UK House of Commons.

<sup>13</sup> See Conclusions of the XXXIX COSAC, paragraph 1.3.

actively to the good functioning of the Union <...> by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality". In addition, under Article 6 and Article 7 of the Protocol national parliaments or chambers are entitled to send their reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity. While, Article 1 of the Protocol requires that "each institution shall insure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union." Also, Article 5 states that "draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality." Thus EU institutions must justify the proposals and make sure that they comply both with the principle of proportionality and with the principle of subsidiarity.

Therefore, for the purposes of this exercise, it was sufficient for national parliaments to express their views only on whether the Proposal was in compliance with the principle of subsidiarity.

Nonetheless, three of the participating parliaments or chambers chose to indicate their views on the Proposal's conformity with the principle of proportionality<sup>14</sup>. Several parliaments also had a critical look at the substance of the Proposal. These parliaments or chambers as well as those that did not manage to complete the check within the eight weeks will be able to make their views known to the Commission under the direct political dialogue procedure known as 'the Barroso Initiative', endorsed by the European Council in June 2006<sup>15</sup>.

## **2.5 Difficulties encountered during the check**

### **2.5.1 Eight week period**

The main difficulty encountered during this subsidiarity check, and which was envisaged from the launch of the check on 9 July 2008, was the tight time frame imposed upon the parliaments and chambers by the impending summer recess. The overwhelming majority of parliaments and chambers in their replies to the COSAC Secretariat cited this reason as the main difficulty that they faced during this subsidiarity check<sup>16</sup>. Some of parliaments admitted that they chose not to participate in the check for this reason. Some parliaments failed to receive opinions from their sectoral committees, failed to hear interested parties or altogether failed to complete the check on time, but intended to do so after the deadline.

For instance, the *Vouli Ton Antiprosopon* of Cyprus stated that during the summer recess it was difficult to involve sectoral committees. Its Committee on European Affairs, due to time restraints, completed the examination of the Proposal without having the opportunity to hear the opinions of interested parties, out of necessity in order to complete the check within the prescribed eight week timeframe.

The Irish *Houses of the Oireachtas* had to accelerate their process substantially in order to meet the deadline. Also, it was impossible to consult with other national parliaments. Therefore, in the opinion of the Irish Parliament, it is important that COSAC look at the

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<sup>14</sup> The Hellenic *Vouli Ton Ellinon*, the Luxembourg *Chambre des Députés*, and the UK House of Commons

<sup>15</sup> Commission Communication from 10 May 2006: "A Citizen's agenda - delivering results for Europe" ((COM(2006) 211 final)

<sup>16</sup> The Bulgarian *Narodno Sabranie*, the French *Assemblée nationale*, The French *Sénat* and others

practical and logistical consequences for the subsidiarity checking procedure when the Commission publishes a proposal running up to or during a period when most of the national parliaments are in recess.

The French *Assemblée nationale* underlined the fact that the eight week period was very short for the debate on the Proposal that had a broad consensus in its Committee on European Affairs. It would have been much more difficult to meet the deadline if opinion in the Committee had been split.

The Portuguese *Assembleia da República* pointed out that the eight week period in which this subsidiarity check took place limited the capacity for a more in-depth debate.

The Romanian Parliament opted out for examination of the Proposal on-line, without engaging their Members of Parliament in direct dialogue or debate.

The Slovenian *Državni zbor*, in addition to the limitations imposed by the summer recess, had to take into consideration the official beginning of the electoral campaign for the parliamentary elections on 21 September 2008.

Due to the parliamentary recess, the Belgian *Sénat*, although it conducted the check, admitted that “it was impossible to treat the proposal in a normal way.” The *Sénat* noted that it was also the case for other national parliaments and that such a situation “should be remedied in some way.”

The Polish *Senat* pointed out that due to the summer recess it was difficult to find external experts who would agree to provide an opinion in a short time.

The UK House of Lords noted that the timing of its own summer recess and those of the Devolved Assemblies caused difficulties in consulting with the latter while ensuring that the eight week deadline was met.

The Austrian *Bundesrat* started the check on time, however, because of the complexity of the Proposal it chose to adjourn the debate past the 4 September deadline in order to invite a series of institutions to present their positions on the subject to the Parliament. The Austrian *Nationalrat* did not participate in the check because of the general elections in Austria on 28 September 2008.

The Hungarian *Országgyűlés* reiterated the point that, according to the Commission's Legislative and Work Programme, the publication had been expected in the first half of the year. The delay in publication caused difficulties because of the parliamentary recess. Therefore, according to the *Országgyűlés*, the adoption of proposals between ordinary sessions of parliaments should be avoided in the future.

Only four of the participating parliaments or chambers seem to have no timing difficulties while conducting this subsidiarity check.<sup>17</sup>

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<sup>17</sup> The Hellenic *Vouli Ton Ellinon*, the Estonian *Riigikogu*, the Luxembourg *Chambre des Députés* and the Polish *Sejm*

### 2.5.2 Problem of the interpretation of the concept of the ‘principle of subsidiarity’

The Irish *Houses of the Oireachtas* in its Reasoned Opinion recommended that COSAC considers reaching an agreement on a common definition and/or interpretation of what the ‘principle of subsidiarity’ means. According to the Irish Parliament, different interpretations 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.

### 2.5.3 Making use of IPEX

In order to enhance the exchange of information during the subsidiarity check, national parliaments were encouraged to share information on the IPEX website.

In their replies to the questionnaire, 14 parliaments or chambers indicated that they actively used the IPEX website to inform other parliaments about the start of the scrutiny procedure, to publish their findings or to follow the activities of other parliaments<sup>18</sup>.

By the deadline, 13 parliaments or chambers had posted information on the IPEX website: 10 indicated that they had started the scrutiny procedure and 3 indicated that they had completed it. The Hellenic *Vouli Ton Ellinon* and the Italian *Camera dei Deputati* indicated that they had important information to exchange, while the Italian Parliament (both Chambers) and the Bulgarian *Narodno Sabranie* noted that they had subsidiarity or proportionality concerns.

## 3. Summary and Conclusions

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The second subsidiarity check within the COSAC framework conducted under the terms of the Protocol No. 2 of the Treaty of Lisbon concerned the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

National parliaments and chambers were called upon to scrutinise the Proposal with regard to the principle of subsidiarity and to send their remarks to the European Commission, the European Parliament, and the Council within the timeframe of eight weeks.

Considering the fact that the Proposal was published on the eve of the parliamentary summer recess, overall, the participation in this subsidiarity check may be regarded as high. By the agreed deadline 17 parliaments or parliamentary chambers from 13 Member States had concluded the check and an additional 15 parliaments or parliamentary chambers from 13 Member States had started the check, but due to time constraints had had difficulties in completing it on time.

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<sup>18</sup> The Austrian *Bundesrat*, the *Vouli Ton Antiprosopon* of Cyprus, the Czech *Senát*, the Hellenic *Vouli Ton Ellinon*, the German *Bundesrat*, the Italian *Camera dei Deputati* and *Senato della Repubblica*, the Latvian *Saeima*, the Lithuanian *Seimas*, the Dutch *States-General*, the Portuguese *Assembleia da República*, the Romanian *Camera Deputatilor* and the *Senatul*.

The outcome of this subsidiarity check clearly indicates that the scrutiny of proposals during the summer recess poses a considerable problem to a number of parliaments and chambers. Several parliaments called on COSAC to consider how such difficulties could be overcome. One of the solutions, voiced during an informal exchange of views between the Commission representatives and the permanent representatives of the national parliaments in Brussels in the framework of the COSAC working group<sup>19</sup>, was to disregard the four weeks of August for the purposes of the implementation of the Protocol. However, such a solution needs the approval of both the EU Institutions and the national parliaments of the Member States.

The overwhelming majority of the participating parliaments and chambers found no violation of the principle of subsidiarity. The Irish *Houses of the Oireachtas* was the only parliament to find, within the eight week timeframe, a possible breach. It stated that “there may be certain aspects of the scope of the proposed directive that may be best left to Member States, while others have clear advantage if action is taken at Community level.” According to the *Houses of the Oireachtas* “the test of subsidiarity (necessary and clear benefit) would need to be applied to the measures proposed by reference to each sector, for example education, as the Community has greater competence in some sectors than in others and the necessity and clear benefits tests may be met more clearly in some sectors than in others”. The *Houses of the Oireachtas* were also concerned with the lack of mandatory consultation by the Commission with the Member States, including Ireland, prior to the announcement of the Commission’s Proposal.

The Czech *Senát* also found a breach of the principle of subsidiarity. However, since the decision of the plenary session of the Czech *Senát* was taken after the 4 September deadline, it cannot be taken into account for the purposes of this exercise.

The results of the check indicate that national parliaments understand the limited scope of the Protocol which provides for the scrutiny of the proposals only in respect of their compliance with the principle of subsidiarity. Nonetheless, a number of participating parliaments voiced their opinion both on the compliance of the Proposal with the principle of proportionality and on the substantial provisions of the Proposal<sup>20</sup>. Currently, such opinions of national parliaments are being considered by the Commission within the framework of ‘the Barroso Initiative’. This informal cooperation tool, however, is outside the scope of the Treaty of Lisbon.

In addition, there seems to be a desire for national parliaments to reach an agreement on a common definition and/or interpretation of the ‘principle of subsidiarity’. Thus, the Irish *Houses of the Oireachtas* called on COSAC to consider reaching such an agreement as different interpretations of the ‘principle of subsidiarity’ may “lead to great disparities of opinion between each of the national parliaments” and the result may be that the threshold for the ‘yellow card’ or ‘orange card’ mechanism of the Protocol will never be reached.

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<sup>19</sup> The working group of the representatives of national parliaments to the EU was established by XXXIX COSAC on 7-8 May 2008.

<sup>20</sup> E.g., the Bulgarian *Narodno Sabranie*, the French *Assemblée nationale*, the Hellenic *Vouli Ton Ellinon*, the Italian *Senato della Repubblica*, the Luxembourg *Chambre des Députés*, the Slovenian *Državni svet*

Most of parliaments and chambers found the Commission's justification adequate. However, some parliaments pointed out that the justification was too general or insufficiently detailed, that the requirement concerning qualitative and quantitative indicators was not fully complied with, or that some general concepts of the Proposal needed to be clarified.

The results of this check show that many national parliaments and chambers actively used the IPEX database and considered it a useful tool for facilitating the exchange of information on the subsidiarity check. It is of utmost importance, however, that all national parliaments fulfil their commitment to upload information on IPEX so that this database is a reliable source of information. Also, due to time constraints, some national parliaments sought to find information quickly through their representatives in Brussels.

Overall, the current subsidiarity check may be considered a success as it demonstrated willingness of the large majority of national parliaments and chambers to engage in a joint exercise regardless of the clear objective difficulties.

**Table: Participation in the subsidiarity check**

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Was any breach found?	Was a reasoned opinion issued?	Was Commission's justifications satisfactory?	Other observations
<b>Austria:</b> <i>Bundesrat</i>	The check was conducted by the EU Committee. Ministry of Economy and Labour provided an explanatory memorandum. Experts of the Ministry and the Ministry of Social Affairs participated in the meeting. The President of the diet of Lower Austria participated in the deliberations.	Through IPEX	Summary of the proceedings was published on the website of the Parliament.	-	-	-	<b>The check was not completed within the deadline.</b> The EU Committee meeting was adjourned to involve additional stakeholders.
<b>Belgium:</b> <i>Sénat</i>	The check was conducted by the Committee on Justice. Proposal was also referred to the Committee on Social Affairs.	No	No	No	No	-	<b>The check was not completed within the deadline.</b> Due to the parliamentary recess, it was impossible to treat the proposal in a normal way.
<b>Bulgaria:</b> <i>Narodno Sabranie</i>	The check was carried out by the Committee on European Affairs, which received an opinion of the Committee on Human Rights and Religious Affairs. The Government provided an explanatory memorandum and an impact assessment. Representatives of the Ministry of Labour and Social Policy participated in the meeting.	Informal contacts with other national parliaments were made.	The report of the Committee on European Affairs was published on the website of the Parliament and in its official publication.	No	No	<b>Not satisfactory. Not supported by sufficient qualitative and quantitative arguments</b>	There is a need to have Community financing to support the national measures in terms of non-discrimination.  Also, the deadline was very short due to the parliamentary recess.
<b>Cyprus:</b> <i>Vouli Ton Antiprosopon</i>	The check was conducted by the Committee on European Affairs.	Contacts were made through the permanent representatives in Brussels and through IPEX.	No	No	No	Yes	Due to summer recess, it was difficult to involve sectoral committees. Due to time constraints, interested parties were not heard.

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Any breach found?	Any reasoned opinion issued?	Was Commission's justification satisfactory?	Other observations
<b>Czech Republic:</b> <i>Senát</i>	The check was conducted by the Committee on EU Affairs. Plenary debate took place. Final decision was taken by the plenary. The Government submitted an explanatory memorandum.	Contacts through IPEX and the permanent representatives of national parliaments in Brussels.	The resolution of the Committee on EU Affairs was published on the website of the <i>Senát</i> .	Yes	Yes. <b>The <i>Senát</i> adopted a Resolution.</b>	Not satisfactory.	<b>The check was not completed within the deadline.</b> Problems due to the summer recess.
<b>Czech Republic:</b> <i>Poslanecká Sněmovna</i>	The check was conducted by the Committee on European Affairs. Preliminary position of the Government was presented by the Deputy Minister of Labour and Social Affairs. The Committee on Constitutional Affairs and the Permanent Commission for Equal Opportunities will debate the proposal later.	Standard type of cooperation with other national parliaments.	The resolution of the Committee on European Affairs was published on the committee website.	No	No	-	<b>The check was not completed within the deadline.</b> The timing of the submission of the proposal was inconvenient due to the summer recess when no committee meetings were scheduled.
<b>Denmark:</b> <i>Folketinget</i>	The check was conducted by the Committee on European Affairs. The Government provided a short subsidiarity memorandum within two weeks after the Proposal was made available in the Danish language version.	No	The Opinion of the Committee was made available to the public.	No, but in the minority opinion the Proposal breached the principle of subsidiarity.	Yes	The Proposal contains a number of vaguely delimited provisions and exceptions from the scope of the Directive that need to be further considered.	<b>The check was not completed within the deadline.</b> See the Appendix for the (Reasoned) Opinion of the Committee.
<b>Estonia:</b> <i>Riigikogu</i>	The check was conducted by the Committee on European Affairs, which received opinions of the Committee on Social Affairs and Constitutional Committee. The Government provided an explanatory memorandum.	No	The minutes of the committee meetings are published on the website of the Parliament.	No	No	Yes	
<b>France:</b> <i>Assemblée nationale</i>	The check was conducted by the Committee on European Affairs. The Government provided information as part of the scrutiny process.	No	The Committee report was published on the website of the <i>Assemblée nationale</i>	No	No	-	The time for the check was very short because of the summer recess.

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Any breach found?	Was a reasoned opinion issued?	Was Commission's justification satisfactory?	Other observations
<b>France:</b> <i>Sénat</i>	The check was conducted by the Committee on European Affairs. The Government provided information. Information was exchanged with the <i>Assemblée nationale</i> .	Information was also obtained through the permanent representative in Brussels.	Yes	No	No	<b>Partially satisfactory.</b> See Annex for the reasons.	<b>The check was not completed within the deadline.</b> Timing problems (summer recess and senatorial elections).
<b>Germany:</b> <i>Bundesrat</i>	The Committee on European Union Questions was the lead committee. The Proposal was also examined by the Committee on Labour and Social Policy, the Committee on Women and Youth, the Committee on Finance, the Committee on Cultural Affairs, the Committee on Legal Affairs and the Committee on Economic Affairs. Final decision was taken by the plenary. The Federal Government presented an explanation.	Through IPEX	The Opinion of the <i>Bundesrat</i> was made public on internet. Also, a press release was published.	No	<b>Yes.</b> The Opinion of the <i>Bundesrat</i>	The <i>Bundesrat</i> did not object to the Commission's justification with regard to the subsidiarity principle.	<b>The check was not completed within the deadline.</b> "If the early warning system had already been in place, it would have been possible to adhere to the eight-week deadline by convening the Chamber of European Affairs."
<b>Greece:</b> <i>Vouli Ton Ellion</i>	The check was conducted at a joint meeting of the Special Standing Committee on European Affairs, the Standing Committee on Social Affairs and the Standing Committee on Public Administration, Public Order and Justice. Representatives of the Ministry of Social Affairs, Ministry of Justice and Ministry of Equality participated in the meeting. The above Ministries and the Permanent Representation of Greece to the EU provided explanatory memoranda.	Consulted the IPEX website.	Press release was published on the website of the Parliament.	No	No.	In the joint Opinion, the three Committees asked the European Commission to provide clarification of certain general concepts used in the proposal in order to avoid misinterpretation.	See the Annex for the Opinion of the joint committee meeting.

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Any breach found?	Any reasoned opinion issued?	Was Commission's justification satisfactory?	Other observations
<b>Hungary:</b> <i>Országgyűlés</i>	The check was conducted by the Committee on European Affairs.	Informal cooperation with other national parliaments through the permanent representative in Brussels.	The minutes of the committee meeting were published on the website of the Committee.	No	No	Yes, but the scope and connection to the relevant Community policies regarding social advantages and social protection provisions need further clarification.	<b>The check was not completed within the deadline.</b> Because of the summer recess, it was impossible to involve other parliamentary committees.
<b>Ireland:</b> <i>Houses of the Oireachtas</i>	The check was conducted by the Joint Committee on European Scrutiny of both Houses of the Irish Parliament. The Department of Justice, Equality and Law Reform provided its views. Three civil society bodies were also consulted.	No, but the Committee believes that cooperation with other national parliaments is essential to the success of the subsidiarity checks under the Treaty of Lisbon.	The Reasoned opinion was posted on the Committee website.	<b>Yes, some parts of the proposal may violate the principle of subsidiarity</b>	<b>Yes.</b>	<b>No. A test of subsidiarity should have been undertaken for each proposed measure by reference to each sector, e.g. education, health services, etc.</b>	National parliaments will need to work closely together under the same understanding of the subsidiarity principle. An agreement should be reached within COSAC on a common understanding or definition of the subsidiarity principle.
<b>Italy:</b> <i>Camera dei Deputati</i>	The Committee on EU Policies issued an opinion to the Committee on Constitutional Affairs.	Through IPEX	No	No	No	<b>No. The Committee on EU Policies found the justification unsatisfactory.</b>	<b>The check was not completed within the deadline.</b>
<b>Italy:</b> <i>Senato della Repubblica</i>	The check was conducted by the Committee on European Union Policies.	Through IPEX	The minutes of the Committee meeting were made available to the public.	No	No	Yes	See the Annex for the Committee Opinion.
<b>Latvia:</b> <i>Saeima</i>	The Committee on European Affairs performed the check after receiving an opinion of the Committee on Human Rights and Public Affairs. The latter Committee consulted the Ministry of Welfare for Social Integration.	Followed the course of the check in other national parliaments through IPEX	A press release on the check was sent to the Latvian news agencies.	No	No	Yes	<b>The check was not completed within the deadline.</b> More detailed financial and administrative assessment is highly recommended.

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Any breach found?	Any reasoned opinion issued?	Was Commission's justification satisfactory?	Other observations
<b>Lithuania:</b> <i>Seimas</i>	The Committee on European Affairs was in charge of the check. The Committee on Human Rights and the Committee on Social Affairs and Labour were asked for their opinions. They asked opinions of NGOs. The European Law Department under the Ministry of Justice presented its opinion. The Ministry of Social Security and Labour was commissioned to prepare draft the position of the Government.	Through IPEX	No	-	-	-	<b>The check was not completed within the deadline.</b> The meeting of the Committee on European Affairs was adjourned to involve additional stakeholders.
<b>Luxemburg:</b> <i>Chambre des Députés</i>	The check was conducted by the Committee on Family, Equality of Chance and Youth. The Minister of Family and Integration participated at the Committee meeting.	No	No	No	<b>Yes</b>	Yes	See Annex for the Reasoned Opinion.
<b>The Netherlands</b> <i>The States-General</i>	The check was carried out by the Joint Temporary Committee on the Subsidiarity Check. It received opinions of the Committees on the Interior of both Houses and the Committee on Social Affairs of the <i>Tweede Kamer</i> . The Plenary sessions of both Houses were involved. The Government provided the so called fiche on the Proposal.	Though IPEX	The findings were published in the official publications of both Houses	Both Houses of the <i>States-General</i> are not convinced that the Proposal complies with the principle of subsidiarity.	<b>Yes</b>	<i>The States-General</i> need more information from the Commission	<b>The check was not completed within the deadline.</b>
<b>Poland:</b> <i>Sejm</i>	The Committee on European Union Affairs conducted the check. A representative of the Government gave an oral opinion.	No	The Committee opinion was published on its website, a shorthand record of meeting was published on the website of the Sejm.	No	No	Yes	

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Any breach found?	Any reasoned opinion issued?	Was Commission's justification satisfactory?	Other observations
<b>Poland:</b> <i>Senat</i>	The check was conducted at a joint sitting of the Committee on European Union Affairs and the Committee on Human Rights and the Rule of Law. The Government submitted its written position and gave evidence at the joint Committee meeting.	No	No	No	No	Yes	Timing problems because of the summer recess. It was especially difficult to find external experts at a short notice.
<b>Portugal:</b> <i>Assembleia da República</i>	The check was conducted by the Committee on European Affairs. The Committee on Ethics, Society and Culture issued an opinion to the Committee on European Affairs.	Through IPEX	No	No	Yes	Yes	The eight week period was outside the normal parliamentary term, limiting the capacity for a more in-depth debate.
<b>Romania:</b> <i>Camera Deputatilor and Senatul</i>	The check was conducted by the joint Committee on European Affairs. The Committees on Human Rights, Cults and National Minorities Issues of both Chambers, the Committee on Equal Opportunities for Women and Men of the <i>Camera Deputatilor</i> and the Committee on Equal opportunities of the <i>Senatul</i> submitted their opinions. The European Affairs Department of the Government, the Ministry of Labour, the Family and Equal Opportunities and other government agencies submitted their opinions.	Through IPEX	No	No	No	<b>No, the justification does not contain full details, item by item.</b>	
<b>Slovakia:</b> <i>Narodna Rada</i>	The Committee on European Affairs conducted the check. The Government submitted its preliminary position.	Used informal contacts	No	No	No	Yes	<b>The check was not completed within the deadline.</b>
<b>Slovenia:</b> <i>Državni zbor</i>	The check was conducted by the Committee on EU Affairs. The Committee received the joint opinion of the Commissions of the National Council.	No	A press release was published on the website of the Parliament.	No	No	Yes	<b>The check was not completed within the deadline.</b>

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Any breach found?	Any reasoned opinion issued?	Was Commission's justification satisfactory?	Other observations
<b>Slovenia:</b> <i>Državni svet</i>	The check was conducted at the joint meeting of the Commission for Social Care, Labour, Health and the Disabled and the Commission for International Relations and European Affairs. The Ministry of Labour, Family and Social Affairs and the Government Office for Equal Opportunities took part in the meeting.	No	A press release was published on the website of the <i>Državni svet</i> .	No	No	Yes	The eight week period coincided with the parliamentary recess.
<b>United Kingdom:</b> <i>House of Commons</i>	The European Scrutiny Committee conducted the check. The Government provided an Explanatory Memorandum. The Parliamentary Under-Secretary of State for Women and Equality at the Government Equality Office gave evidence to the Committee.	No	The findings were published in the Report to the House of Commons	No, but the Committee awaits a further note by the Government on whether the Community has competence to legislate on some of the matters covered by the draft.	No	Yes	
<b>United Kingdom:</b> <i>House of Lords</i>	The check was conducted by the European Union Committee with the involvement of its Social Policy Sub-Committee. The National Assembly of Wales gave its opinion. The Government provided an Explanatory Memorandum.	Cooperation through the permanent representatives of national parliaments in Brussels.	No	No	No	Yes, although the <b>National Assembly for Wales considered that it was insufficiently detailed.</b>	The summer recess caused difficulties in consulting the Devolved Assemblies.