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**Report on the Results
of the Subsidiarity Check on
the Proposal for
a Council Framework Decision
on the Right to Interpretation and to Translation
in Criminal Proceedings**



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Abstract

This COSAC-coordinated subsidiarity check on **the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings** (COM(2009) 338 final) was conducted under the provisions of the Treaty of Lisbon during the summer recess period for most parliaments, i.e. from 20 July until 14 September 2009.

21 parliaments/chambers from 17 Member States were able to complete the check within the set deadline. An additional **10 parliaments/chambers from 9 Member States** started the subsidiarity check, but had difficulties in completing it within the 8-week period as defined in Protocol 2 to the Treaty of Lisbon. Thus, the COSAC Secretariat received replies to its questionnaire from the **total of 30 parliaments/chambers from 24 Member States**¹. Overall, these figures indicate willingness on the part of the parliaments to engage in the COSAC-coordinated subsidiarity checks which are seen as a useful tool to facilitate an exchange of views and best practices in applying the provisions of the Protocol.

Out of 21 participating parliaments, three - **the Austrian *Bundesrat*, the Irish *Houses of the Oireachtas* and the Maltese *Kamra tad-Deputati*** - indicated that they **found the Proposal to be in breach of the principle of subsidiarity** and issued reasoned opinions as per the Protocol.

Another **six** participating parliaments in their replies indicated that they issued reasoned opinions either **supporting the Proposal** in general or **asking the Commission to provide additional information** on it.

Justification of the Proposal on the grounds of its compliance with the principle of subsidiarity seemed to have been the **major drawback of the Commission**. **11 participating parliaments found the Commission's justification** in its explanatory memorandum **inadequate or not entirely satisfactory**. The parliaments found it too general, lacking quantitative or qualitative indicators to substantiate the need for the Proposal. Also, the parliaments were not convinced about the added value of the Proposal in relation to the provisions of the European Convention on Human Rights (henceforth "the ECHR") and the case law based on it which forms part of the general principles of Community law.

The **parliamentary recess** was cited by a number of parliaments as the **main difficulty** in completing the subsidiarity check on time. The time constraints resulted in practical and logistical difficulties in organising the check, in lack of in-depth analysis, and lack of opinions of specialised committees, regional parliaments or interested parties.

The IPEX website was seen by the parliaments as **the principal source of information** on the state of play of the subsidiarity check in other national parliaments.

¹ As of 22 September 2009

1. Introduction

This report, prepared by the COSAC Secretariat, presents the results of the subsidiarity check on **the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings** (COM(2009) 338 final) conducted under the provisions of the Treaty of Lisbon and coordinated by COSAC.² 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, best practices and to improve understanding of the provisions of Protocol 2 to the Treaty of Lisbon by parliaments within the COSAC framework.

1.1 BACKGROUND

Based on proposals from national parliaments, the COSAC Chairpersons in their meeting on 10 February 2009 in Prague agreed to carry out a subsidiarity check on the **Proposal for a Framework Decision on procedural rights in criminal proceedings** in 2009. This decision was confirmed by the XLI COSAC Meeting³ on 12 May 2009 in Prague during the Czech Presidency.

As in previous cases, 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").

At the meeting of the COSAC Chairpersons on 6 July 2009 in Stockholm during the Swedish Presidency it was agreed to carry out this subsidiarity check within an eight-week period following the publication of the Proposal in all official languages of the European Union⁴. The COSAC Secretariat was asked to prepare all necessary arrangements for the subsidiarity check seeking to take into account any answers coming in after the deadline, so that as complete information as possible would be available for the discussion at the XLII COSAC Meeting on 4-6 October 2009 in Stockholm⁵.

1.2 TITLE OF THE PROPOSAL

The initial title of the Proposal was a Proposal for a Framework Decision on procedural rights in criminal proceedings (2009/JLS/047). Upon adoption on **8 July 2009**, however, **the title of the Proposal was changed** into a Proposal for a Framework Decision Council on the right to interpretation and to translation in criminal proceedings (henceforth "the Proposal").

² This is the fourth subsidiarity check co-ordinated by COSAC under the provisions of the Treaty of Lisbon. See the COSAC subsidiarity check reports at: <http://www.cosac.eu/en/info/earlywarning>.

³ See Conclusions of the XLI COSAC, paragraph 2.4 at: <http://www.cosac.eu/en/meetings/Prague2009/XLI.pdf/>

⁴ See minutes of the Meeting of the COSAC Chairpersons on 6 July in Stockholm at:

<http://www.cosac.eu/en/meetings/stockholm/chairpersons/>

⁵ Id.

The Proposal under the new title retained the same Commission internal reference number, *i.e.* (2009/JLS/047).

In its explanatory memorandum, the Commission, *inter alia*, stated that “The proposal is envisaged as a **first step in a series of measures** designed to replace the Commission's 2004 proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union - COM(2004) 328, 28.4.2004 - which is withdrawn <...> **Agreement could not be reached** on that proposal, despite 3 years' discussions in the Council Working Group, and it was effectively abandoned in June 2007". According to the Commission "this proposal should therefore be considered as **part of a comprehensive package** of legislation which will seek to provide a minimum set of procedural rights in criminal proceedings in the European Union. <...> For this proposal, the Commission has decided to concentrate on **the right to interpretation and translation** as it was **the least controversial right** in the discussions of the 2004 proposal and there was information and research available on this right”⁶.

1. 3 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 8 July 2009 the Commission adopted the Proposal. The COSAC Secretariat informed national parliaments about the adoption of the Proposal and distributed an *Aide-mémoire* for the subsidiarity check, which included background information and a questionnaire.

On 20 July 2009 the COSAC Secretariat informed national parliaments about the publication of the Proposal in all the official languages of the European Union and set the deadline for the completion of the check for **14 September 2009**.

An exchange of views and best practices on the experiences of national parliaments during this subsidiarity check will take place **at the XLII COSAC Meeting on 5-6 October 2009 in Stockholm**.

⁶ http://eur-lex.europa.eu/Result.do?T1=V5&T2=2009&T3=338&RechType=RECH_naturel&Submit=Search

2. Results of the Check

2.1 PARTICIPATION

For the second time in the history of subsidiarity (and proportionality) checks coordinated by COSAC **the check took place during the summer parliamentary recess**. This was determined by the date of the publication of the Proposal by the Commission on 8 July 2008.

By the deadline of 14 September 2009, the following **21 parliaments/chambers from 17 Member States** (henceforth "the participating parliaments") had concluded the check and sent their reports to the COSAC Secretariat: the Austrian *Bundesrat*, the Bulgarian *Narodno Sabranie*, the *Vouli Ton Antiprosopon* of Cyprus, the Danish *Folketing*, the Dutch *Tweede Kamer* and the *Eertse Kamer*, the Irish *Houses of the Oireachtas*, the Italian *Senato della Repubblica*, the French *Sénat*, the German *Bundestag*, the Latvian *Saeima*, the Maltese *Kamra-tad-Deputati*, the Polish *Sejm* and the *Senat*, the Portuguese *Assembleia da República*, the Slovakian *Národná Rada*, the Slovenian *Državni zbor* and the *Državni svet*, the Swedish *Riksdag*, and the UK *House of Commons* and the *House of Lords*.

An additional **10 parliaments/chambers from 9 Member States** started the subsidiarity check, but had difficulties in completing it within the set deadline. These were the Austrian *Nationalrat*, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the German *Bundesrat*, the Hungarian *Országgyűlés*, the Lithuanian *Seimas*, the Parliament of Romania, and the Spanish *Cortes Generales*. In the Czech *Poslanecká sněmovna* and the *Senát* the check is still ongoing. In the *Senát*, the final decision at the plenary level is expected at the beginning of October 2009.

Some parliaments informed the COSAC Secretariat that they would not participate in the check because of the summer recess or because of parliamentary elections (e.g. the 4 October 2009 elections in Greece).

The COSAC Secretariat received **replies from a total of 30 parliaments/chambers from 24 Member States**⁷. Because of the time constraints associated with the presentation of the report to the XLII COSAC Meeting on 4-6 October in Stockholm, **this report analyses only the information provided by the parliaments which completed the subsidiarity check within the 8-week deadline**.

The complete replies of the parliaments/chambers including the reasoned opinions are presented in the Annex to the Report, which is published as a separate document.

2.2 PROCEDURES APPLIED BY NATIONAL PARLIAMENTS

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

⁷ As of 22 September 2009

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.

The vast majority of participating parliaments conducted the check under the provisions of the Protocol. However, the Dutch *Tweede Kamer* and the *Eerste Kamer* conducted the check under the provisions of Article 5 of the EC Treaty and Protocol 30 of the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

2.2.1 Involvement of Parliamentary Committees

In the overwhelming majority of cases, *i.e.* in 17 participating parliaments, the subsidiarity check was conducted by the Committees on EU Affairs. In these cases the Committees were either lead committees or performed the check without involving specialised committees.

Opinions of specialised committees were sought in five participating parliaments. In the Bulgarian *Narodno Sabranie* and the Danish *Folketing*, opinions were provided by the Committees on Legal Affairs, in the Polish *Senat* - by the Committee on Human Rights, the Rule of Law and Petitions, in the Portuguese *Assembleia da República* - by the Committee on Constitutional Affairs, Freedoms, Rights and Guarantees, and in the Slovenian *Državni zbor* - by the Committee on Domestic Policy, Public Administration and Justice.

In two instances the lead committees were specialised committees. In the German *Bundestag* the Proposal was examined by the Committee on Legal Affairs, which received an opinion of the Committee on European Union Affairs, and in Swedish *Riksdag* the subsidiarity check was carried out solely by the Committee on Justice.

In the Dutch Parliament, the subsidiarity check was launched by the Temporary Committee on Subsidiarity of both Chambers of the *States-General*, but subsequently it was conducted individually in the *Tweede Kamer* by the Standing Committee on Justice and in the *Eerste Kamer* by the Committee for the JHA Council.

2.2.2 Involvement of Plenary Sessions

The German *Bundestag*, the Dutch *Tweede Kamer*, and the Dutch *Eerste Kamer* were the participating chambers which conducted plenary deliberations on the Proposal and took the final decision on its compliance with the principle of subsidiarity at the plenary level.

2.2.3 Coordination between Chambers of Bicameral Parliaments

Coordination of the subsidiarity check between two chambers of the participating bicameral parliaments took place in the Dutch *States-General* and the Irish *Houses of the Oireachtas*.

Initially, the *Tweede Kamer* and the *Eerste Kamer* of the Dutch *States-General* coordinated their activities according to the standard joint procedure, whereby the check was launched by the joint Temporary Committee on Subsidiarity. However, the Standing Committee on Justice of the *Tweede Kamer* and the Committee for the JHA Council of the *Eerste Kamer* had divergent views on the Proposal and there was no sufficient time for mediation. It was decided to send to the Commission separate letters with slightly different opinions.

In the case of the Irish *Houses of the Oireachtas*, its Joint Committee on European Scrutiny includes Members of both the *Dáil* and the *Seanad*. Therefore, both Houses were involved simultaneously in the subsidiarity check.

2.2.4 Consultation with Regional Parliaments with Legislative Powers

During this subsidiarity check, regional parliaments with legislative powers were consulted in two cases, *i.e.* by the Austrian *Bundesrat* and the UK *House of Lords*. According to the UK *House of Lords*, a response was received from the European and External Affairs Committee of the National Assembly for Wales, but the Scottish Parliament and the Northern Ireland Assembly were unable to consider the matter within the timetable set by COSAC owing to their summer recesses.

2.2.5 Information Provided by Governments

Out of 21 participating parliaments, 12 received government information (in written form and/or orally) on the Proposal. In the majority of cases governments provided the participating parliaments with explanatory memoranda, which included an opinion on subsidiarity. In five cases governments provided oral evidence during committee meetings. There were also a few cases when governments did not provide participating parliaments with any information because they were not requested to do so or they were late.

2.2.6 Involvement of NGOs, Interest Groups, External Experts and Other Stakeholders

Given the challenges of conducting the check during a parliamentary recess, most of the parliaments found it difficult to consult non-governmental organisations, interest groups, external experts and other stakeholders. Nevertheless, three participating parliaments did consult external bodies. The Austrian *Bundesrat* consulted the Austrian Chamber of Advocates (*Österreichischer Rechtsanwaltskammertag*), the Maltese *Kamra tad-Deputati* consulted the Maltese Law Courts in order to establish the current practices in this area, and the Polish *Senat* was provided with external expertise prepared by an independent expert.

2.3 FINDINGS

2.3.1 Identified Breaches of the Principle of Subsidiarity

Three participants of the subsidiarity check - the Austrian *Bundesrat*, the Irish *Houses of the Oireachtas* and the Maltese *Kamra tad-Deputati* - indicated that they had found the Proposal in breach of the principle of subsidiarity.

In its Statement to the European Commission of 3 September 2009, the EU Committee of the Austrian *Bundesrat* concluded that the Proposal "**cannot be accepted in the present form**". The Committee argued that the Proposal was "essentially a codification of the decisions of the European Court of Human Rights (ECtHR)" and therefore "**it is questionable as to whether there is an urgent need for a framework decision**, since the Member States are in any case obliged in principle to comply with ECtHR decisions". Furthermore, in the opinion of the Committee "the small number of decisions by the ECtHR involving violations of Article 6.3(a) and 3(e) of the European Convention for the Protection

of Human Rights and Fundamental Freedoms (ECHR) would also appear to indicate that there is **not an urgent need for a legal instrument** in this regard".

In its reasoned opinion of 3 September 2009, the Joint Committee on European Scrutiny of the *Irish Houses of the Oireachtas* stated "**that some parts of the Proposal may not comply fully with the principle of subsidiarity**". The Committee based its conclusion on the following reasoning:

"There may be certain aspects of the scope of the proposal that may be best left to Member States, while others have clear advantages if action is taken at Community level. For example, the test of subsidiarity (necessity and clear benefit) would need to be assessed to see whether it would be best applied to "all persons" as proposed (which was a mix of options (b) and (e) in the proposal, or just cross border cases (option d)). The Community may have competence to legislate for cross border cases but due regard has to be had to national competence if the proposal is to apply to all criminal offence cases".

In addition, the Joint Committee on European Scrutiny **expressed doubts as to the legal basis** of the Proposal. The Committee drew attention to the fact that the new Proposal "was originally part of a 2004 proposal which was opposed by a number of Member States on the grounds of its legal basis, and some doubts as to its compliance with the principles of subsidiarity and proportionality". Given that the new Proposal was "quite similar to what went before" and was "using the same legal basis (i.e. Article 31(1) c of the TEU)" the Committee requested further clarification from the Commission on this point.

The Foreign and European Affairs Committee of the *Maltese Kamra tad-Deputati* issued its Statement of 14 September 2009 arriving at the conclusion that **the Proposal "represents an instance of overregulation and duplication** since the matter is already sufficiently uniformly regulated by each individual member state in accordance with an agreed common standard as set out in the European Convention for the Protection of Human Rights (forming part of the general principles of law in EU Law) and the Human Rights Charter to be given legal effect on ratification of the Treaty of Lisbon". Therefore, in the opinion of the Committee **the Proposal "goes beyond the issue of subsidiarity and constitutes an unwarranted measure at the level of the EU"**. In addition, the Committee **questioned the legal basis** of the Proposal.

It may be recalled that Article 7 of the Protocol outlines two procedures commonly referred to as "yellow card" and "orange card". The "orange card" procedure is not applicable in this case, because the Proposal falls under the consultation and not co-decision procedure (equivalent to the ordinary legislative procedure under the terms of the Treaty of Lisbon). Therefore, it is only the "yellow card" procedure which is applicable in this case. Under the Protocol, the minimum votes needed to trigger the "yellow card" procedure is 1/3 of all the votes allocated to national parliaments (*i.e.* 18 votes out of 54), and in the case of a proposal in the area of freedom, security and justice, this threshold is 1/4 (*i.e.* 14 votes out of 54).

As a result of this subsidiarity check, the opinions of the Austrian *Bundesrat* (one vote), the *Irish Houses of the Oireachtas* (two votes) and the *Maltese Kamra tad-Deputati* (two votes), which carry the total of five votes, would be insufficient to trigger the "yellow card" procedure as laid out in the Protocol.

It should be noted that **none of the parliaments which completed the check after the 14 September deadline found the Proposal to be in breach of the principle of subsidiarity.**

2.3.2 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.

Apart from the three participating parliaments which found a possible breach of the principle of subsidiarity and issued reasoned opinions as per the Protocol (two of them in the form of a statement), six other participating parliaments issued opinions (*e.g.* the Danish *Folketing*, the Italian *Senato della Repubblica*, the French *Sénat*) or sent brief letters to the European Commission (*e.g.* the Dutch *Tweede Kamer*, the German *Bundestag*). In those documents the parliaments either expressed their overall support for the Proposal (*e.g.* the Dutch *Tweede Kamer*, the Portuguese *Assembleia da República*) or asked the Commission for additional information. For instance, the Dutch *Eerste Kamer* requested the Commission to provide further information on the added value of the Proposal in relation to the provisions of the ECHR and the case law based on it.

2.3.3 Justification with Regard to the Principle of Subsidiarity

11 participating parliaments found the Commission's justification of the Proposal with regard to its compliance with the principle of subsidiarity **not entirely satisfactory.**

For instance, the UK *House of Lords* indicated that the justification given under the heading "Subsidiarity" in the Commission's explanatory memorandum was "inadequate" and pointed out that "the memorandum did not satisfactorily indicate or summarise the problems which were identified in the Impact Assessment". Furthermore, the *House of Lords* found that the preamble to the Proposal (in particular, recitals (5) to (8)) was also "in very general language" and did "not give a clear idea why the proposal is necessary when all Member States are party to the ECHR". It pointed out that it was "only through reading the Impact Assessment that it became clear why EU action was justified in this area".

Similarly, the Cypriot *Vouli ton Antiprosopon* and the UK *House of Commons* pointed out that a brief statement in paragraph 24 of the Commission's explanatory memorandum was not sufficient. It was a statement rather than an analysis.

According to Irish *Houses of the Oireachtas*, "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 the Committee drew attention to the "lack of the quantitative or qualitative indicators to substantiate the need for the Proposal". It was also unclear to the Committee "how the circumstances have changed since the 2004 proposal was rejected by 6 Member States to satisfy the concerns raised about its legal base and subsidiarity". Finally, "given the legal implications of making the proposal applicable to all persons in criminal proceedings, rather than just cross border cases, there was not enough justification given for choosing that option over those that would have had less legal, political and financial implications."

The Dutch *Eerste Kamer* in its letter to the Vice-president of the European Commission Ms. Margot Wallström stated that "as regards the principles of subsidiarity and proportionality the Senate was able to agree, subject to some reservation", but requested further information on the legal basis of the Proposal, its added value in relation to the provisions of the ECHR and the case law based on it. The *Eerste Kamer* also considered that more explanation was needed of the Commission's assertion that the application of the provisions of the ECHR in the Member States is inconsistent and that this problem could be addressed by the Proposal.

The Polish *Senat*, for its part, regretted that the Commission had "not identified all necessary arguments and those put forward in the justification were not sufficiently well formulated".

Finally, there were parliaments which found the Commission's justification satisfactory in general, but had certain reservations. For instance, the Bulgarian *Narodno Sabranie* had reservations as to Article 5 (2) of the Proposal on the obligation of the Member States to offer training to judges, lawyers and other relevant court personnel. While the Dutch *Tweede Kamer* pointed out that the justification could have been more balanced by adding a consideration to the relation of the proposal to the ECHR, because the common minimum standard on interpretation and translation in criminal proceedings that the Proposal introduces is also covered by Articles 5 and 6 of the ECHR.

2.3.4 Difficulties Encountered During the Check

A number of participating parliaments cited the **parliamentary recess as the main difficulty** encountered during this subsidiarity check. As a consequence, due to time constraints "there was little time for carrying out the subsidiarity check" (the Dutch *Eerste Kamer*), some parliaments "were unable to involve specialised committees or to hear opinions of interested parties (the Cypriot *Vouli ton Antiprosopon*), "the 8-week period was outside the parliamentary term, limiting the capacity for a more in-depth debate" (the Portuguese *Assembleia da República*), it was "impossible to mediate between both Chambers of the Parliament" (the Dutch *Tweede Kamer*), "special arrangements had to be made to enable the Committee to consider the issue of subsidiarity and summer recess also made coordination with the other Chamber of the bicameral parliament as well as with regional legislatures difficult" (the UK *House of Lords*).

The Irish *Houses of the Oireachtas* pointed out that the fact that the check was undertaken during the lead-in to parliamentary recess "is an ongoing concern regarding the publication date of proposals selected for checking". The Maltese *Kamra tad-Deputati*, on its part, underlined that "the 8-week period in the Lisbon Treaty is not sufficient to cover periods when parliaments are in recess".

The UK *House of Lords* noted that "the Commission is prepared to concede that it would discount August were that Protocol in force" and admitted that "such a concession would assist the House of Lords to manage the procedure for reasoned opinions under the Protocol if proposals are published during the summer period".

The Irish *Houses of the Oireachtas* therefore recommended that COSAC in its final report considered "the practical and logistical difficulties that have arisen again when a proposal

being tested on subsidiarity grounds is one published heading into the summer recess period for most parliaments".

On the other hand, 11 participating parliaments reported that they had not had any difficulties in conducting the check during the set timeframe (e.g. the Danish *Folketing*, the Italian *Senato della Repubblica*, the French *Sénat*, the Latvian *Saeima*, or the Swedish *Riksdag*).

Another concern expressed by the Portuguese *Assembleia da República* related to **the object of this subsidiarity check itself**. The Portuguese Parliament drew attention to the fact that "the initial planning of the Commission was to put forward a *Proposal for a Framework Decision on procedural rights in criminal proceedings* and this was the one chosen by national Parliaments in the framework of COSAC. However, the proposal being scrutinized by the current subsidiarity check is a *Proposal for a Framework Decision with a view to assuring the right to interpretation and translation in criminal proceedings*, i.e., referring only to a specific aspect of the broader issue relating to procedural rights in criminal proceedings" Therefore "this subsidiarity check was not exactly about the same proposal national Parliaments chose to scrutinize in the framework of COSAC"⁸.

Finally, in its comments on the current subsidiarity check the Irish *Houses of the Oireachtas* highlighted the need for the national parliaments to develop an agreed definition and interpretation of the principle of subsidiarity and to consider the practicalities of "separating subsidiarity alone for checking by national parliaments in isolation from the inter-related issues of the legal basis and proportionality on any new EU legislation".

2.3.5 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, eight participating parliaments 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.

By 15 September 2009, one day after the deadline, 20 parliaments/chambers had posted information on the IPEX website: 12 indicated that they had started the scrutiny procedure and eight indicated that they had completed it. In addition, five parliaments indicated that they had specific issues concerning the principles of subsidiarity and proportionality, while seven parliaments indicated that they had important information to exchange. Overall, this number of parliaments which made active use of IPEX is a positive tendency.

However, there were six participating parliaments which failed to post any information on IPEX and another seven participating parliaments which did not update the information, effectively depriving the other national parliaments of the information on the final outcome of the subsidiarity check. This situation was partly mitigated by a vivid exchange of information on the subsidiarity check among the national parliaments' representatives in Brussels.

⁸ For more information on this point please see Part 1.2 of this Report.

TABLE: KEY INFORMATION ON THE SUBSIDIARITY CHECK

(This table contains information about the subsidiarity check conducted by the parliaments which completed the check within the 8-week deadline)

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Other observations
Austria: <i>Bundesrat</i>	The check was conducted by the EU Committee. The Ministry of Justice provided an explanatory memorandum and a position paper. Officials of the Ministry of Justice provided statements to the Committee	No	A summary of the proceedings was published on the website of the Parliament. Statements were published on IPEX.	YES	Yes, in a form of a Statement of the EU Committee to the European Commission	No. It is questionable as to whether there is an urgent need for a framework decision	-
Bulgaria: <i>Narodno Sabranie</i>	The final decision on check was taken by the Committee on European Affairs and Oversight of the European Funds, which received an opinion of the Committee on Legal Affairs. The Government provided an explanatory memorandum. Experts of the Ministry of Justice participated in the meetings of the Committees	IPEX was consulted	The report of the Committee on European Affairs and Oversight of the European Funds was published on the website of the <i>Narodno Sabranie</i> and in its news bulletin "Evrovesti"	No	No	No	-
Cyprus: <i>Vouli Ton Antiproson</i>	The check was conducted by the Parliamentary Committee on European Affairs. The Ministry of Justice and Public Order submitted an opinion	IPEX was consulted	A report will be forwarded to the EU Institutions	No	No	No. The Commission's justification with regard to the principle of subsidiarity was deemed to have been unsatisfactory since only a very brief section in the Proposal was dedicated to the justification	Due to the time constraints no specialised committees were involved and no opinion of interested parties was heard
Denmark: <i>Folketing</i>	The check was conducted by the European Affairs Committee and the Legal Affairs Committee. The final decision was taken by the European Affairs Committee. The Government provided a subsidiarity note	No	The findings will be made available to the public on the website of the <i>Folketing</i>	No	Yes	Yes	-

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Other observations
Ireland: <i>Houses of the Oireachtas</i>	The check was conducted by the Joint Committee on European Scrutiny. As this is the committee with the primary responsibility for subsidiarity checks and the scrutiny of EU legislative proposals, no other committees were involved. Information was provided by the Department of Justice	Informal contacts were made through representatives of the National Parliament in Brussels and information on IPEX was assessed	The reasoned opinion was posted on the website of the Joint Committee	YES Some parts of the proposal may not comply fully with the principle of subsidiarity	Yes	No. The Commission's justification is incomplete.	The check was undertaken during the lead-in to parliamentary recess. This is an ongoing concern regarding the publication date of proposals selected for checking
Italy: <i>Senato della Repubblica</i>	The Committee on European Union Policies adopted an opinion.	Through IPEX	The minutes of the Committee Meeting were made available on the website of the <i>Senato</i>	No	Yes	Yes	-
France: <i>Sénat</i>	The check was conducted by the Committee on European Affairs	No	The conclusions were published on the website of the <i>Sénat</i>	No	Yes	Yes	-
Germany: <i>Bundestag</i>	The Committee on Legal Affairs (the lead committee) and the Committee on European Union Affairs submitted an opinion. The final decision was taken by the plenary. The Federal Ministry of Justice and the Federal Ministry of the Interior provided written information/reports.	No.	A short summary of the decision was published on IPEX	No	No	During the parliamentary discussions the Commission's justification was not criticized for not being sufficient	-
Latvia: <i>Saeima</i>	The Committee on European Affairs performed the check. Chairperson and Members of the Committee on Legal Affairs participated in the meeting of the Committee on European Affairs. The Ministry of Justice provided an opinion on the compliance of the Proposal with the principles of subsidiarity and proportionality	Followed the course of the check in other national parliaments through IPEX and through the Permanent Representative of the <i>Saeima</i> to the EU	A press release on the last meeting of the Committee on European Affairs was sent to the Latvian news agencies	No	No	Yes	"The European Commission has chosen an adequate framework for developing legislative act"

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Other observations
Malta: <i>Kamra tad-Deputati</i>	The check was conducted by the Foreign and European Affairs Committee	Checked the position of parliaments on IPEX, where they were available in a familiar language. In other cases, contacted the IPEX correspondents	Not immediately, but will publicise through the press and media	YES, and beyond it. This Proposal represents an instance of over-regulation and duplication. It therefore goes beyond the issue of subsidiarity and constitutes an unwarranted measure at the level of the EU	Yes. In a form of a Statement of the Foreign and European Affairs Committee	The Proposal represents an instance of overregulation and duplication. It constitutes an unwarranted measure at the EU level	Adoption of the Proposal and the launch of the COSAC subsidiarity check coincided with a period in which the Parliament is in recess. The 8-week period in the Lisbon Treaty is not sufficient to cover periods when parliaments are in recess
The Netherlands <i>Tweede Kamer</i>	The subsidiarity check was launched by the Temporary Committee on Subsidiarity of both Chambers of the <i>States-General</i> . The check was conducted by the Standing Committee of Justice. The final decision was taken in the Plenary of the <i>Tweede Kamer</i>	No	The findings were published in the official Parliamentary records	No	A brief letter to the European Commission, cc. to the European Parliament, the Council, COSAC and the NL Government	Yes, although the justification could have been more balanced by adding a consideration to the relation of the Proposal to the European Convention on Human Rights	Time constraints due to the recess period made it impossible to mediate between both Chambers of the Parliament
The Netherlands <i>Eerste Kamer</i>	The subsidiarity check was launched by the Temporary Committee on Subsidiarity of both Chambers of the <i>States-General</i> . The Proposal was scrutinised by the Committee for the JHA Council of the <i>Eerste Kamer</i> . The final decision was taken by the plenary of the <i>Eerste Kamer</i>	No	The findings were published on the website of the <i>Eerste Kamer</i> and on IPEX	No, but additional information has been requested from the European Commission	Yes	No. The <i>Eerste Kamer</i> requested additional information on the legal basis of the Proposal and on its added value in relation to the provisions of the European Convention on Human Rights and the case law based on it	Due to the start of the Committee and Plenary meetings there was little time for carrying out the subsidiarity check
Poland: <i>Sejm</i>	The check was conducted by the Committee on European Union Affairs, which is a specialised body giving opinions on EU matters on behalf of the <i>Sejm</i>	No	Opinion was published on its website. Transcript of the meeting - on the website of the <i>Sejm</i> .	No	Yes, in a form of the Committee opinion acknowledging that there is no breach.	Yes	-

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Other observations
Poland: <i>Senat</i>	The final decision was taken by the Committee on European Union Affairs in cooperation with the Committee on Human Rights, the Rule of Law and Petitions. The Government submitted its written position and gave evidence at the Committee meeting.	No	A report on the subsidiarity check was published on the website of the Committee on European Union Affairs and on IPEX	No	No	No. "The Commission has not identified all necessary arguments and those put forward in the justification are not sufficiently well formulated"	The Polish Parliament is currently considering amendments to the Rules of Procedure of both Chambers in view of the possible entry into force of the Treaty of Lisbon.
Portugal: <i>Assembleia da República</i>	The check was conducted by the Committee on European Affairs. The Committee on Constitutional Affairs, Freedoms, Rights and Guarantees issued an opinion to the Committee on European Affairs	IPEX was consulted	The findings were uploaded on IPEX	No	Yes	Yes	The 8- week period was outside the parliamentary term, limiting the capacity for a more in-depth debate. This subsidiarity check is not exactly about the same proposal national Parliaments chose to scrutinize in the framework of COSAC
Slovakia: <i>Národná Rada</i>	The Committee on European Affairs conducted the check. The Ministry of Justice provided a preliminary opinion on the Proposal.	No	A press conference was held after the committee meeting and a resolution was published on the Parliament's website	No	No	Yes	Encountered difficulties due to parliamentary recess
Slovenia: <i>Državni zbor</i>	The Committee on Domestic Policy, Public Administration and Justice conducted the check and adopted an opinion. The final decision was taken by the Committee on EU Affairs. The Government provided an explanatory memorandum. State Secretary of the Ministry of Justice presented verbal communication at the meeting of the Committee on DPPAJ	No	The report was published on IPEX	No	No	No	-

Country, Chamber	Procedure used to conduct the check	Cooperation with other national parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Other observations
Slovenia: <i>Državni svet</i>	The check was conducted by the Commission for International Relations and European Affairs. The Ministry of Justice presented oral evidence at the meeting of the Commission.	No	No	No	No	Yes	Eight-week period coincided with summer parliamentary recess
Sweden: <i>Riksdag</i>	The Committee on Justice examined the Proposal. The Government did not provide information this time, but previously, <i>i.e.</i> on 8 May and 4 December 2008 the Ministry of Justice informed some members of the Committee on the future Proposal.	IPEX was consulted	The findings were noted in the record of the Committee meeting and published on IPEX	No	No	Yes	-
United Kingdom: <i>House of Commons</i>	The check was conducted by the European Scrutiny Committee. The Ministry of Justice provided an Explanatory Memorandum, but the Committee has asked for further information on the question	At official level the Committee was consulted by Ireland's Houses of the Oireachtas Joint Committee on European Scrutiny	The findings were published in the Report to the House of Commons. The Report will also be uploaded on IPEX	No	No	No. The justification was not satisfactory in the Commission's explanatory memorandum. The analysis in the Commission's Impact Assessment was more helpful	Parliamentary summer recess ends on 9 October. But for the fact that the Committee has decided to meet in September, it would not have been able to respect the eight-week deadline for submission of a reasoned opinion.
United Kingdom: <i>House of Lords</i>	The check was conducted by the Sub-Committee on Law and Institutions (Sub-Committee E) of the European Union Committee. The European and External Affairs Committee of the National Assembly for Wales provided a response. The Government provided an Explanatory Memorandum	No	Updates on progress will be available on the website of the Committee and via IPEX	No	No	No. The justification given under the heading "Subsidiarity" in the Commission's explanatory memorandum is inadequate	Due to the summer recess, special arrangements had to be made to enable the Committee to consider the issue of subsidiarity. The recess also made coordination with the House of Commons and the three regional legislatures difficult.