

November 2008

**Annex No. 2 to the  
Chapter No. 2 of the  
Tenth Bi-annual Report  
by COSAC:  
Replies by National Parliaments to the  
Questions of the French Presidency,  
other Working Group Documents**



Prepared by the COSAC Secretariat and presented to:

**XL Conference of Community and European Affairs  
Committees of Parliaments of the European Union**

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Paris

**Groupe de travail des représentants permanents des parlements nationaux à  
Bruxelles sur la coopération pour mettre en oeuvre le Protocole 2 du traité de  
Lisbonne sur les principes de subsidiarité de proportionnalité**

**XXX**

**Working group of national parliament's permanent representatives in  
Brussels on cooperation regarding application of Protocol 2 of the Lisbon  
Treaty on subsidiarity and proportionality**

<p><b>Liste des contributions des parlements nationaux List of national parliaments contributions</b></p>
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**LISTE DES PARTICIPANTS AU GROUPE DE TRAVAIL/  
LIST OF PARTICIPANTS TO THE WORKING GROUP**

Pays	Chambre	Représentant groupe de travail
<a href="#">Allemagne</a>	Bundestag	Vesna Popovic
	Bundesrat	Andreas Veit
<a href="#">Autriche</a>	Nationalrat et Bundesrat	Heike Malicek
		Gerhard Koller
<a href="#">Belgique</a>	Chambre des représentants	Hugo d'Hollander
	Sénat	Marie-Aline Stacanov/Tim de Bondt
<a href="#">Bulgarie</a>	Assemblée nationale	Dencho Georgiev
<a href="#">Chypre</a>	Chambre des représentants	Christiana Fryda/Natia Karayianni
<a href="#">Danemark</a>	Folketinget	Peter Juul Larsen
<a href="#">Espagne</a>	Congrès	-
	Sénat	-
<a href="#">Estonie</a>	Riigikogu	Arvi Karotam/Malle Kuuler
<a href="#">Finlande</a>	Eduskunta	Mika Boedeker
<a href="#">France</a>	Assemblée nationale	Frank Baron
	Sénat	Anne Marquant
<a href="#">Grèce</a>	Vouli ton Ellinon	Georges Papacostas
<a href="#">Hongrie</a>	Assemblée nationale	Laszlo Sinka
<a href="#">Irlande</a>	Oireachtas	John Hamilton
<a href="#">Italie</a>	Camera dei Deputati	Gianfranco Neri/Antonio Esposito
	Senato della Repubblica	Beatrice Gianani
<a href="#">Lettonie</a>	Saeima	Simona Megne
<a href="#">Lituanie</a>	Seimas	Zivile Pavilyonyte
<a href="#">Luxembourg</a>	Chambre des députés	Yves Carl
<a href="#">Malte</a>	Chamber of deputies	Eleanor Scerri
<a href="#">Pays-Bas</a>	Tweede Kamer	Jan Nico van Overbeeke
	Eerste Kamer Staten Generaal	Jan Nico van Overbeeke
<a href="#">Pologne</a>	Sejm	Magdalena Skrzynska
	Sénat	Magdalena Skulimowska
<a href="#">Portugal</a>	Assembleia da Republica	Maria Teresa Paulo
<a href="#">République Tchèque</a>	Chambre des députés	Frantisek Carkt
	Sénat	Hana Sedlackova
<a href="#">Roumanie</a>	Chambre des députés	Daniela Filipescu
	Sénat	Daniela Filipescu
<a href="#">Royaume-Uni</a>	House of commons	Libby Davidson
	House of Lords	Ed Lock
<a href="#">Slovaquie</a>	Conseil national	Miriam Lexmann
<a href="#">Slovénie</a>	Assemblée nationale	Jerica Zupan Van Eijk
	Conseil national	Ana Ivas
<a href="#">Suède</a>	Riksdagen	Bengt Ohlsson

## QUESTIONNAIRE:

1) **Quelles informations vous semble-t-il nécessaire d'échanger** entre parlements nationaux pour mettre en œuvre le protocole 2 sur les principes de subsidiarité et de proportionnalité : des informations « informelles » sur les textes dont l'examen est envisagé ou en cours, des informations « formelles » sur les avis motivés définitivement adoptés ? Une simple notification de l'existence des avis motivés ou une transmission du texte complet (avec ou sans traduction ?)

2) **Par quels moyens ces informations doivent-elles être échangées** : par des moyens informatiques (outre le site internet d'IPEX, site de la COSAC etc), par des réunions administratives ou échanges de mails entre représentants permanents à Bruxelles ou fonctionnaires de liaison des parlements nationaux, par les réunions habituelles de la COSAC ou par des réunions « ad hoc » de parlementaires nationaux ?

3) Comment envisagez-vous **le rôle de la Commission européenne** dans l'information des parlements nationaux sur les modalités de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?

4) Quelles sont vos **suggestions pour améliorer les exercices pilotes dans le cadre de la COSAC** dans la perspective de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?

5) Toute autre contribution serait bienvenue.

XX

1) **Which informations would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

2) **By which means these informations should be exchanged** : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?

3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

5) Any other contribution would be welcomed.

# **ALLEMAGNE**

## ***Bundesrat***

### **On question 1**

The full text of the formal information (e.g. committee documents and parliamentary decisions) should be made available. We would like to see translated version of the texts but in practice this is unlikely to be possible. Brief summaries in English and French, as requested for the IPEX system, would be helpful.

Parallel to this, information should also be exchanged on an informal basis in the run-up to the subsidiarity checks and in the course of the checks.

### **On question 2**

IPEX should be the only channel used for exchange of documents (formal information).

The network of national parliaments' representatives to the EU could be used for informal exchanges of information.

### **On question 3**

The Commission should inform national parliaments as soon as possible about the concrete plans for implementation of the so-called early warning system. In respect of the information needed, attention is drawn in particular to the contribution from the XXXIXth COSAC (points 2.3 and 2.4).

### **On question 4**

No proposals.

### **On question 5**

We should avoid setting up new formal structures to coordinate the attitude of national parliaments to proposals transmitted by the Commission under the aegis of the early warning system.



## ***Bundestag***

1) Which information would be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: «informal» information on texts which could be under scrutiny or are under scrutiny, «formal» information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation)?

The exchange between national parliaments should cover the widest possible range of information regarding the application of Protocol 2, and should begin at the earliest stage possible. There should be an exchange of “informal” information, preferably orally, on the possible doubts of any national parliament with regard to a specific legislative proposal as well as an exchange of “formal” information about the results of parliamentary scrutiny in a national parliament. The form of information about results (simple notification or full text) should depend on the resources available in national parliaments. It should be in the interest of each national parliament to provide information about their proceedings in order to find “allies” in other parliaments.

2) By which means these information should be exchanged: by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by «ad hoc» meetings of national parliamentarians?

The most practical tool for the exchange of information depends on the nature of the information and the stage of the decision making process in the national parliaments involved.

The “political families” in the European Union could use their existing contacts to inform each other about initial doubts regarding a specific legislative proposal at a very early stage. Their efforts should be supported where possible, for instance by facilitating the use of IT-based networks, such as the planned Parliamentary Information Network “MyParl”. In addition, the regular meetings of national parliament representatives in Brussels could function as a forum to orally exchange informal information about scrutiny procedures in a national parliament with regard to subsidiarity. National parliaments which do not have a permanent representative in Brussels could be informed via their liaison officers. The European Parliament (EP) should be fully informed of such an announcement. At this stage, any exchange of information would not formally engage the national parliaments involved. The aim is to draw the attention of other parliaments to a specific proposal which could be in breach of the subsidiarity principle well before the elapse of the eight weeks period in order to raise awareness and facilitate cooperation.

Information about the results of parliamentary scrutiny could be communicated through the existing IPEX website. There is no need to duplicate IPEX by using the COSAC website.

The ordinary meetings of COSAC do not take place frequently enough to provide an appropriate forum for the exchange of information on specific legislative proposals.

They should however continue to serve for general discussions on the cooperation and exchange of information between national parliaments and the EP.

There is no need to agree on “ad hoc” meetings generally and in advance; they may be scheduled in cases of urgency.

3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

The role of the Commission should be pro-active: It should provide national parliaments and the EP with comprehensive information about envisaged legislative proposals as soon as possible. As soon as a proposal has been adopted by the Commission, it should inform all national parliaments about the schedule for the translation in all official languages. Once the translation is complete, the Commission should inform all parliaments about the exact date of the beginning and the end of the eight-week-period. In addition, the Commission should explain to national parliaments in which way it plans to implement Protocol 2 of the Lisbon Treaty.

4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

It is to be hoped that pilot exercises will be replaced by “real” scrutiny under Protocol 2 with the entry into force of the Lisbon Treaty in the beginning of 2009. Should further pilot exercises be deemed necessary, they could be used to specifically test the enhanced mechanisms for the exchange of information that should be the outcome of the COSAC working group. In order to achieve a smooth transition to the scrutiny under “real” conditions, the frequency of pilot exercises could be increased.

5) Any other contribution would be welcomed.

It should be noted that the internal decision making process of the German Bundestag regarding the procedures and responsibilities for subsidiarity checks after the entry into force of the Lisbon Treaty has not yet been concluded. Any arrangements between national parliament for the improvement of interparliamentary cooperation and exchange of information are put under the reserve of this decision.

## **AUTRICHE**

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

**1) Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information on texts which could be under scrutiny or are under scrutiny, « formal » information on reasoned opinions already adopted ? A simple notification of reasoned opinions or the transmission of the all text (with or without translation ?)**

The basis of the exchange of information should be the IPEX website that was created for this purpose. The process of scrutiny in national parliaments is displayed with symbols indicating a certain stage. In addition documents can be uploaded by the single parliaments. Nevertheless, the 8-weeks-period as envisaged by the Lisbon Treaty may still be short. In addition, it might be useful not only to publish an opinion after adoption but also to upload preparatory documents or comments beforehand.

When it comes to informal information it might be considered to choose other channels of information. Several ways are possible: the “Monday morning meeting” of permanent representatives of national parliaments could contain the permanent agenda item “early warning” where news on activities in the field of subsidiarity and proportionality are exchanged. Another means could be an exchange of information by e-mail but there should exist criteria in order to avoid an overflow of information.

As regards the language regime a summary of any text transmitted should be provided in English or French.

**2) By which means this information should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?**

see above

In order to make full use of IPEX each parliament shall appoint specialised staff in charge of screening IPEX every day in order to learn about newly released opinions. It may also be considered to create an automatic system of “alert” of national parliaments which get a message as soon as one parliament has uploaded a new document.

It still will need further discussion if/how to involve COSAC in the future operational work on subsidiarity and proportionality. For the time being it seems that COSAC is the place to exchange models of best practise and organize subsidiarity tests rather than serve as a political forum to coordinate national positions. If the latter were the case COSAC would have to be changed fundamentally, in particular the frequency of meetings.

**3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality ?**

The European Commission will have a major role to play in this context as almost all legislative proposals come from the Commission and only a small part emanates from member states, the European Parliament, the ECB or the EIB. In this context the Commission should be requested to provide all national parliaments with its answers to opinions forwarded, preferably by displaying it on IPEX. It will also be of joint interest if the Commission informs national parliaments when a proposal has been published in all EU languages (which defines the start of the 8-weeks-period).

**4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

As soon as the Lisbon Treaty will have entered into force COSAC may organize a few more “pilot exercises” concerning the implementation of the protocol by national parliaments. However, subsidiarity checks should more and more be considered “normal daily work” of parliaments. COSAC should remain the place where questions of principle and experiences of procedures applied in national parliaments are discussed. Thereby a common understanding of the principles of subsidiarity and proportionality shall be developed.

## BELGIQUE

### *Chambre des Représentants*

**1) Which informations would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality : « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted ? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

*It would be interesting to have acces to the information of the other parliaments from the beginning of the scrutiny process, in order to inspire (or to draw the attention to certain aspects in legislative proposals) the own opinionformation. The formal adopted opinions are of course also useful. It is realistic to have only the reasoned opinion at our disposal in French or English (not the whole report).*

**2) By which means these informations should be exchanged** : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?

*The informal (or the "process information") as well as the formal information (the final opinion) should be put on IPEX. This would make IPEX still more interactive. This can be complemented by exchange of mails between permanent representatives, exchange of information via the COSAC site, etc.*

**3) How do you consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

*The comments by the European Commission on the reasoned opinions should be put on IPEX by the respective parliaments.*

*A page of a parliament (assembly), should thus comprise three subcategories:*

*-process-information (elements of discussion: reactions of the government or other expertisegroups)(inspiration and alert-function for other parliaments*

*-the formal subsidiarity opinion (in F or E);*

*- the reply of the European Commission on this opinion ( in F or E)*

**4) What are your suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

*These exercices are OK.*

**5) Any other contribution would be welcomed.**

*The experiments in the Cosac show that the subsidiarity -opinions have a rather qualitative character. The ideas of coalition formation, in order to reach the treshold (of the yellow or orange card) are thus not relevant. There should thus be in a final stage a synthesis moment of these qualitaitive opinions (which cannot be quantified). This cannot be done by the European Commission. The parliaments need to organize in one or another way a collective synthesis moment. That is exactly the challenge of the working group.*

## **BULGARIE**

### ***Narodno Sabranie***

**1) Which informations would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)**

Exchange both kinds of information; post it on the IPEX website.

The informal (preliminary) information and the formal information (adopted opinions) can be posted under separate, clearly distinguishable headings on the website.

It is also important to ensure the timely posting of information about the beginning of the subsidiarity check of a legislative proposal by a parliament.

Additional unofficial information could be posted, if a parliament wishes to do so, in the language it considers appropriate.

Official information (adopted opinions) is to be posted also in English or French.

**2) By which means these informations should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?**

Information should be exchanged electronically on the IPEX website, so as to make it accessible to all parliaments.

This does not rule out bilateral unofficial contacts and exchange of views by experts through all possible channels, outside the procedures envisaged under 1).

**3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?**

It could provide financial assistance for capacity building on subsidiarity to the parliaments of the new Member States through training and seminars.

It would be desirable to have the replies of the Commission to reasoned opinions by national parliaments posted on the IPEX website, including when they fall beyond the scope of the protocol on subsidiarity.

**4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

It is not necessary to increase the dimension of the pilot exercises; emphasis should rather be placed on developing procedures and expertise within the national parliaments.

In this respect it would be appropriate to consider the possibility of elaborating criteria and providing examples of implementation of the protocol.

**5) Any other contribution would be welcomed.**

IPEX should be financed and managed as a joint project of parliaments.

National parliaments, assisted by the European Commission, should develop a cooperation with respect to the preliminary analysis of subsidiarity aspects in important white papers.



## CHYPRE

### ***Vouli Ton Antiprosopon***

#### **1. Which information would it be necessary to exchange between national parliaments?**

Both formal and informal information regarding to the application of the principles of subsidiarity and proportionality, is deemed useful. However, in order to maximize the usefulness of the above exchange of information, it would be helpful if a translation of the text in English or a brief summary of the text in English is provided.

#### **2. By which means this information should be exchanged?**

Any information that becomes available could be directly communicated to electronic addresses specified by each national parliament in addition to it being communicated to the Permanent Representatives or the liaisons of national parliaments. In this way, information becomes readily available to a multitude of recipients thereby enhancing the national parliament's ability to react within the framework specified by Protocol 2.

#### **3. How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?**

The role of the European Commission is instrumental to the application of Protocol 2. With the direct communication of Commission proposals and other documents to the national parliaments it facilitates the examination of all such proposals within the 8 week time period provided for under the Protocol.

However, the European Commission can further aid national parliaments by ensuring that:

- It provides national parliaments directly with information on the content and the date of publication of new proposals and other consultation papers it will publish, along with a weekly list of new documents to be published.
- It forwards the reactions submitted by national parliaments as well as its responses to these to all national parliaments in English, as provided for in paragraph 2.3 of the Conclusions adopted by the XXXIX COSAC on the 8<sup>th</sup> May 2008. This could be accompanied with a short summary in English.
- The 8 week period starts when the said documents are transmitted in the official language of national parliaments, and the transmission of proposals to which the early warning mechanism is applicable, is made through a separate channel, as provided for in paragraph 2.4 of the Conclusions adopted by the XXXIX COSAC on the 8<sup>th</sup> May 2008.

**4. What are your suggestions to improve the “pilot exercises” of COSAC in view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

Better communication (i.e exchange of views, better practices and information) between national parliaments either directly or through IPEX, especially during the 8 week period, and preferably in English, in order to allow the more effective participation of national parliaments in the scrutiny of EU matters.

# DANEMARK

## *Folketinget*

### **1. The work of the Working Group**

The Folketing welcomes the establishment of the Working Group by COSAC.

We find it useful that the national parliaments' representatives are used for this purpose as they may have an active role in the information exchange between national parliaments on the application of the principle of subsidiarity.

However, the subsidiarity check is only one part of the new competences and procedures in the Lisbon Treaty in relation to national parliaments. Other important items such as

- taking part, within the framework of an area of freedom, security and justice, in the evaluation mechanisms in the political monitoring of Europol and the evaluation of Eurojust's activities,-
- taking part in the revision procedures of the Treaties,
- being notified of applications for accession to the union,
- monitoring the EU proposals concerning Family Law with the power for any Parliament to veto them
- taking part in the inter-parliamentary cooperation between national parliaments and with the European Parliament

must be dealt with by national parliaments (and the European Parliament) in another context.

The Folketing advocates that the Working Group chooses an open method of working, inviting the European Parliament, the European Commission, IPEX (Central Support) etc... to its meetings when useful.

As the COSAC secretariat is going to write the report it could be useful if the secretariat can participate with more than one person.

### **2. The Legislative proposals - What are we dealing with?**

The Danish Parliament finds it of importance to distinguish between the different kinds of proposals and to have a system which makes it clear for national parliaments which procedure is used:

#### **a. Proposals with subsidiarity check**

The proposals which according to the Treaty fall within the competence of national parliaments **to** ensure the principle of subsidiarity and the possibility of sending a reasoned opinion to the European Commission according to the provisions of the Treaty.

The reasoned opinions must be dealing with the proposal's compliance with the principle of subsidiarity which means that the proposed action cannot be sufficiently achieved by the Member States but can be better achieved at Union level.

The argumentation from a national parliament supporting the reasoned opinions against a proposal can be of a legal nature but supposedly also of political nature as far as the principle of subsidiarity is concerned.

**It could be considered by the Working Group if it could be useful to have a collective reflection between national parliaments and establish whether it could be useful to arrive at guidelines for common criteria, reference points that enable assemblies' point of view to be dealt with according to procedures to be established.**

#### **b. Documents where there is no subsidiarity check**

National parliaments can send comments and opinions to the European Commission on proposals which are not considered in relation to the subsidiarity check, i.e.:

- Opinions from national parliaments on green- and white papers and other consultation documents. In accordance with Protocol 2, article 2 the Commission shall consult widely before proposing a legislative act. This consultation must include National Parliaments. As it is to-day it is not always easy to follow the publication of consultation documents, including green and white papers, from the Commission as there is no structured procedure in doing so (different forms, different names etc).
- Opinions from national parliaments, within the 8 weeks or after, about the content of proposals, according to the political dialogue between the European Commission and national parliaments, which is supposed to continue also after the entry into force of the Lisbon Treaty.

**It could be considered by the Working Group to reach an understanding between national parliaments and the European Commission about a more structured procedure dealing with consultation documents from the Commission including the use of IPEX.**

### **3. THE ACTORS – How to do it?**

The national parliaments must seek an agreement with the European Commission on how the subsidiarity check is going to be carried out in practical terms.

#### **a. The European Commission:**

The European Commission transmits all new proposals and consultation papers directly to national parliaments and to IPEX.

In order to facilitate the work of national parliaments the European Commission can

- send a rolling calendar to IPEX containing information about the planned date of publication of new proposals.
- inform the national parliaments and IPEX when the final translation of a legislative proposal is transmitted to the relevant national parliament and indicate the date when the eight week period expires.

- send its responses to the reactions from national parliaments to IPEX. If the answer from the European Commission is not in English or French the Commission will add a copy in one of these languages.

- inform the National Parliaments and IPEX - just after the eight week period has elapsed - about the number of National Parliaments having sent reasoned opinions about a proposal not complying with the principle of subsidiarity.

An understanding should be reached with the European Commission that the counting of reasoned opinions is cumulative and that all reasoned opinions on a proposal's non-compliance with the principle of subsidiarity must be taken into account in relation to reaching the threshold mentioned in article 7 (yellow and orange cards).

How the European Commission is going to respond to a yellow or orange card is, as stated in the Treaty, a matter for the Commission to decide on a case by case basis.

**We propose that the mentioned initiatives are discussed with the European Commission**

#### **b. National parliaments**

Each national parliament/chamber has its own system of European Scrutiny which must be respected. However the objective is the same: either to examine legislative proposals and other documents emanating from EU institutions and/or to scrutinize the work of national governments in the Council.

In order to fulfil the obligations of the Treaty in relation to the subsidiarity check an informal rapid information exchange mechanism is needed:

This information exchange will work

- through IPEX and the use of symbols. A new symbol will be introduced about possible problems in a parliament at an early stage in the process

- through national parliaments' representatives in Brussels who can inform each other about developments in national parliaments. The COSAC secretariat or the IPEX webmaster could help the national representatives in this work.

- by establishing a priority list of proposals from the Commissions Legislative and Work Programme based on input from parliaments about proposals which might be interesting in the context of subsidiarity,

- by national parliaments translating draft opinions and other relevant text (or summaries of these)

**As a common understanding about the meaning and use of the IPEX symbols is crucial for the functioning of IPEX it is proposed that the Working Group and the IPEX Central Support discuss the possibility of proposing guidelines for this.**

**Also it is proposed that the Working Group agrees on proposals for guidelines for the practical information exchange between national parliaments' representatives in Brussels.**

#### **c. COSAC**

With two (or four) meeting pr. year of COSAC the Danish Parliament finds it difficult to use COSAC in the day to day examination of the proposals.

It could, however, be useful for the process if CODAC could debate the European Commission's work programmes and give an indication on which proposals parliaments find important in this respect. COSAC might also, as before, debate more important proposals.

As mentioned in Article 10 in Protocol 1 on the Role of National Parliaments in the EU, the Conference of Parliamentary Committees for Union Affairs shall promote the exchange of information and best practice between national parliaments and the European Parliament, including their special committees. As involvement of the special committees in EU questions is of high importance it may be considered to let other committees take part in the COSAC meetings.

COSAC can also debate proposals where there is sufficient number of parliaments to use the yellow or orange card. See under 4b.

<b>The role of COSAC in the subsidiarity test must be made clear</b>
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#### **4a. Coordination of national parliaments' reasoned opinions?**

It has been discussed whether there is a need of coordination of reasoned opinions from national parliaments within the eight weeks period. And whether it is possible?

Monitoring of subsidiarity can be nothing other than voluntary for national parliaments. However, even if there are different opinions about the importance of the subsidiarity test, there has not yet been any indication that any national parliament will not take part in the process.

The mechanism can be operated with each parliament acting entirely independently and each parliament/chamber will decide for itself, in the light of its own constitutional and political context, whether and how it wishes to co-operate with others on subsidiarity.

The requirement to submit a certain number of reasoned opinions to trigger off one of the cards may produce unexpected results. If national parliaments submit different opinions on the same proposal, this might strengthen the hand of the Commission if it is minded to maintain its proposal unamended. It is also possible that national parliaments might submit contradictory opinions on a proposal. For some, this factor could increase the importance of national parliaments making attempts to establish a degree of coherence between their positions. This is especially the case if the Commission will not formally agree that it will use the cumulative mechanism in counting the opinions in relation to the cards.

The Danish Parliament finds it too early at this point to conclude anything about whether it can be useful for national parliaments to try to coordinate their reasoned opinions. Much depends on the Commission. In the end it is up to each parliament.

#### **4b. How do we deal with a yellow or orange card?**

There has been much talk about the working of the subsidiarity test but not so much about what national parliaments will do if there is a sufficient number of parliaments to open the yellow/orange card procedures.

It is a question whether there is a requirement in the Treaty of Lisbon (Article 7 (3) in Protocol 2) that the reasons expressed by the majority of national parliaments against a proposal shall be

“shared” in order to give the legislator (Council or European Parliament) the possibility of agreeing with the national parliaments and thereby stop the legislative proposal.

If that is so, it raises the question whether the “shared reasons” shall be established in the reasoned opinions sent from parliaments within the eight weeks period, or can be established after it has been seen that there is a majority of national parliaments against a legislative proposal.

The Danish Parliament is of the opinion that there is a need to increase the coordination between national parliaments if it comes to a yellow/orange card situation. That can be in form of a meeting, in COSAC, a JPM or other fora, where there is the possibility of direct exchange of informations, maybe also with the Commission and the European Parliament if seen of value. Both institutions have a direct influence on the further procedure, especially in the orange card situation.

## **5. Answers to questions**

### **1. Which informations would it be necessary to exchange between national parliaments?**

Mentioned under 3b

### **2. By which means should these information be exchanged?**

Mentioned under 3b.

### **3. How do you consider the role of the European Commission?**

Mentioned under 3a.

### **4. What are your suggestions to improve the “pilot exercises” of COSAC?**

Mentioned under 3c.

### **5. Any other contribution?**

See the rest of the note.

## **ESTONIE**

### ***The Riigikogu***

**1) Which informations would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)**

*« informal » informations on texts which could be under scrutiny or are under scrutiny, simple notification of reasoned opinions without translation*

**2) By which means these informations should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?**

*IPEX and exchanges of mails between permanent representatives in Brussels*

**3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality? Considering our practice with receiving documents (we have direct access to Government EU database)**

*it would be added value if the Commission would indicate/send the documents which are subject to subsidiarity/proportionality check*

**4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

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**5) Any other contribution would be welcomed.**



## **FINLANDE**

### ***Eduskunta***

#### **The Grand Committee**

**1) Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information on texts which could be under scrutiny or are under scrutiny, « formal » information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)**

The exchange on information between the national parliaments in case of subsidiarity and proportionality checks is needed mainly to conclude whether the threshold for national parliaments to conduct a scrutiny process according the Protocol is met. The exchange of information of that nature can easily be communicated via existing electronic means.

At the point where there is already a national decision to conduct a scrutiny check it would be helpful to have an exchange of views with the representatives of like-minded parliaments to coordinate the necessary concrete measures to implement the scrutiny process. For that kind of coordination the structure of the permanent representatives of the national parliaments in Brussels can be utilised, in addition to direct communication by e-mail.

However, it should be stressed that the decision to raise a scrutiny check is always to be taken by the national parliaments according their internal procedures; it is not an issue that can be decided nor negotiated between the civil servants in capitals or Brussels.

For an exchange of information at an earlier stage of the scrutiny procedure any parliament that wishes to invoke the Protocol can easily correspond with other parliaments by the existing electronic means.

**2) By which means these information should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?**

The Eduskunta is strongly of the opinion that there is no need for new structures or working groups to be established for the exchange of information between the national parliaments. See the answer above.

As we are talking about several hundred proposals every year, exchanging information via physical meetings would entail an unbearable burden.

**3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?**

There should be an automatic procedure to be used to communicate to the national parliament when the time frame of eight weeks has started. Same applies also to the outcome of the eight weeks scrutiny. Obviously, the Commission should make public without delay any communications received from national parliaments and the Commission's response.

**4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

It would be useful to start to interpret the Protocol on the COSAC exercises in a way as the Protocol was meant to be implemented. That is to change the current praxis whereby the files to be scrutinised are decided only on the basis of their title before the substance of an initiative is even known.

The decision to conduct a subsidiarity check should be motivated by the outcome of a substantial study of the individual file which of course can be done only after the respective file has been published.

We are strongly of the opinion that the "pilot exercises" no longer serve any useful purpose. Whatever happens to the Lisbon treaty, national parliaments have already been able for some time to communicate to the Commission their concerns. The focus should be on developing information exchanges on this scrutiny and, of course, on the Lisbon treaty –based procedures.

## FRANCE

### Assemblée nationale

#### REPONSES AU QUESTIONNAIRE DU GROUPE DE TRAVAIL SUR LA MISE EN ŒUVRE DU PROTOCOLE N° 2 SUR LA SUBSIDIARITE ACCOMPAGNANT LE TRAITE DE LISBONNE

☞ Quelles informations vous semble-t-il nécessaire d'échanger entre parlements nationaux pour mettre en œuvre le protocole 2 sur les principes de subsidiarité et de proportionnalité : des informations « informelles » sur les textes dont l'examen est envisagé ou en cours, des informations « formelles » sur les avis motivés définitivement adoptés ? Une simple notification de l'existence des avis motivés ou une transmission du texte complet (avec ou sans traduction) ?

☞ Par quels moyens ces informations doivent-elles être échangées : par des moyens informatiques (autre que le site internet d'IPEX, site de la COSAC etc.), par des réunions administratives ou échanges de mails entre représentants permanents à Bruxelles ou fonctionnaires de liaison des parlements nationaux, par les réunions habituelles de la COSAC ou par des réunions « ad hoc » de parlementaires nationaux ?

✓ L'existence des seuils élevés auxquels sont associées les conséquences juridiques des avis parlementaires sur la subsidiarité impose de renforcer la qualité de la coopération interparlementaire. Cependant, afin de garantir l'autonomie de chaque parlement dans l'usage de cette nouvelle prérogative et ne pas restreindre le champ d'une procédure déjà soumise à d'importantes contraintes, l'essentiel est de mettre en œuvre un système d'échange d'informations réactif et efficace.

▪ Il est indispensable que les avis motivés adoptés par chaque assemblée des parlements nationaux soient **immédiatement mis en ligne sur le site d'IPEX**, accompagnés dans les plus brefs délais d'une **traduction dans au moins l'une des langues de travail de l'Union**. IPEX pourrait parallèlement, dès réception, signaler les avis par exemple par un message électronique à l'attention de tous les représentants permanents des parlements nationaux à Bruxelles, à charge pour eux de les répercuter auprès des organes intéressés de leur parlement.

▪ Compte tenu de l'étroitesse des délais d'examen, il pourrait être utile que **chaque parlement qui décide d'instruire un texte particulier pour contrôler sa conformité au principe de subsidiarité en informe immédiatement son représentant permanent à Bruxelles et le secrétariat de la COSAC**. Une mention spéciale pourrait à cette fin être insérée sur le site IPEX.

▪ Sur cette dernière base, le secrétariat de la COSAC pourrait informer en temps réel chaque parlement national lorsque les *examens* de subsidiarité portant sur un même texte **franchissent certains seuils prédéfinis** (par exemple 5%, 10%, puis 20% des parlements nationaux).

☞ Comment envisagez-vous le rôle de la Commission européenne dans l'information des parlements nationaux sur les modalités de la mise en œuvre du protocole n° 2 sur les principes de subsidiarité et de proportionnalité ?

✓ La Commission joue un rôle au tout début et en toute fin du processus. Il lui appartient de **signaler, à chaque parlement national, le point de départ du délai des huit semaines** lorsqu'elle transmet sa proposition législative au dernier parlement national. Les **réponses** qu'elle adresse aux avis des parlements nationaux **doivent être transmises et publiées sur le site IPEX**. Et elle doit évidemment informer les assemblées lorsque les seuils du quart, du tiers et de la moitié des avis motivés sont atteints et leur transmettre en temps réel les suites juridiques qu'elle donne aux cartons jaunes et oranges.

☞ Quelles sont vos suggestions pour améliorer les exercices pilotes dans le cadre de la COSAC dans la perspective de la mise en œuvre du protocole n° 2 sur les principes de subsidiarité et de proportionnalité ?

✓ Les tests de subsidiarité menés par la COSAC, pour constituer un très puissant encouragement à l'appropriation par les parlements nationaux de leurs nouvelles prérogatives, pourraient être utilement améliorés pour, principalement, garantir une **plus grande réactivité des avis parlementaires**. L'imprévisibilité de l'agenda communautaire se prête en effet mal à la focalisation exclusive, une fois par semestre, sur quelques textes déterminés. La COSAC pourrait se contenter **d'adopter une liste plus vaste de grands textes à l'ordre du jour** susceptibles de justifier un test concerté de subsidiarité en continuant à désigner deux ou trois projets sur lesquels les parlements doivent particulièrement se pencher, et **lancer la procédure de test concerté sur tout texte de la première liste qui recueille un seuil déterminé d'examens parlementaires** (voir ci-dessus pour la distinction entre l'examen de subsidiarité et l'adoption de l'avis formel), par exemple fixé à trois assemblées appartenant à au moins trois États membres.

# FRANCE

## Sénat

**1) Quelles informations vous semble-t-il nécessaire d'échanger entre parlements nationaux pour mettre en œuvre le protocole 2 sur les principes de subsidiarité et de proportionnalité : des informations « informelles » sur les textes dont l'examen est envisagé ou en cours, des informations « formelles » sur les avis motivés définitivement adoptés ? Une simple notification de l'existence des avis motivés ou une transmission du texte complet (avec ou sans traduction ?)**

*Il est nécessaire d'échanger des informations formelles et informelles pour mettre en œuvre une coopération efficace des parlements nationaux en matière de contrôle de subsidiarité et de proportionnalité.*

*Les informations formelles, à savoir les avis motivés adoptés par un Parlement national, doivent être inscrites immédiatement sur le site d'IPEX) avec le texte de l'avis et, afin qu'il soit compris par tous, un résumé en anglais ou en français. Il est envisageable de confier à IPEX le soin d'envoyer un message chaque semaine aux parlements nationaux récapitulant les avis motivés reçus au cours de la semaine.*

*Les informations informelles sont complémentaires mais tout aussi nécessaires. Avant l'adoption d'un avis motivé, se déroule une procédure de sélection des textes. Les textes sélectionnés font l'objet d'un examen approfondi, qui aboutit dans certains cas à l'adoption d'un avis, dans d'autres cas, non. Il faut que les parlements nationaux s'informent mutuellement de ces examens en cours, même s'ils ne déboucheront pas forcément sur un avis motivé. Une solution est d'insérer une icône « en cours d'instruction » sur le site d'IPEX pour les textes sélectionnés. En outre, les parlements nationaux pourraient informer systématiquement le secrétariat de la COSAC dès lors qu'ils sélectionnent un texte pour examen et le secrétariat de la COSAC transmettrait chaque semaine un récapitulatif par mail de ces annonces « informelles », de surcroît les représentants des parlements nationaux à Bruxelles pourraient se réunir régulièrement (ex : deux fois par mois) pour s'informer mutuellement des textes en cours d'examen. Un compte-rendu de ces réunions à l'adresse des représentants absents ou des parlements nationaux non représentés pourrait être réalisé (par un délégué des représentants ou le secrétariat de la COSAC).*

*D'une manière générale, le secrétariat de la COSAC et les représentants permanents agiraient « en amont » du processus, par une information précoce, IPEX serait l'instrument validant les positions officielles des parlements nationaux et tenant à jour le décompte des « cartons » jaunes, oranges ou rouges.*

**2) Par quels moyens ces informations doivent-elles être échangées : par des moyens informatiques (outre le site internet d'IPEX, site de la COSAC etc), par des réunions administratives ou échanges de mails entre représentants permanents à Bruxelles ou fonctionnaires de liaison des parlements nationaux, par les réunions habituelles de la COSAC ou par des réunions « ad hoc » de parlementaires nationaux ?**

*La réponse figure essentiellement au 1). Le processus de coopération administrative doit être complété par un processus politique. La COSAC des présidents et la COSAC plénière paraissent les instances politiques les mieux à même d'accroître la coopération politique entre*

*parlements nationaux dans le domaine de la subsidiarité et cela d'autant plus que, en application du protocole annexé au traité d'Amsterdam, la COSAC peut adresser aux institutions de l'Union une contribution portant sur l'application du principe de subsidiarité.*

3) Comment envisagez-vous le rôle de la Commission européenne dans l'information des parlements nationaux sur les modalités de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?

*La Commission européenne doit transmettre aux parlements nationaux l'ensemble des textes qui sont soumis au contrôle de subsidiarité avec une alerte sur la date d'enclenchement du délai de 8 semaines. Elle doit rendre publics, dès leur réception, les avis motivés des parlements nationaux, de même que les réponses écrites qu'elle formule.*

4) Quelles sont vos suggestions pour améliorer les exercices pilotes dans le cadre de la COSAC dans la perspective de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?

*Les exercices pilotes sont actuellement trop peu nombreux et ils sont décidés très en amont, alors que les intentions de la Commission européenne sur le « fond » des sujets ne sont pas encore connues (les titres des projets de directives n'étant pas toujours suffisamment explicites). De plus, ils se heurtent aux changements de calendrier de dépôt des propositions législatives de la Commission européenne. Ces exercices méritent d'être poursuivis mais doivent être complétés par des échanges administratifs informels (cf. question 1) qui permettraient de créer des coopérations « ad hoc ». Il serait utile d'introduire plus de souplesse et de pragmatisme dans la détermination des textes faisant l'objet des exercices pilotes en sorte de mieux tenir compte du contenu et du calendrier d'adoption par la Commission européenne.*

5) Toute autre contribution serait bienvenue.

*Pas de commentaire supplémentaire.*

## GRÈCE

### ***Vouli Ton Ellinon***

**1) Which informations would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

*According to the needs of our Parliaments at this early stage, we consider useful to receive any available information, either formal (reasoned opinions, reports etc) or “informal” which could give ground to the intention to start scrutiny. Any of the above mentioned texts should be accompanied by a short summary in English or French, otherwise the exchange of information would be useless.*

*We also consider useful an “a priori evaluation” of informal documents according to their significance – in other words “1st level” significance or “2nd (minor) level”. This “1<sup>st</sup> level” doc. would be for example, the case where breach of the subsidiarity principle is thought likely, and a preliminary exchange of ideas should be sought.*

**2) By which means these informations should be exchanged :** by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?

*Until the process is institutionalized we deem necessary the best use of all available means, i.e. both IPEX and the COSAC secretariat which will play a coordinative role between liaison officers (distributing documents by e-mail list) and Parliaments’ representatives (personal contact).*

*Ad hoc meetings should be considered only between Parliaments’ representatives in Brussels, otherwise it is likely to lead to a waste of precious time considering the time limits available and the overload of work to be done at home!*

**3) How do you consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

*As agreed in the COSAC Contribution the Commission should also send a note of alert at the beginning of the 8 weeks’ period.*

*Furthermore, it is worth considering the possibility of the Commission transmitting and communicating any comments received from national Parliaments as well as any respective responses. In this case, however, any translation obstacles should be taken into account.*

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

*The pilot projects have proved to be very useful practice and they should continue. We should envisage conducting more than one in each presidency.*

*The committees engaged in such projects should not forget to update the respective IPEX scrutiny pages on time (and supply information in English or French) in order to have exchange of information within the 8 weeks 'time frame.*

5) Any other contribution would be welcomed.

On the basis of these contributions and according to paragraph 1.6 of the COSAC conclusions in Slovenia, **a first meeting of national parliaments representatives to the EU (one representative by chamber) will take place on Wednesday, the 2<sup>nd</sup> of July.** The agenda and place of the meeting will be communicated later. Parliaments without a representative to the EU will be invited to designate a participant for this working group.



# HONGRIE

## The National Assembly

Referring to the e-mail of 30 May 2008 enclosed please find the contributions on behalf of the Hungarian National Assembly regarding the application of Protocol No. 2 attached to the Treaties.

It is our view that each national parliament should decide itself, how deeply the parliament would like to get involved in the examination of the principle of subsidiarity. Aligned to the national characteristics and the legal background each parliament should elaborate its own working method to achieve the most effective result.

In Hungary the legal background is clear as regards the procedure of the Hungarian National Assembly to control the principles of subsidiarity and proportionality. Pursuant to article 134/D of the Standing Orders of Parliament, the enforcement of the principle of subsidiarity is carried out as follows:

*" (1) The European Union Committee may examine the enforcement of the principle of subsidiarity in the draft legislations of the European Commission in accordance with the provisions of legislation of the Union.*

*(2) If the European Union Committee presumes any breach of the principle of subsidiarity, it shall inform the Speaker of Parliament thereof. The Parliament shall decide on the motion of the committee within fifteen days. The provisions of paragraph (1) of Article 114 shall be applicable on the discussion of the motion, as appropriate."*

According to the provisions defined in article 134/D the procedure is applied only to legislative proposals of the European Commission. Though at the moment these examinations remain to be occasional in the Hungarian parliament, in the long run we expect it to become a regular practice.

### **1) Scope of information exchanged between national parliaments**

Exchange of information between national parliaments is essential in respect of application Protocol No. 2.

Concerning the scope of information being shared we would suggest that each time when a national parliament presumes that a given EU draft breaches the principle of subsidiarity it should send a warning to other parliaments indicating **at least** the followings:

- the title of the EU draft act,
- the article of the text that is presumed to be problematic,
- additionally a short explanation and

- the EU number of the document

Concerning the time limit it would be very important to communicate these warnings and opinions in the first half of the 8-week-period in order to leave time for other national parliaments to react. It is essential to be able to step up in time and jointly.

## 2) Means of communication

Following the entry into force of the Treaty of Lisbon, subsidiarity check by national parliaments will be a regular practice. Parliaments will examine number of EU proposals at the same time that would require **direct day-to-day contact** between persons, who are directly involved in the subsidiarity check.

Communication between national parliaments in respect of subsidiarity-checks should be carried out by e-mail, in addition to the website of IPEX.

- Although IPEX remains to be a very important tool of information-exchange between national parliaments, we are convinced that IPEX itself will not be enough to ensure **daily communication** between parliamentary experts.
- Therefore an **e-mail list** should be created collecting addresses of colleagues being in charge of the examination of EU proposals. It is up to the parliament to appoint persons to this e-mail list.
- To facilitate the flow of information, each national parliament should **appoint an official** being primarily responsible for subsidiarity-checks.
- Communication between parliamentary experts should be carried out **via e-mail**. This is the only way that ensures direct and prompt transfer of information to the appropriate person.

## 3) Role of the European Commission

We welcome the commitment of the European Commission that it would inform national parliaments about the commencement of the 8-week-period.

In our view this notice as well as the Commission's feed back on national parliament's opinions should be forwarded to parliamentary experts **via e-mail**.

## 4) Future of COSAC pilot projects

Raison d'être of pilot exercises of COSAC should be terminated by the entry into force of the Treaty of Lisbon.

## IRLANDE

### The Houses of the *Oirachtas*

#### Joint Oireachtas Committee on European Scrutiny

The Joint Committee welcomes this opportunity to offer their views on how cooperation between national parliaments can be improved to ensure the effective application of Protocol 2 of the Lisbon Reform Treaty on the principles of subsidiarity and proportionality. In the lead up to the constitutional referendum in Ireland on ratification of the Lisbon Treaty, the Joint Committee published a report on the provisions of the Treaty enhancing the role for national parliaments. The Committee strongly supports these provisions which they believe can lead to national parliaments becoming an integral part of the EU architecture and its decision making process. This would inevitably lead to a more transparent and democratic EU, and in turn, a more effective Union.

The Joint Committee is disappointed that the provisions on the enhanced role for national parliaments have not been brought about as envisaged by the outcome of the referendum but strongly believes that the democratic decision of the Irish people is sovereign and must be respected. Despite the set-back to the ratification process, the Joint Committee believes that it is still possible to move ahead in the spirit of the Treaty as regards enhancing the role of national parliaments. The Irish people are still very much in favour of the European project and they want to see a more democratic EU. The Joint Committee believes, therefore, that it is essential that COSAC continue its work aimed at enhancing the role of national parliaments within the EU. To this end, it is possible to build on the 'Barroso Initiative' which allows national parliaments to comment on Commission legislative proposals, including their compliance with the principles of subsidiarity and proportionality. By building on the 'Barroso Initiative' it should be possible to implement aspects of Protocol 2 in an informal way. The Joint Committee welcomes the fact that the work of COSAC on exchanging information and best practices on the application of the principle of subsidiarity is continuing and wishes to be fully and actively involved in this work.

With this in mind, the Joint Committee offers the following replies to the specific questions:

**1) Which informations would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

**2) By which means these informations should be exchanged :** by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?

*In response to questions 1 and 2, the Oireachtas Joint Committee on European Scrutiny believes that it is vitally important that an effective information sharing system is established in order to fully realise the potential of the subsidiarity checking mechanism contained in the Lisbon Reform Treaty. It is essential that there are clear and open lines of communications between the national parliaments. The Committee feels that COSAC, and its network of European Affairs Committees, offers the best vehicle for developing and consolidating these lines of communication.*

*To this end, the Committee believes that there should be a two track approach to exchanging information between the national parliaments – informally and formally. In the first instance, the permanent representatives in Brussels should informally inform his/her counterparts, either by e-mail or via the weekly meetings, that his/her national parliament is currently considering a proposed legislative act with a view to possibly preparing a reasoned opinion on its compliance with subsidiarity. This will act as a prompt to other national parliaments to also look at the proposal in question and also enable the permanent representative to gain an indication of whether other national parliaments share the same concerns.*

*Once a national parliament adopts a reasoned opinion, the text should be formally circulated to all other national parliaments via e-mail and be posted on the IPEX website. The IPEX website should be up-graded to include a dedicated webpage on the operation of the subsidiarity check which would contain a database of all reasoned opinions. The reasoned opinions should not simply be listed but be distributed under the heading of the respective legislative proposal. This will make the information more accessible and quick to find. The use of e-mail as well as a database on the IPEX website is a means of not only pulling information but pushing information. There must be active dissemination of information.*

3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

*In order to ensure the effective implementation of the subsidiarity checking mechanism, it is important that the COSAC work with the Commission. The Joint Committee on European Scrutiny believes that it should be the Commission's responsibility to inform national parliaments when the deadline of eight weeks is due to expire on a particular piece of proposed legislation. In this context, the COSAC should seek final written clarification from the Commission that the deadline for the submission of reasoned opinions starts when the proposal is available in all official languages.*

*The Commission should also be asked to publish all reasoned opinions of national parliaments, as well as its reasoned opinion when appropriate, on its website in order to ensure the highest possible public access.*

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

*The Joint Committee on European Scrutiny believes that the COSAC pilot projects have worked well in focusing national parliaments on the important principle of subsidiarity and facilitating discussion within national parliaments on how best to implement the*

*subsidiarity checking mechanism within their own systems. The Committee thinks that while the subsidiarity checks planned for this year should continue, the attention and energy of COSAC should shift to learning the lessons of these pilot exercises and establishing the systems to enable national parliaments to fulfil their role envisaged under the Lisbon Reform Treaty. Attention also needs to be given to exchanging information on how national parliaments plan to implement the other aspects of the Treaty affecting them, in particular national parliaments' role in assessing and evaluating the activities of EUPOL and EUJUST.*

*Once the subsidiarity checking mechanism and the related information systems are operationally, the Committee believes that COSAC should have a role in monitoring the operation of the system. This could include the preparation of an annual report on the issue.*

5) Any other contribution would be welcomed.

*In order for the subsidiarity checking mechanism to work effectively, the Joint Committee believes that there should be a common understanding of the principle of subsidiarity which would be shared by all national parliaments and used when preparing reasoned opinions. This would ensure a certain level of consistency but at the same time leave it to each national parliament to decide its reasons for finding a breach of the principle. A common understanding could lessen the possibility of ambiguity and uncertainty, thus closing down the possibility of over-lateral interpretations by all parties involved.*

*The Committee recommends, therefore, that the COSAC Working Group on the application of protocol 2 should develop a broad understanding of the principle of subsidiarity which also tackles the question of whether proportionality should be included in such an understanding. This common understating can be submitted to the next COSAC plenary with a view to its adoption. If the common understanding is adopted by COSAC, the Committee believes it should be communicated to the Commission. The Commission would be asked to consider national parliaments' reasoned opinions on the basis of this COSAC common understanding of the principle of subsidiarity. Informal discussions with the Commission would be advisable if or when the working group is developing this common understanding.*

**Joint Oireachtas Committee on European Scrutiny  
Dublin, 1 July 2008**

## ITALIE

### Réponse du Parlement italien

**1) Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality «informal» information on texts which could be under scrutiny or are under scrutiny, «formal» information on reasoned opinions already adopted?**

**A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)**

*We think that the information to be exchanged are those included or which will be included in the IPEX web site.*

*In particular the IPEX database already includes a specific symbol that NP can use when they are considering subsidiarity aspects in their scrutiny. This symbol could be used for ensuring a timely and focused exchange of information also during the 8 weeks period provided in Protocol 2.*

*In addition the IPEX Board adopted a preliminary decision about the introduction of a new symbol that NP should use when adopting reasoned opinions.*

**2) By which means these informations should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?**

*The exchange of information should take place in the IPEX web site which already seems to include all the appropriate tools. On this basis when it is needed any additional information could always be exchanged trough all the ordinary tools and channels of cooperation, notably the representatives in Brussels, the liaison officers, as well as all the interparliamentary meetings.*

*COSAC could continue to ensure a very important exchange of information and best practices on the procedural aspects.*

**3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?**

*The European Commission is the main receiver of the parliament's opinions and should play a positive role, in connection to IPEX website, for facilitating the exchange of information about these opinions and the Commission responses.*

**4) What are your suggestions to improve the «pilot exercises» of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

*The COSAC «pilot exercises» on the application of the principles of subsidiarity and proportionality could continue following the current arrangements. They ensure a useful exchange of best practices and information on the procedures and practices followed in each NP.*

**5) Any other contribution would be welcomed**

*The Italian Parliament notices that the criteria and procedures for the implementation of the Lisbon Treaty provisions should be considered by the Speakers Conference. COSAC can give a very important contribution to this end, envisaging the role of European Affairs Committees.*

*As outlined in the conclusions of the EU Speaker's Conference held in Lisbon on 20-21 June 2008, the Conference should reflect on the outcome of the COSAC WG and start a joint reflection regarding all these themes, also establishing, if possible, a fruitful dialogue with the European Institutions.*

*In this framework the national parliaments' representatives Working Group can provide COSAC with a very useful survey of all the ideas, proposals and experiences of the NP and of the EP.*

## LETTONIE

### **Saeima**

1) Which informations would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information's on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

*The exchange of information is of crucial interest for all National Parliaments; if they are willing to use the powers given in the Protocol 2 The question is what kind of information should be exchanged, also taking into account the language question and differences in the procedures in each National Parliament.*

*We do believe that it is of great importance to exchange information already during this 8 week period before the formal information on reasoned opinion (which could also be prepared in a short summary in English, French or German). It would be essential to receive from others an informal note stating on which particular Commission proposal the reasoned opinion will be given, as probably not all parliaments will check each legislative proposal of Commission ( or Council, or European Parliament)*

2) By which means these information's should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?

*Regarding the means of information exchange, Saeima believes, that there should not be developed any new instruments. We support the use of already existing resources, such as the information exchange between National Parliament representatives in Brussels (either by email or in the regular meetings between them), sending of the information to the COSAC secretariat (in this regard, there could be some changes at the COSAC webpage, where the reasoned opinions of National Parliaments could be published), and also the use of IPEX.*

3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

*Commission will receive the reasoned opinions regarding the subsidiarity, as well as they will continue to receive the opinions on the substance of the proposals. In this regard, Commission should not only inform about how many and which parliaments have given their reasoned opinions, (the Treaty does not obligate to do this, but it would be a positive step from the side of Commission) but also make available Commission's responses to concrete National Parliaments. If possible, Commission could think about the possibility to publish their information not only on the Commission's webpage, but also in the IPEX.*



4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

*Regarding the pilot exercises of COSAC, it is very important to maintain them, especially having regard of the latest results of Irish referendum. It would be essential that National Parliaments also give to the COSAC secretariat Commission's answers to their opinion. Nevertheless continuing these exercises, it is very important to take into account the capacities, which different parliaments have. We do believe that for the time being two subsidiarity checks per year are the optimal number.*

5) Any other contribution would be welcomed.

*More important than the subsidiarity checks and the application of the Protocol 2 is the way how the National Parliaments will continue their participation in the EU decision making process, and even more in the policy formulation process, if the Lisbon treaty does not come into force!*

# LITUANIE

## **Seimas of the Republic of Lithuania**

1) **Which information would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information on texts which could be under scrutiny or are under scrutiny, « formal » information on reasoned opinions already adopted ? A simple notification of reasoned opinions or the transmission of the all text (with or without translation ?)

When exchanging information it is important to separate clearly the statements on subsidiarity (related to Protocol 2) from the issues on general scrutiny. In the opinion of the Committee on European Affairs, it would be purposeful for the national parliaments to exchange both preliminary and “formal” information: formal information on already adopted reasoned opinions along with the text of the adopted document. Translation of the document or at least a brief summary in English or French would be preferable. In principle such way of information exchange has already been standardized and may further be used by employing the exchange instruments that are already in place (IPEX). Other types of exchange, such as exchange of more detailed information, could be implemented through other available channels (e.g. lists of contact persons and other addressees), without necessarily standardizing the format of such exchange.

2) **By which means this information should be exchanged:** by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?

For the exchange of information on the decisions of the national parliaments available computer means would be sufficient having improved them to match the specific needs of the subsidiarity monitoring. The national parliaments could make the information on reasoned opinions already adopted by them available without delay. Accordingly, having improved IPEX, it would be possible to find the most up-to-date status quo information on reasoned opinions adopted by the national parliaments under Protocol 2 at anytime. Easy access to the cross-statistical information (e.g. on the proposals, for which the eight week period to submit a reaction has not expired, by indicating the number of adopted reasoned opinions to each of them, as well as whether the threshold established in Protocol 2 has been reached or is it far from reaching, and the like) at IPEX is preferable. Mailing lists of contact persons may be used in separate cases on individual initiative. The subsidiarity monitoring should not give the reason to structurize the meetings of the committee secretariats or the permanent representatives of national parliaments to the EU in Brussels. A joint discussion on the situation regarding the subsidiarity monitoring should remain on the agenda of COSAC.

3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

In pursuance of better cooperation and efficiency, the responses of the European Commission to the reasoned opinions of the national parliaments regarding the principle of subsidiarity should be easily available to all the national parliaments preferably through IPEX and should be forwarded directly to all the national parliaments. It would also be desirable that the

Commission's annual report to the national parliaments, which is laid down in Protocol 2, would reflect a general view regarding the implementation of the protocol provisions.

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality ?

*After the Lisbon Treaty comes into effect we would consider it no longer purposeful to continue on implementing the “pilot exercises” of COSAC. Nevertheless, the issues of applying the principles of subsidiarity and proportionality should remain on the COSAC's agenda with a view to embrace the powers prescribed to the national parliaments in the appropriate manner. The COSAC Secretariat should continue on drafting relevant reports with a view to exchange best practices and achievements among the national parliaments to ensure the maximum implementation of Protocol 2.*

# LUXEMBOURG

## *Chambre des Députés*

**1) Quelles informations vous semble-t-il nécessaire d'échanger entre parlements nationaux pour mettre en œuvre le protocole 2 sur les principes de subsidiarité et de proportionnalité : des informations « informelles » sur les textes dont l'examen est envisagé ou en cours, des informations « formelles » sur les avis motivés définitivement adoptés ? Une simple notification de l'existence des avis motivés ou une transmission du texte complet (avec ou sans traduction ? )**

Réponse : L'information mutuelle entre Parlements nationaux devrait se faire par étapes.

D'abord, dans un premier stade, il conviendrait de donner des informations informelles au cas où le Parlement ou la chambre concernée procède à une première analyse d'un texte et a un doute que le principe de subsidiarité n'est pas respecté.

Ensuite, une notification formelle pourrait être faite du texte complet, accompagné d'un résumé en anglais et / ou français explicitant en particulier les raisons pour lesquelles le Parlement concerné estime que le principe de subsidiarité n'est pas respecté. Il conviendrait néanmoins de ne pas imposer de traduction intégrale des documents (question de coûts).

**2) Par quels moyens ces informations doivent-elles être échangées : par des moyens informatiques (outre le site internet d'IPEX, site de la COSAC etc), par des réunions administratives ou échanges de mails entre représentants permanents à Bruxelles ou fonctionnaires de liaison des parlements nationaux, par les réunions habituelles de la COSAC ou par des réunions « ad hoc » de parlementaires nationaux ?**

Réponse : L'information informelle devrait passer par des échanges e-mail ou par les représentants établis à Bruxelles, mais sans oublier que les représentants sont des fonctionnaires et non pas des responsables politiques. Les représentants ne sauraient donc en aucun cas prendre des décisions.

L'information formelle devrait passer de préférence directement par le site IPEX ou sinon par le site de la COSAC.

Une multiplication des réunions, que ce soient les réunions habituelles de la COSAC ou des réunions « ad hoc » entre parlementaires est en toute hypothèse à éviter. La même remarque vaut pour une éventuelle multiplication des réunions entre fonctionnaires.

**3) Comment envisagez-vous le rôle de la Commission européenne dans l'information des parlements nationaux sur les modalités de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?**

Réponse : La Commission européenne devrait rendre publiques ses réponses aux avis des Parlements nationaux. De même, elle devrait informer les Parlements nationaux du point de départ du délai de huit semaines respectivement de la fin dudit délai.

**4) Quelles sont vos suggestions pour améliorer les exercices pilotes dans le cadre de la COSAC dans la perspective de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?**

Réponse : Il conviendrait de mettre en place le système d'information informelle décrit ci-dessus.

**5) Toute autre contribution serait bienvenue.**

## MALTE

### ***II-Kamra Tad-Deputati***

*1) Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: «informal» information on texts which could be under scrutiny or are under scrutiny, «formal» information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)*

The ‘yellow’ and ‘orange card’ mechanisms are in themselves simple mechanisms involving a straightforward mathematical calculation as foreseen in the Treaty. The successful implementation of this Protocol is dependent on two things:

- ☐ whether all national parliaments have the necessary mechanisms to detect and report suspected breaches of subsidiarity; and
- ☐ the effectiveness of the mechanism that brings together the opinions of all the parliaments together to reach the ‘subsidiarity quota’.

The information required (either from the Commission or from other parliaments) would be:

- ☐ When the 8-week period starts and finishes for each proposal
- ☐ When a parliament submits a reasoned opinion to the Commission and the content of such opinion in English/French
- ☐ The feedback of the Commission on such reasoned opinion
- ☐ When the ‘subsidiarity quota’ has been reached on a particular proposal and thus the yellow and orange cards are used

Some ‘counting mechanism’ for the votes of the individual parliaments, as well as a clear definition of what counts as a ‘vote’, need to be established.

*2) By which means these information should be exchanged: by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by «ad hoc» meetings of national parliamentarians?*

IPEX should be the main tool used in the exchange of such opinions and related information.

Initially the Commission would indicate when the last language version is made available, and hence when the 8-week period starts running and expires. Once the 'first' parliament detects a possible breach of subsidiarity on a particular proposal, the proposal is placed in a new section in IPEX, in which all similar documents are collected. Thus at any point in time one can find in this section all the documents on which one or more parliament have submitted an opinion in terms of protocol 2 of the Lisbon Treaty. The usual IPEX dossier format can be utilised, however this would include the opinions of the parliaments and the Commission reaction. These would include a translation into English and/or French in addition to the original language. It would be the responsibility of the individual parliaments to make this information available. RSS feeds or an automatically generated email to all IPEX correspondents and clerks of the committees can be used to inform parliaments of new items added.

COSAC should remain the main body that coordinates subsidiarity related issues.

The use of audio/video-conferencing as a means of communication between the staff of the individual parliaments' committees could prove to be an efficient way of enhancing communication and enabling cooperation on this issue.

Although the House of Representatives does not yet have a representative in Brussels, it is believed that these officers could play an important role in putting into force the provisions of the Protocol on subsidiarity. The option to nominate any other participant for parliaments that do not have a permanent representative as yet is welcome and should be maintained until all parliaments are represented in Brussels.

*3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?*

In considering the role of the European Commission in the application of Protocol 2 one must not forget that subsidiarity gives the right to national parliaments to challenge Commission opinions, essentially working against the Commission. One can assume that there is a limit as to how much the Commission can be expected to cooperate. However, the Commission has a vital role in informing parliaments of the 8-week deadlines for all proposals, possibly via IPEX. Beyond that point it is the duty and in the interest of national parliaments to coordinate the flow of information in the best manner possible e.g. sharing of national parliaments' opinions and Commission reactions.

*4) What are your suggestions to improve the «pilot exercises» of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?*

The Maltese House of Representatives has not yet established the modalities of subsidiarity evaluation and unfortunately has not managed to participate in any of the checks carried out so far. In view of this, the Maltese parliament is not in a position to make any suggestions. However, efforts will be made to participate in at least one of the checks foreseen for this year.

## **PAYS-BAS**

### **House of Representatives**

***1) Which information would be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information on texts which could be under scrutiny or are under scrutiny, « formal » information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)***

*Considering the relative short time-period available for scrutiny, any information that can serve as an input for position-taking should be exchanged. This contains all of the above mentioned sorts of information. The House of Representatives prefers information to be available in the working languages English and French.*

***2) By which means should these information be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by «ad hoc» meetings of national parliamentarians ?***

*Information should be exchanged primarily through the existing IPEX-mechanism and COSAC-email group; on the basis of this information national parliaments' representatives can exchange additional information.*

***3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality ?***

*The guiding principles of the role of the European Commission follow from Protocol 2. The Commission is obliged to send new legislative proposals directly to the national parliaments and should notify when the 8 weeks period starts (when the text is available in all languages). Furthermore, draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act must contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality.*

*The House of Representatives is of the opinion that subsidiarity- and proportionality aspects should already be taken into account as soon as possible in the process of developing new proposals. Broad consultations as well as the impact assessments by the European Commission are a relevant and useful instrument in considering whether the principles of subsidiarity and proportionality are respected in the early stages of developing draft legislative proposals.*

***4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?***



*The pilot exercises should be transformed into an adequate interparliamentary subsidiarity-procedure. The current pilot, where only 2 legislative proposals a year are being considered by COSAC on the principles of subsidiarity and proportionality, has proven to be useful. The pilot has demonstrated that COSAC is well able to perform its role in scrutinizing legislative proposals. Protocol 2 of the Lisbon Treaty requires that COSAC moves to the next stage where all legislative proposals could be checked on the principle of subsidiarity and proportionality. Lessons learned from the pilot exercise will be helpful in developing new working methods in order to implement the provisions as foreseen in Protocol 2 which are feasible and effective.*

*At the last COSAC meeting in Brdo, the delegation of the Netherlands' House of Representatives circulated a non-paper on the modalities for implementing Protocol 2 in an effort to start discussion in COSAC on the different aspects of it:*

- *COSAC should continue to play a guiding role in the application of the principle of subsidiarity. In its meetings it should focus on the actual legislative agenda of the Commission and formulate a strategic approach regarding current and upcoming EU-proposals.*
- *In order to properly and collectively monitor the examining of EU legislative proposals on the principles of subsidiarity and proportionality in the respective national parliaments of the 27 Member States, it is suggested to set up a sub-formation of COSAC, in which each parliament can participate and which meets in a frequency of at least two months.*
- *The regular meetings of the parliamentary representatives could serve to inform each other on the state of play in their own parliaments, exchanging information amongst the national parliaments on their (developing) positions on legislative proposals.. They could also indicate possibilities for acting together with other parliaments on specific dossiers.*
- *Furthermore, the national parliaments' representatives in Brussels should act as a platform for preliminary discussion on European proposals. They should monitor specific legislative proposals in the pre-legislation phase as well as in the negotiation phase in the Council and the European Parliament.*
- *Finally, the existing IPEX-mechanism could serve as a monitoring system for the application of the subsidiarity check by the national parliaments of the 27 Member States. A counting device should be added to the system to establish whether the necessary thresholds are being approached.*

*The working group that has been set up at the request of COSAC by the incoming French Presidency, will come up with an overview of the different views and modalities on implementing Protocol 2.*

*An essential element for the discussion in this respect will be how the different actors will relate to each other in a way that a mechanism is developed that is both effective and at the same time efficient, also given that the time period of 8 weeks is relatively short. In first instance the exchange of information on the developing of positions is necessary. This could be done via the existing IPEX-website. Also the weekly meetings of the parliamentary permanent representatives in Brussels could provide another useful platform for exchanging information and signaling trends in national parliaments. At some stage, once it becomes clear that on certain dossiers the threshold for a yellow or orange card is being approached, it will become necessary for the parliamentarians themselves to get involved,*

*which could be done via regular bi-monthly meetings of the COSAC-subcommittee that was proposed at the last COSAC by the Netherlands' House of representatives.*

## **Senate of the Netherlands**

**1) Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information on texts which could be under scrutiny or are under scrutiny, « formal » information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)**

As regards the exchange of information, the Senate is of the opinion that all of the above mentioned information should be exchanged. Parliaments should inform each other if they deem necessary to exchange certain pieces of information to gather the needed threshold of protocol 2 or even to consider the option other national parliaments might share the same arguments but have not yet voiced them to their own governments. The informal notices and draft-texts do not necessarily have to go on IPEX, a simple e-mailgroup of the clerks of the EU-committees in the national parliaments would sustain for a better exchange of information. That way, the (staff of the) committees in the different parliaments can decide for themselves whether they are interested in the matter or only take note of the information. As regards the different languages, it would be efficient if a summary would be provided in for example English or French. For the system of protocol 2 to work, we need not be selective about the information, we need to exchange as much as possible using the already existing mechanisms.

**2) By which means these information should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians?**

The Senate's opinion on this is mainly guided by two principles: a) no new institutions or for a need to be created for the implementation of protocol 2 and b) the decision on whether a proposal is not in line with the subsidiarity- and/or proportionality-principle or is content-related not regarded as advisable, is a decision of the committees/members of parliament and not to be discussed by civil servants. Therefore, the information should be exchanged (as mentioned at the answer to question 1) between liaison officers in national parliaments and the permanent representatives in Brussels: a large e-mail group already exists (it is the same as always being used for any COSAC-information).

The most important is however that every national parliament uses IPEX to the fullest of its potential. It would be perfect if an IPEX-monitor would be discussed in the committees of the national parliaments at least twice a month, so that any changes on the IPEX-website (uploading of parliament's opinions/process of scrutiny) can be considered by the members of parliament.

**3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality ?**

As regards the information-obligation of the European Commission, according to the new Treaty and the current procedures, the European Commission needs to send the proposals directly to the national parliaments. As regards the actual implementation of protocol 2, it is the responsibility of the national parliaments together to inform each other in time for the implementation of the protocol. It would be advisable to ask the European Commission if a

reasoned opinion sent to a national parliament might be (also) put on the IPEX-website. As for the national parliaments, these reasoned opinions of the European Commission should be exchanged.

**4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?**

The “pilot exercises” of COSAC as regards the procedures have been quit successful. Since the arguments why a certain proposal is in breach of the principles mentioned in protocol 2, represent an (political) opinion of the different parliaments, the pilot exercises have shown (see the notes of the COSAC-secretariat for the COSAC chairpersons meeting in Slovenia- February 2008) that (content) improvement cannot and should not be enforced top-down. The coordination of these exercises done by the COSAC-secretariat has also been an improvement. For the future, it could be considered that the aide-memoires of the parliaments are exchanged as soon as the COSAC-secretariat has received any. That way, the opinion of one parliament might influence the opinion of another. This could easily be done through (again) the existing structures: IPEX, COSAC-website and e-mailgroup.

## POLOGNE

### *SEJM*

1) **Which information would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality?

It is necessary to exchange formal information on reasoned opinions already adopted. The decision should be made by a body authorized by the countries' legislation or internal parliamentary regulations. For faster and more effective cooperation the documents should be translated into English and/or French before the exchange or at least the summary of the document into one of these languages should be attached. To facilitate the comparison of submitted documents national parliaments may adopt a common form. Nevertheless, taking into account a short time for exchange of the information, national parliaments should also exchange some information in the informal way.

2) **By which means these information should be exchanged**

The exchange should be made by internet – especially IPEX and via the permanent representatives in Brussels. “Ad hoc” meetings of national parliaments should only be organized if there is a possibility to meet the necessary majority for either yellow or orange card in the given time framework.

3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

It is important that the European Commission is involved in the application of Protocol 2. The Commission should receive information from the parliaments on the documents that are going to be checked for subsidiarity and/or proportionality, and especially the documents that will be found by the parliaments as not meeting the principles of subsidiarity and/or proportionality. This information should be posted on the European Commission's website. The European Commission should also present the information on its decision, according to the procedures described in the Protocol.

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

Taking into account the outcomes of the latest subsidiarity tests there is a necessity to discuss, on a given examples, what exactly the breach of the principles of subsidiarity and proportionality means.

5) Any other contribution would be welcomed

There is a necessity to have a clear system of the IPEX symbols. First of all there should be a symbol informing that given document is under the subsidiarity check. The second symbol should refer to the documents which can raise the problem for the parliament, and the last one should be used when there is a reasoned opinion adopted by the parliament.

There should be a selection/searching mechanism on the IPEX website which will provide an easy access to the documents with a reasoned opinion along with information on the number of national parliaments which adopted the opinion.

## **Senat**

1) Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » information on texts which could be under scrutiny or are under scrutiny, « formal » information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

– « informal » information on texts which could be under scrutiny or are under scrutiny, **a simple notification of reasoned opinions with translation**

2) By which means these information should be exchanged:

– **by computer means** (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?

– **by exchanging mails between permanent representatives in Brussels**

– **by IPEX**

3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

**The European Commission's role should be:**

– **to transmit legislative proposals via separate channel**

– **to transmit to all national parliaments its answers to their opinions and remarks/inquiries**

– **to indicate the final date when the eight week period to submit a reasoned opinion expires.**

4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

– **The time has come to terminate the pilot exercises stage and to gather and analyse experiences in order to develop a catalogue of best practices to be applied on the national parliaments' level for their subsidiarity checks. COSAC should be able to focus on major substantive issues.**

5) Any other contribution would be welcomed.

# PORTUGAL

## *Assembleia da República*

Following the XXXIX COSAC, held in Slovenia, on 6 - 8 May, the French Senate has sent all the National Parliaments (NP) a Questionnaire (to be answered by June 16) on the implementation of the decision to set up a Working Group (WG) of the NP's Permanent Representatives to the EU, with the aim of:

1. Listing the NP's ideas on the ways of cooperating in order to guarantee the best application of the Protocol relating to the principles of subsidiarity and proportionality, enclosed in the Treaty of Lisbon ;
2. Distinguishing the ways in which each Parliament individually intends to implement this Protocol and the ways in which the NPs can act collectively, especially to guarantee an effective "early warning mechanism".

The conclusions of the WG will form the basis of a report to be prepared by the COSAC Secretariat, which will be presented at the next COSAC Meeting (in Paris, in November): a contribution to the political debate concerning the matter of implementing the Treaty of Lisbon with respect to the new provisions affecting the NPs.

The conclusions of the XXXIX COSAC (Slovenia, 6 - 8 May 2008) dealing with this question reads:

"1.6. COSAC calls on the incoming French Presidency to make a check list of the national parliaments' ideas that could lead to better cooperation in the application of Protocol 2 on the principles of subsidiarity and proportionality. COSAC calls on the French Presidency to invite a working group of the national parliaments' representatives to the EU, the discussions of which will form the basis of a report on how these opportunities can best be implemented by national parliaments, and on whether any collective arrangements may be needed, while respecting each national parliament's right to determine its own working practices The report will be written by the COSAC Secretariat and will form the basis of a discussion at the XL COSAC Meeting under the French Presidency"(1).

The Report on the abovementioned COSAC, prepared by the European Affairs Committee (EAC) / Assembly of the Republic Delegation to COSAC, also referred to this matter in item 6(b).

As agreed in the EAC meeting of 4 June, please find herewith the answers to the questionnaire:

- 1) **Which information would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality:**  
« informal » information on texts which could be under scrutiny or are under scrutiny,  
« formal » information on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

The NPs must cumulatively exchange:

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(1) The full version of the "Contribution and Conclusions" can be viewed at:  
<http://cosac.eu/en/meetings/Ljubljana2008/ordinarymeeting/>



- a) Informal information about the initiatives that are already under scrutiny ;
- b) Formal information about the parliamentary decision / reasoned opinions adopted.

This information must be transmitted by:

- a) Sending notification of the existence of these formal opinions by every NP;
  - b) Making the text of the reasoned opinion of every NP available at the IPEX website (instead of systematically sending them to the NPs), whenever the reasoned opinion identifies a non-compliance with the principle of subsidiarity and/or any matter considered relevant to the other NPs: a summary must be written in EN or FR.
- 2) **By which means these information should be exchanged:** by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?

The information will, preferentially be transferred using information technology (IPEX and the permanent representatives network of the NPs in Brussels or liaison officers).

Whenever a NP considers it relevant to hold a debate about a given European initiative, it may bring up the question either with the COSAC troika (so that this question becomes one of the matters debated by COSAC) or with the NP which holds the EU and presidency and with the EP - so that this question can be debated at one of the interparliamentary meetings (JPM/JCM).

- 3) How do you consider the **role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

The European Commission will continue to transmit its initiatives to the NPs. However and for the abovementioned purposes, the NPs will reinforce the need for the Commission to:

- a) Notify the NPs at the time that each initiative has been translated into all the official languages (this is, the time when the period of 8 weeks for the parliamentary opinions concerning the “early warning mechanism” will start to take effect);
  - b) Make the replies sent to the NPs available, as the reasoned parliamentary opinions are received by the Commission;
  - c) Notify the NPs of the effects that the reasoned parliamentary opinions have had on the final text of the initiative, when applicable;
  - d) Maintain the translation of its Legislative and Working Programme, including all the enclosed maps, in all the official languages.
- 4) What are your suggestions to **improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

COSAC pilot projects may be developed by:

- a) Improving the selecting process of the initiatives chosen to undergo a subsidiarity test;

- b) The COSAC Secretariat may prepare a “technical note” in advance about the initiative (juridical basis, concept of subsidiarity, questions which may lead to doubts, etc);
- c) Organizing “hearings”, at COSAC meetings, involving the Commissioner responsible for the proposal and/or the EP Rapporteur covering the issue.

This subject may, however, be better studied by the COSAC Secretariat itself, which could present its proposals.

#### 5) Other Suggestions.

Based on the abovementioned item 1.6 in the Conclusions adopted by the XXXIX COSAC, and the subsequent sending of the replies to this questionnaire by the NPs, the first meeting of the NP permanent representatives to the European institutions (one representative per Chamber) will be held in Brussels, on 2 July.

# RÉPUBLIQUE TCHÈQUE

## Chambre des Députés

**1) Quelles informations vous semble-t-il nécessaire d'échanger entre parlements nationaux pour mettre en œuvre le protocole 2 sur les principes de subsidiarité et de proportionnalité : des informations « informelles » sur les textes dont l'examen est envisagé ou en cours, des informations « formelles » sur les avis motivés définitivement adoptés ? Une simple notification de l'existence des avis motivés ou une transmission du texte complet (avec ou sans traduction ?)**

La Chambre des Députés soutient l'idée d'échange de toutes les informations évoquées entre les parlements nationaux. La coopération et l'échange des informations sont une condition d'exécution réussie du rôle des parlements nationaux. Ils auraient déjà échangé les informations importantes au cours de négociations dans les commissions parlementaires des affaires européennes. Cette idée repose sur la communication informelle entre les commissions responsables de ce contrôle. Il est aussi important d'accomplir cet échange au niveau des fonctionnaires des parlements nationaux et de nouer des relations entre eux.

D'après la Chambre des Députés, il est important de transmettre le texte complet des avis motivés mais leur traduction pourrait poser des problèmes notamment aux parlements des petits états.

**2) Par quels moyens ces informations doivent-elles être échangées : par des moyens informatiques (autre que le site internet d'IPEX, site de la COSAC etc.), par des réunions administratives ou échanges de mails entre représentants permanents à Bruxelles ou fonctionnaires de liaison des parlements nationaux, par les réunions habituelles de la COSAC ou par des réunions « ad hoc » de parlementaires nationaux ?**

La Chambre des Députés est contre la création d'une nouvelle institution. Les informations peuvent être échangées par les liaisons déjà existantes comme la COSAC, et surtout l'IPEX. La Chambre des Députés propose un échange systématique des avis motivés des parlements nationaux par l'intermédiaire du secrétariat de la COSAC ou l'IPEX afin d'informer tous le plus tôt possible.

L'idée de créer une communication officielle (e-mail groupe, forum, ...) entre les personnes responsables pourrait être aussi intéressante.

**3) Comment envisagez-vous le rôle de la Commission européenne dans l'information des parlements nationaux sur les modalités de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité ?**

La Commission européenne s'oblige déjà d'informer les parlements nationaux de tous ses actes. Elle pourrait améliorer son système de classement des documents par domaines concrets. Ce système permettrait aux fonctionnaires parlementaires de mieux s'orienter vis-à-vis des actes de la Commission.

**4) Quelles sont vos suggestions pour améliorer les exercices pilotes dans le cadre de la COSAC dans la perspective de la mise en œuvre du protocole 2 sur les principes de**

**subsidiarité et de proportionnalité? Dans la perspective de la mise en œuvre du protocole 2 sur les principes de subsidiarité et de proportionnalité, quelles sont vos suggestions pour améliorer les exercices pilotes dans le cadre de la COSAC ?**

En cas de la ratification du Traité de Lisbonne, l'opinion de la Chambre des Députés est qu'il est suffisant d'utiliser des structures existantes en ce moment (COSAC, IPEX). Autrement, il est nécessaire de poursuivre la pratique des exercices pilotes dans le cadre de la COSAC.

**5) Toute autre contribution serait bienvenue**

La Chambre des Députés propose aux parlements nationaux :

D'examiner auparavant le texte de la Stratégie politique annuelle et du Programme législatif et de travail de la Commission et d'indiquer les actes qui potentiellement ne seraient pas conformes au principe de subsidiarité et de proportionnalité.

De programmer des stages pour échanger des expériences entre les fonctionnaires des parlements nationaux ce qui pourra aussi aider à mieux comprendre le processus de sélection des actes et de contrôle de conformité du principe de subsidiarité dans les divers parlements.

## Czech Senate

*1) Which informations would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)*

Information exchange between chambers of Parliaments of the Member States in the process of application of Protocol 2 attached to the Treaty of Lisbon is vital. Given the high quora needed for formal procedures to be triggered by national parliaments, information on other chambers' attitudes toward individual fresh proposals can be a factor for other chambers concerned in their will to conclude the subsidiarity principle scrutiny procedure within the given time limit.

However, we need to consider carefully what type of information and in what form we are to pledge to share as large bulks of disharmonized information uploaded to various databases or circling via e-mail might be counterproductive rather than add to better informed scrutiny processes.

We therefore suggest sharing both formal and informal information. The former we understand would be the outcomes of committee and plenary stages of the scrutiny process in the given chamber that we already today upload to IPEX in the Czech original and English translation. The later we agree could be first a "hint" (e.g. "flagging" of the document on IPEX) when the scrutiny procedure has begun indicating that subsidiarity issues are under observation and that scrutiny is planned to be concluded within the 8-week period in order for a timely reasoned opinion to be relayed to the Commission. Another informal document to be shared we suppose could be a short summary of the uploaded opinion in English.

*2) By which means these informations should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?*

We believe that IPEX should be the information exchange tool in matters of Protocol 2. Exchanges of e-mails are a less sophisticated and effective means that does not allow for, to name one, search by document. It is understood that for the IPEX to be used more often and more effectively, technical adaptations need to be made (e.g. faster uploading, quicker search) and any duplication of work of people feeding the database in the capitals needs to be avoided.

Ad hoc meetings of parliamentarians are a very problematic option that would probably prove to be cumbersome, as attendees would need to be provided with a mandate to represent (which takes time) and only a limited subject area could be covered at individual meetings.

It is the ordinary meetings of COSAC where evaluation of subsidiarity check should be a major issue on the agenda regularly. It would be sensible for every chamber to nominate say "subsidiarity rapporteur" (that would attend ordinary COSAC meetings and naturally would often be the EU Committee Chairperson) who would follow developments in regarding subsidiarity issues in his or her chamber in the half-year preceding COSAC meetings and report in writing (a simple form would be best) to COSAC secretariat that would compile out of these

reports an aggregated document mapping the number, procedure phases and proposals where different chambers have raised objections. Debating experience and results evolving from subsidiarity check should take place during or immediately before ordinary meeting of COSAC in presence of subsidiarity rapporteurs.

*3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?*

The procedural role of the Commission is sufficiently outlined in the text of the Protocol itself. Declarations made by the Commission as to the manner in which they will count reasoned opinions – i.e. will not assess the possibly differing grounds on which individual chambers have made their subsidiarity objection – are welcome. It should be ascertained that this position is held on to by the Commission for the future. COSAC secretariat should also be able to keep independent count of reasoned opinions submitted in order to verify the numbers.

The Commission should be encouraged to produce a manual where it would outline the way in which it intends to proceed should the different options under Protocol 2 realize, i.e. how they intend to assess the reasoned opinions once the different quora are reached, what principles its review will be based upon, how the Council and the EP will be made aware of a “card situation”, etc.

*4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?*

The pilot exercises are practiced under current Treaty conditions. With the prospective entry into force of the new treaty framework the pilot exercises will be replaced with a standard procedure of subsidiarity checking together with means for interparliamentary coordination that we are setting up right now.

In view of improving the pilot exercises, national parliaments/their chambers could also consider starting to inform systematically the European Parliament of their opinions on subsidiarity for individual proposals. While the governments in Council receive information through national parliament-government procedures, the European Parliament, as another co-legislator that can eventually support national parliaments’ “orange card”, should be included in the information flow as such systematic sharing of information between national a European parliaments is in mutual interest.

The pilot exercises were an important procedural test as to how the foreseen subsidiarity check mechanism might work/face problems in the future. It is therefore very regrettable that the Commission will not keep to its Legislative and Work Programme for 2008 as they have recently informed that both proposals agreed to undergo the test by the COSAC Chairpersons in Ljubljana will be delayed, one of them significantly. This delay will in fact prohibit the carrying out of the coordinated check by the NPs. The fact that the Commission does not adhere to its own work programme is unwelcome as such as it hinders planning of the other institutions and national parliaments. But repetitive delaying (this is not the first time) proposals where the COSAC has indicated will to carry out the check on subsidiarity is deplorable and the COSAC should consider taking action towards the Commission and at least demand explanation.

# **ROUMANIE**

## **Romanian Parliament**

### **I. Main features of the mechanism implementing Protocol 2 :**

I.1. Collective decision of National Parliaments will not be employed.

Motivation:

- risk of confusing the procedures of adopting proposals at EU level, at a time when the Treaty of Lisbon itself needs to be put into practice;
- major changes in COSAC's Rules of Procedures may be needed;
- opinion of most of the delegations to the XXXIX-th COSAC meeting.

I.2. Cooperation of National Parliaments should be complemented by a "forum" type exchange of ideas, where simple concerns or non-elaborated views may be expressed even before well documenting the matter.

Motivation:

- the brainstorming technique may display new issues, methods and angles ;
- National Parliaments may be inspired to start the scrutiny of certain proposals otherwise dismissed as less relevant ;
- an informal dialogue could help to eliminate the inhibition in communicating;
- the research could be facilitated by way of dissemination of information on topics already checked upon by the more advanced teams; all teams could benefit of arguments found by others ;
- the principle of transparency would be better served.

I.3. The action by national parliaments should be targeted to the essence of new proposals and consultation papers of the European Commission, rather than monitoring only the compliance with the principles of subsidiarity and proportionality.

Motivation:

- the essence of the scrutiny is contributing to shaping EU policies; efforts to create and make function a new cooperation mechanism would be better justified by a more complete result;

- checking the compliance with the principles of subsidiarity and proportionality is most of the times part of the scrutiny process; dismissing important information just to stay in the frame of subsidiarity check would be a waste

I.4. Meetings of the COSAC liaison officers in National Parliaments and COSAC Secretariat staff may be organised to improve the mechanism, clear matters of mutual concern and review the activity.

Motivation:

- the meetings can better solve the most difficult and complex matters;
- keeping the meetings at “technical” level avoids a change in the status of COSAC.

## II. **Answers to questions**

1) **Which informations would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

Answers:

- « formal » information on reasoned opinions already adopted, full text without translation, together with official positions expressed by non-parliamentary actors;
- « informal » information on texts which are under scrutiny, in a brainstorming exercise described in point 1.2;

2) **By which means these informations should be exchanged** : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?

Answers:

- « formal » information in point 1) a) should be placed in IPEX database;
- « informal » information in point 1) b) could be placed either in IPEX or COSAC web pages, in the shape of a discussion forum; periodically, the National Parliaments representatives to the European Parliament group the opinions/ideas/concerns, under relevant criteria and compile a list of conclusions, meant to help in National Parliaments in adopting the reasoned opinions.

3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?

Answers:



a) the existing dialogue mechanism between the European Commission and the National Parliaments should be improved according to the Contribution adopted by the XXXIX COSAC (para. 2.3.), including briefings on how the inputs were used by the European Commission;

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

a) examine a draft having been processed in commitology

5) Other contribution

- a) COSAC Secretariat could draw up a list of proposals having been selected for scrutiny by each of the 27 member states, weekly update it and place it on the COSAC or IPEX web page;
- b) The staff of COSAC Secretariat, together with liaison officers in national Parliaments and permanent representatives to the European Parliament should draw up “Guidelines on subsidiarity and proportionality”; discussions may be organized in the forum; conclusions by the permanent representatives; main topics: definitions; explanatory notes on what is and what is not a subsidiarity or a proportionality breach, examples of proven breaches; examples of suspected breaches; list of breaches in the last 5 years and the way they had been processed and solved; procedures in the European Parliament and examples; procedures in the Court of Justice and examples, etc.
- c) Proposals initiated by member states (in areas where the member States share the legislative initiative with the Commission) should be made public in a **particular list**;
- d) Launch an exchange of information (or simply informing) by the COSAC Secretariat with the interested Committees in the European Parliament on possible subsidiarity/proportionality breaches identified in the forum, on proposals to be adopted by co-decision, which were not yet presented in the first reading;
- e) Organize annual meetings of the COSAC liaison officers in National Parliaments and COSAC Secretariat staff, to solve technical matters of mutual concern and review the activity.

# ROYAUME-UNI

## House of Commons

In order to follow the conclusions of the XXXIX COSAC of Brdo pri Kranju, under Slovenian Presidency, which in its paragraph 1.6 : « *calls on the incoming French Presidency to make a check list of the national parliaments' ideas, that could lead to better cooperation in the application of Protocol 2 on the principles of subsidiarity and proportionality* »

*The European Scrutiny Committee of the House of Commons has not yet adopted a formal view on the matters dealt with in this document. The Committee is currently carrying out an inquiry into the implications of the Lisbon Treaty and many of the issues in this paper are likely to be tackled within this report. The report is likely to be published in late September 2008 and preliminary discussions by the Committee have shaped the responses below.*

*The Lisbon Treaty will, if ratified, formalise the role of national parliaments to examine the subsidiarity implications of draft legislative acts and gives the opportunity to raise reasoned opinions if subsidiarity concerns are found. We believe that the use of this provision would not significantly change the way that scrutiny of European matters is carried out in the House of Commons and that the subsidiarity and proportionality procedure would be employed very few times per annum. None the less there may be value in considering the implications of the Lisbon Treaty for national parliaments independently and collectively and examining the appropriate procedures and working practices to be put in place if the Treaty is ratified.*

### **1) Which information would it be necessary to exchange between national parliaments?**

*It is important to recognise the principle that each national parliament or chamber will need to decide for itself whether and how it wishes to co-operate with others on subsidiarity. Protocol 2 does not (and should not) impose any duty on national parliaments or chambers to act collectively and the subsidiarity and early-warning mechanism was specifically developed so that parliaments and even chambers could act separately of each other. Having said this, we believe that there are incentives to co-operation between national parliaments and clear advantages in exchanging of information both on an informal and a formal basis.*

*We believe that, in principle, the current structures and tools for inter-parliamentary co-operation are sufficient to facilitate the required exchange of information and therefore no extra resources should be needed and no new bodies or meetings should be created for this purpose.*

#### *Informal exchange of information*

*The formal timetable national parliament scrutiny of subsidiarity (8 weeks) is a short amount of time to complete the scrutiny process and the procedures involved in raising a reasoned opinion. This tight timescale means that information must be exchanged before the adoption of formal positions if it is to be of use to other national parliaments and for*

*influencing the position of others and gather support for reaching the activating the subsidiarity and proportionality mechanism. Informal exchange of information prior to the adoption of reasoned opinions by national parliaments will therefore be necessary in order for cooperation to be fruitful. The exchange of information at an early stage will enable national parliaments, only if they wish to, to participate in discussions and cooperation to enable timely action of other parliaments who may also wish to raise concerns.*

*Concerns about subsidiarity on specific draft legislative proposals should, therefore, be identified and highlighted to all national parliaments as early as possible within the 8 week period allowed for the subsidiarity check. At this time information about the nature of the subsidiarity concern should also be exchanged, if possible. It may also be helpful and/or appropriate for national parliaments to provide updates on the progress of a subsidiarity concern as a situation progresses and if it is judged to be particularly interesting or relevant to others.*

*Subsidiarity concerns about proposals included in the Commission Work Programme or Annual Policy Strategy should also be communicated informally when or if analysis of these documents is carried out.*

#### *Formal exchange of information*

*When a reasoned opinion has been raised it will be possible (and we believe it is important to) to formally exchange information to ensure that political decisions on the principle of subsidiarity are accurately and quickly communicated amongst national parliaments. Once the information has been exchanged, it will be for each chamber to independently consider how this information should be communicated to Members and what, if any, resulting action should be taken.*

## **2) By which means this information should be exchanged?**

*It is imperative that political oversight is exercised over any arrangements for informal and formal exchanges of information.*

#### *Informal exchange of information*

*The informal exchange of information should be delegated by Members to take place primarily at official level. It will be vital that liaison officers in national capitals and the national parliament representatives in Brussels are both kept informed. Though we believe best use should be made of the daily face-to-face contact between representatives based in Brussels to facilitate communication between national parliaments that wish to do so. We propose that this exchange, in practical terms, should take the form of:*

- Potential subsidiarity concerns should be communicated by the relevant national parliament staff (either liaison officers in national capitals or representatives in Brussels, as agreed internally by each chamber) to an agreed email distribution list of contact points. This should be done as soon as a concern has been informally identified.*
- This information should be collated and included on the next agenda of the regular meetings of the national parliament representatives in Brussels (the agenda/minutes of the appropriate part of the meeting would also be sent to those Parliaments not represented in Brussels). The agenda of these meetings should always include an opportunity for representatives to highlight subsidiarity concerns. Though it is likely*

*that at many meetings this facility will not be used because of the low occurrence of subsidiarity concerns anticipated.*

#### Formal exchange of information

*Reasoned opinions, once adopted, should be immediately communicated to all national parliaments via email. The email should give a summary of the opinion including a short resume of why the reasoned opinion was raised. The full text of the reasoned opinion should also be attached.*

*At the same time the reasoned opinion should be uploaded to the IPEX database. The COSAC secretariat should also be informed at this point.*

*We believe that national parliaments should be able to easily access information on the cumulative number of reasoned opinions that have been raised against any particular legislative document at any time during the subsidiarity check period. We are aware that if information is accurately uploaded onto IPEX, then this information will be available when sought using the search facility of the database and email alerts can be used to draw attention to specific info after it is loaded. We, therefore, believe that it is of utmost importance that all national parliaments fulfil their commitment to upload information on all scrutiny activity so that the IPEX database is a truly useful tool.*

*We believe that even if IPEX is fully functioning, there is added value in the production of a list of documents on which reasoned opinions have been raised which is regularly updated as the number of opinions increases. The COSAC secretariat should, therefore, create and maintain a list of documents against which one or more reasoned opinions have been raised. The list should be available for consultation on the COSAC website and the list should be updated whenever a new reasoned opinion is raised. The list would only collate information that has been disseminated by national parliaments and/or posted on IPEX. A cumulative total of opinions raised would be maintained on the site only for proposals that had attracted subsidiarity concerns.*

*The aim of the list would be only to collate information on (and create a historical archive of) the proposals against which reasoned opinions had been raised. This would be a useful reference point for Members and staff of national parliaments. It is anticipated that the resource implications of this for the COSAC secretariat would be limited as the number of opinions raised is likely to be very few. It is therefore anticipated that no extra staff would be required to carry out this task.*

*We propose that the ordinary meetings of COSAC should continue to be used to exchange best practice and common difficulties of national parliaments and the scrutiny of European legislation. If agreed by the COSAC meeting, an analysis of the application of Protocol 2 by national parliaments could be carried out within the framework of the biannual reports of COSAC which could then be debated at the relevant COSAC meeting.*

*National parliaments may wish to exchange information after the formal subsidiarity check is completed and thinking should be done into which forum such exchanges should take place. This could be useful for example if a national parliament or chamber calls on its government to launch a challenge in the European Court of Justice, this may be interesting to others. It may be that a note could be added against the document on IPEX.*

### **3) Role of the European Commission?**

*The Commission will have a role to ensure that all draft legislative acts are communicated to national parliaments directly on the same day as documents are communicated to the European Parliament and the Council as specified in the Lisbon Treaty and that this is completed without mistake.*

*The Commission will also need to communicate to national parliaments when the 8 week period for the operation of the subsidiarity check begins.*

*We do not believe that the Commission has any role to question or judge the validity or admissibility of any reasoned opinion that has been issued by a chamber or parliament and that each opinion should be accepted as such once adopted by the national chamber or parliament.*

*The Commission will also have a role to make public the number of reasoned opinions that it (and the other institutions) have received for every legislative proposal. It will need to clarify how it intends to do this and whether it will do so cumulatively or once at the end of the 8 week period.*

*The Commission will also need to clarify:*

- *The practicalities of how reasoned opinions should be sent to the commission? NB: this is also a question that should be posed to the EP and the Council.*
- *Whether it will publish its responses to all reasoned opinions?*

#### **4) Improvements to COSAC subsidiarity and proportionality pilot exercises?**

*We do not believe that the pilot exercises of COSAC should be continued if the Lisbon Treaty is ratified as the full procedure will be in place. We do see benefit in dedicating part of the biannual report to analysing the application of and for the exchange of best practice on Protocol 2 as national parliaments' experience of the procedure increases over the months and years.*

#### **5) Any other contribution**

*It is important that the working group on the implications of Protocol 2 consults the Commission, Council and European Parliament on the parts of the protocol that affect these institutions. It will be important that the Commission agrees to the role that it will take on and that the European Parliament and the Council are consulted about, for example, how legislative resolutions of the EP will be communicated to national parliaments (Article 4) and on the practicalities of how national parliaments should communicate a reasoned opinion to the institutions.*

*The participation of the European Parliament in the working group is not expected. However, the COSAC secretariat will need to be present at the working group as observers so that they are able to write the report of the working group as envisaged by the conclusions of the XXXIX COSAC.*

## House of Lords

As you are aware, the House of Lords has yet to finish its consideration of the Bill to enable the UK Government to ratify the Treaty. As a result the Select Committee on the European Union has not been able formally to discuss the impact of the Treaty on the House nor how the relevant provisions of the Treaty will be implemented in the House. Our contribution at this stage is based on staff analysis and discussions. Political discussions will have begun by the first working group meeting and our representative will be able to contribute further on the basis of these.

I take each of your questions in turn.

### **1. What information to exchange between national parliaments**

We consider that an indication of a subsidiarity concern should be shared at the earliest possible moment so as to allow the longest opportunity to take account of it in the analysis of a Proposal. In this regard information could be shared on the following:

- Forward looking analysis of the APS or AWLP highlighting certain proposals on the grounds of subsidiarity;
- Notification when an initial staff-level analysis has raised subsidiarity concerns;
- Notification when a committee has decided to launch an analysis into a specific Proposal for subsidiarity concerns;
- Updates on the progress and eventual conclusions of such an analysis;
- Notification when a plenary meeting will consider a proposal to submit a reasoned opinion;
- Notification when a chamber has submitted a reasoned opinion.

In addition to the notifications we consider that as much information on the legal and/or political reasons for subsidiarity concerns should be shared as a chamber is able to share, and as early as possible. Clearly where more information is shared at an earlier stage it will be easier for us to take this into account in our own analysis.

The working group should also discuss how to share information that relates to scrutiny of policy rather than subsidiarity.

### **2. Means for sharing the information**

Our view is that the mechanisms for sharing information should be based on those which exist already. The EU Committee's report on the Lisbon Treaty was keen to stress that the importance of the subsidiarity controls should not be overestimated by comparison with the scrutiny of policy which takes place already and will continue. So any changes to these mechanisms should be cost effective and should not seek to impose a disproportionate burden.

Our thinking with regard to technological resources is as follows:

- IPEX Website - this is a useful tool for staff in national capitals. With regard to subsidiarity, IPEX should be able to :
  - (i) alert staff where other national parliaments are actively investigating a subsidiarity issue ;
  - (ii) alert staff where other national parliaments have sent a reasoned opinion ;
  - (iii) provide the text of the reasoned opinion, where necessary together with an explanatory statement, with, where appropriate and possible, translation into one or more of the more commonly understood languages ;
  - (iv) provide the contact details of the relevant, competent official;
  - (v) count the total number of reasoned opinions submitted for each Proposal ; and
  - (vi) provide adequate search facilities covering both current and past Proposals.

IPEX should continue to provide information on policy scrutiny as well.

- COSAC Website - there may be a role for the COSAC secretariat in providing a brief and objective summary of the reasoned opinions submitted by national parliaments on each Proposal. This should be available online.

Our thinking with regard to staff-level engagement is as follows:

- Representatives in Brussels - should do most of the day-to-day work of sharing information between parliaments. We envisage :
  - (i) a separate agenda item at a weekly meeting of Brussels-based staff under which such information can be shared ;
  - (ii) setting up an email distribution list through which subsidiarity information can be shared before the face-to-face contact under (i) above ; and
  - (iii) extending the amount of policy scrutiny information shared.
- Liaison Officers in national capitals - should continue in their current role. There is no need for their detailed involvement in sharing information on subsidiarity scrutiny.

Our thinking with regard to member-level engagement is as follows:

- COSAC meetings - the current frequency and format of meetings has enabled discussion of subsidiarity points. We see no compelling need for COSAC to meet more frequently or to seek to focus exclusively on subsidiarity.
- Ad hoc meetings - should not absolutely be ruled out at this stage, but care must be taken to ensure good use of public money and members' and staff time. The annual round of interparliamentary cooperation meetings is already comprehensive and demanding.

- Bilateral contact - members can currently hold bilateral discussions either in the margins of a COSAC or other joint meeting between national parliaments, or over the telephone. In the majority of subsidiarity cases we envisage that a telephone call or e-mail from a member to a colleague in another national parliament will be both sufficient and cost efficient.

### 3. The role of the European Commission

The Treaty is broadly clear on the role of the Commission in this area. However there are (i) a number of questions which we consider the Commission should answer formally; and (ii) a number of practicalities which are not spelt out fully in the Treaty,. We suggest that the working group writes to the Commission with these. The working group might also consider inviting representatives of the Commission to attend one of its meetings. The questions we suggest are:

- Which documents does the Commission consider to be subject to the subsidiarity procedures? How will such documents be identified, for example by a note in the heading?
- How will the Commission forward these documents to national parliaments?
- How will the Commission communicate when all the language versions have been sent out and the 8-week period begins?
- How will the Commission calculate and note the date of expiry of the 8 week period? And at what time on that date will the deadline fall?
- Will the Commission send translations when available, or send all translations only when the last one is available?
- How do the Commission want to receive a reasoned opinion? Will receipt be acknowledged?

In addition we would like to put the following to the Commission:

- Reasoned opinions: all that is required to meet the requirement of a reasoned opinion is a coherent statement of reasons supporting the opinion that the principle of subsidiarity has not been complied with. It is for each national parliament to interpret this as they see fit.
- Reasoned opinions on a Proposal do not have to give similar reasons or reference the same article to count together towards the threshold<sup>2</sup>.
- The way in which the Commission counts reasoned opinions must be transparent and must be publicly available.
- Given that the 8 weeks will run regardless of parliamentary recesses, it would be extremely helpful if the Commission could provide a forecast of the proposals it anticipates publishing particularly during periods when many parliaments are in recess. For example the Commission would announce in early June what it expects to publish over July, August and September.

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(2) We base the first two bullet points on the European Court's case law on the Treaty requirements for a statement of reasons in legislation and on the content of Reasoned Opinions made by the Commission in the Infraction procedure



We would also suggest that a meeting of the working group with representatives from the European Parliament and other relevant EU bodies would be useful. Such a meeting would allow the extent to which these bodies wish to be kept informed to be explored.

#### **4. COSAC pilot checks**

We note that COSAC has committed only to conduct pilot checks until the end of this year. It is a political decision whether to continue beyond this. Personally, I consider that for parliaments such as this one which conduct document-based scrutiny, the pilot checks will have served their purpose once the Treaty comes into force. However they may have continuing importance for chambers which do not examine every document as a matter of routine.

The working group should discuss the practicalities of a similar mechanism to compare the procedures of the national parliaments with regard to scrutiny of the policy aspects of Proposals for European legislation. The desirability of such a comparison could be discussed by COSAC.

#### **5. Others**

Nothing at this stage.

## SLOVAQUIE

### **Narodna Rada**

*1) Which informations would it be necessary to exchange between national parliaments in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)*

The Slovak Parliament is of the opinion that national parliaments are primarily responsible for the scrutiny of their own Governments, but at the same time a coordinated exchange of information among national parliaments on their application of the Protocole 2 of the Lisbon Treaty shall be guaranteed. In order to come to an agreement on what information is necessary to exchange a deep discussion among national parliaments on a common understanding of the provisions of the Protocole 2 and its application is necessary. This necessity was visible during the meeting of national parliaments' representatives opening a discussion about positive and negative reasoned opinions as well as not making a clear distinction between the application of the Lisbon Treaty provisions and the so called Barrso's initiative.

On the other hand the Slovak Parliament would appreciate if the work of the Working Group on Lisbon Treaty and National Parliaments (WGLT) can at the same time contribute to a higher coordination of the usage of the so called Barrso's initiative.

In order to coordinate the application of the Lisbon Treaty provisions on National Parliaments, we see it necessary to find mechanisms for an immediate exchange of information in case a chamber/parliament scrutinizing a received proposal finds a breach of the principle of subsidiarity. Of course exchange of the issued reasoned opinions is vital as well as their translation at least into English and if possible also to French.

*2) By which means these informations should be exchanged : by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?*

– publication of all reasoned opinions issued by a chamber/parliament on IPEX

– a special IPEX symbol or a system of symbols in order to make the coordination among chambers/parliaments possible shall be discussed by the WGLT

– chambers/parliaments shall be able to provide translation of their reasoned opinions (or at least the main findings of them) into English and if possible also French and published it on IPEX together with the original text of the reasoned opinion

– a direct link to IPEX collection of reasoned opinions shall be made on COSAC website - the concrete solution shall be discussed by the WGLT (simple link to IPEX, link to the dossier of each legislative proposal...), since there are many technical possibilities the implementation of which depends on the concrete need of national parliaments to be shared on the COSAC website

– better coordination of the national parliaments' representatives in Brussels shall be discussed, while their regular meetings can provide a human complementation to the electronic coordination provided by IPEX. It might be of value to agree on the timing and structure of such meetings, which should be, according to our opinion, separated from the usual Monday morning meetings of the permanent representatives.

In the same time the Slovak Parliament proposes to avoid any kind of over-coordination at this moment, but rather leave a space to tune the mechanism once the Lisbon Treaty (or any further treaty providing national parliaments with the rights defined in today's Lisbon Treaty) is in use.

*3) How do you consider the role of the European Commission for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality?*

In order to guarantee a wide application of the Lisbon Treaty provisions on national parliaments a good and efficient co-operation and exchange of information with the European Commissions is necessary. That is why we consider it necessary to be informed by the Commission on:

– the transmission of the final language version and the exact date of expiry of the eight weeks period for each transmitted proposal

– its answer to the reasoned opinions received from chambers/parliaments (if not originally in English or French, including a translation into these languages), or when appropriate the text of its reasoned opinion on national parliaments' reasoned opinions transmitted to the Union legislator

– the closure of the eight weeks period for a specific proposal and the information on how many reasoned opinions have been received from national parliaments by the Commission

National parliaments shall also be able to receive clear information on in what way the Commission intends to count the received reasoned opinions in order to check, whether a necessary threshold mentioned in article 7 (yellow or orange card) has been reached, respectively whether it wishes to count the reasoned opinions on a proposal's non compliance with the principle of subsidiarity in a cumulative way, or whether its intention is to base the counting on the concrete arguments respected chambers/parliaments are using in their reasoned opinions. From this perspective a clear explanation of the Commission's understanding of the term "shared reasons" in the Article 7, point 3 (a) of the Protocol (No 2) would be also appreciated in order to reach a higher efficiency in the application of the Treaty by national parliaments.

*4) What are your suggestions to improve the « pilot exercises » of COSAC in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?*

We are of the opinion that more pilot exercises could be done before the Lisbon Treaty enters into force. They would motivate national parliaments to approach more actively to the subsidiarity issues. The COSAC Secretariat should publish continuous information about the results of the scrutiny as sent by particular parliamentary chambers in the course of the scrutiny period.

*5) Any other contribution would be welcomed.*

The Slovak parliament is also of the opinion, that the WGLT shall try to see the co-operation among national parliaments within the context of the Lisbon Treaty in a more wider way as defined by this questionnaire as well as to see the links between the provisions on national

parliaments defined by the Lisbon Treaty and the other possibilities of influencing the EU policy formation by national parliaments, which are given by the so called Barroso's initiative.

This questionnaire is focused on the provisions on national parliaments given by the Protocol 2 of the Lisbon Treaty and mainly on the subsidiarity check principle. We would support the inclusion of the other competencies of national parliaments provided by the Treaty into the discussion of the WGLT, such as the role of national parliaments within the framework of the area of freedom, security and justice, political monitoring of Europol and the evaluation of Eurojust, as well as in the revision procedures of the Treaty, monitoring the EU proposals on family law, with the veto possibility and the right to be notified in case of decisions on enlargement. We would also include into the discussion other ways of co-operation between national parliaments and the EU institutions, defined in the Lisbon Treaty, as is the interparliamentary co-operation with the European parliament, as well as the right to be consulted by the Commission on different policy areas, as stated in the Protocol 2, article 2 "the Commission shall consult widely before proposing a legislative act" since we are of the opinion, that national parliaments must be considered as part of this wide consultations. Because of these reasons, we consider it vital to invite, when appropriate representatives of the EP and the Commission to participate in the discussions of the WGLT.

## SLOVÉNIE

### ***Državni zbor and Državni svet***

In order to follow the conclusions of the XXXIX COSAC of Brdo pri Kranju, under Slovenian Presidency, which in its paragraph 1.6 : *« calls on the incoming French Presidency to make a check list of the national parliaments' ideas, that could lead to better cooperation in the application of Protocol 2 on the principles of subsidiarity and proportionality »* **we ask you to give us, for Monday 16th June at last, the ideas of your national parliament on this subject.**

More specifically, we would be interested to receive contributions on the following questions:

**1) Which information would it be necessary to exchange between national parliaments** in order to apply Protocol 2 on the principles of subsidiarity and proportionality: « informal » informations on texts which could be under scrutiny or are under scrutiny, « formal » informations on reasoned opinions already adopted? A simple notification of reasoned opinions or the transmission of the all text (with or without translation?)

National parliaments might want to share information on texts which could be under scrutiny or are under scrutiny through the IPEX website. Should it be bound by sending only already adopted reasoned opinions, the national parliaments would have lost much of the valuable time out of 8-week deadline.

In the case of scrutinizing documents through the IPEX website all national parliaments should put more effort into better and more consistent use of the data base.

Until a more efficient use of this database is set, the secretary of the national parliament undertaking the scrutiny activity informally informs the secretariats of other national parliaments - the same procedure should apply to reasoned opinions. In this respect they should state their major findings with emphasis on problem areas.

**2) By which means these informations should be exchanged:** by computer means (in addition to website of IPEX, website of COSAC, and so on), by administrative meetings or exchanges of mails between permanent representatives in Brussels or liaison officers in national parliaments, by ordinary meetings of COSAC or by « ad hoc » meetings of national parliamentarians ?

In order to make an additional step further, it is of crucial importance to use the existing levers acceptable by most national parliaments. Being that such preferences have been stated in the 9.th Biannual Report, it would be better to enhance the work of IPEX: form an additional function on the IPEX web site and arrange the work in national parliaments' secretariats accordingly.

Again, until a more efficient use of this database is set the secretariats of the national parliaments should establish their cooperation preventing higher number of intermediaries -

often not directly involved in the scrutiny procedure - cause the delay in information transmission.

3) How do you **consider the role of the European Commission** for the information of national parliaments on the modalities of application of Protocol 2 on the principles of subsidiarity and proportionality ?

The work of the European Commission has been satisfactory. Nevertheless it should be encouraged to improve its work in line with points 2.1 to 2.5. of the Contribution adopted at XXXIX. COSAC.

4) What are your **suggestions to improve the « pilot exercises » of COSAC** in the view of the application of Protocol 2 on the principles of subsidiarity and proportionality?

A consistent use of under point 1 described procedure along with national parliaments committing to monitor the novelties in the IPEX base along with thorough supervision of all documents sent by the European Commission should contribute to a more efficient scrutiny procedure and therefore to "better functioning of the Union" as in this way national parliaments too would leave its mark on the way the Union regards the interests of European citizens.

The national parliaments should be encouraged for further implementations of efficient mechanisms from the above mentioned Protocol.

However, the national parliaments themselves should introduce new working methods in order to implement the new provisions accordingly, where they haven't been adopted yet. It would be recommended that the working bodies responsible are better involved in the scrutiny procedure.

5) Any other contribution would be welcomed.

# SUÈDE

## *Riksdagen*

### **General:**

The Swedish Parliament has not yet decided upon the modalities for its own work with the “Subsidiarity Check” in accordance with protocol 2. Such decisions are expected towards the end of this year. At present, our answers therefore have to be of a **preliminary and unbinding** character. It should be mentioned, however, that no changes of Swedish law or internal regulations seem to be formally necessary for implementing the provisions of the Lisbon Treaty relating to national parliaments.

In our view, the main task of national parliaments when it comes to EU matters is to exercise political control over the actions of their respective governments in the European Council, the Council of Ministers, a.s.o. The Lisbon Treaty does not change this.

It is therefore important that parliaments scrutinize all aspects of proposals for new EU legislation – political content as well as compatibility with the Treaties. The principle of subsidiarity (and proportionality) is but one of those aspects, and mainly related to the issue of compatibility. Furthermore, the opportunity accorded by protocol 2 to national parliaments in this regard is, at least formally, limited to alerting the EU institutions to a possible breach of the principle of subsidiarity, i.e. national parliaments have no direct role in the decision-making process. Therefore, the importance of the “subsidiarity check” as a part of overall scrutiny should not be exaggerated.

In addition, the “subsidiarity check” of the Lisbon Treaty and the relevant Protocols must be regarded as an opportunity for each national parliament to express its own opinion, rather than a way of imposing a duty upon them, or requesting a co-ordinated and collective opinion.

Against this back-ground the Swedish Parliament, while being generally in favour of developing inter-parliamentary co-operation within the EU, would take the view that for the implementation of protocol 2 present modes of co-operation and exchange of information could be adapted, and, consequently, that the establishment of any new institutions, structures or networks related specifically to protocol 2 should be avoided.

### **1. Which information?**

None of the types of information mentioned are necessary in order to perform a subsidiarity check. However, all of them might be useful: Information about which proposals could be scrutinized, are, will be, or have been, under scrutiny. Information on any conclusions drawn would also be helpful, in particular if a short summary in English could be provided. (The full text should be provided on request only.)

### **2. By which means?**

Our impression is that the IPEX website could normally be used for all types of information required. For the purpose of “user-friendliness”, and in order to avoid duplication, it would be important to have **one** website where all information concerning scrutiny of legislative proposals and other Commission documents (green papers, etc.) is assembled. In case any parliament/chamber considers it important to pass around any related information that can not

be put on the IPEX website, it could exceptionally be done using a mailing list of “Brussels or liaison officers”.

It seems natural that COSAC and/or ad hoc meetings will, from time to time, discuss experiences of the procedures for subsidiarity checks, including the exchange of information between parliaments, but we do not see any need for regular meetings (COSAC or other) at the political level to discuss individual cases – that would seem unpractical and time-consuming, in particular as such meetings could not forestall the position of the different parliaments.

### **3. Role of the European Commission**

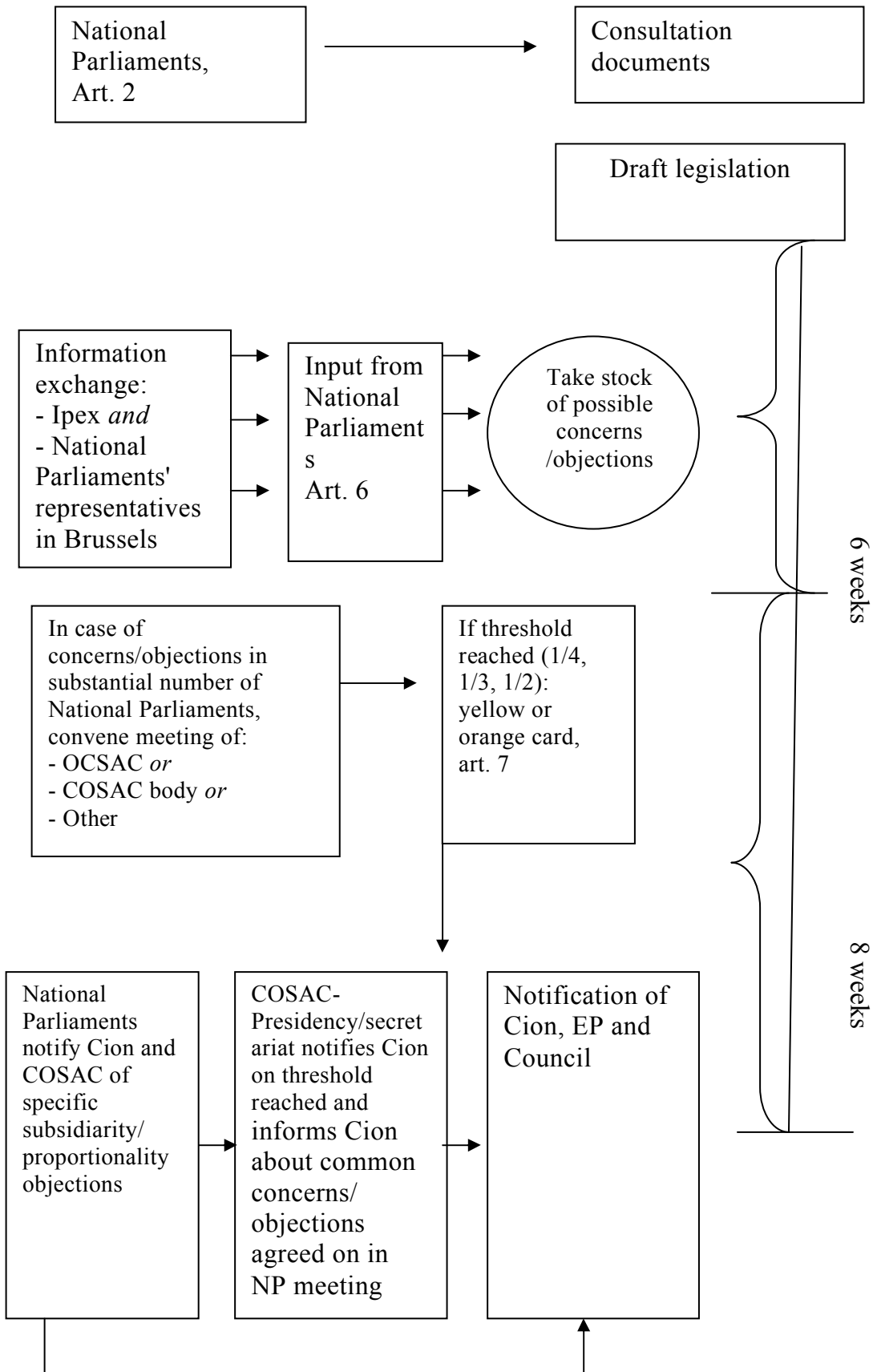
We generally support the relevant part (in particular p. 2.4.) of the Conclusions of the XXXIX COSAC. The Commission should undertake to inform National Parliaments when all language versions of a document that falls within the scope of protocol 2 have been submitted, and the 8-week period therefore has started. It should publish any reasoned opinions received, its responses to them, and any actions taken as a result (i.e. review or not).

### **4. Pilot exercises of COSAC**

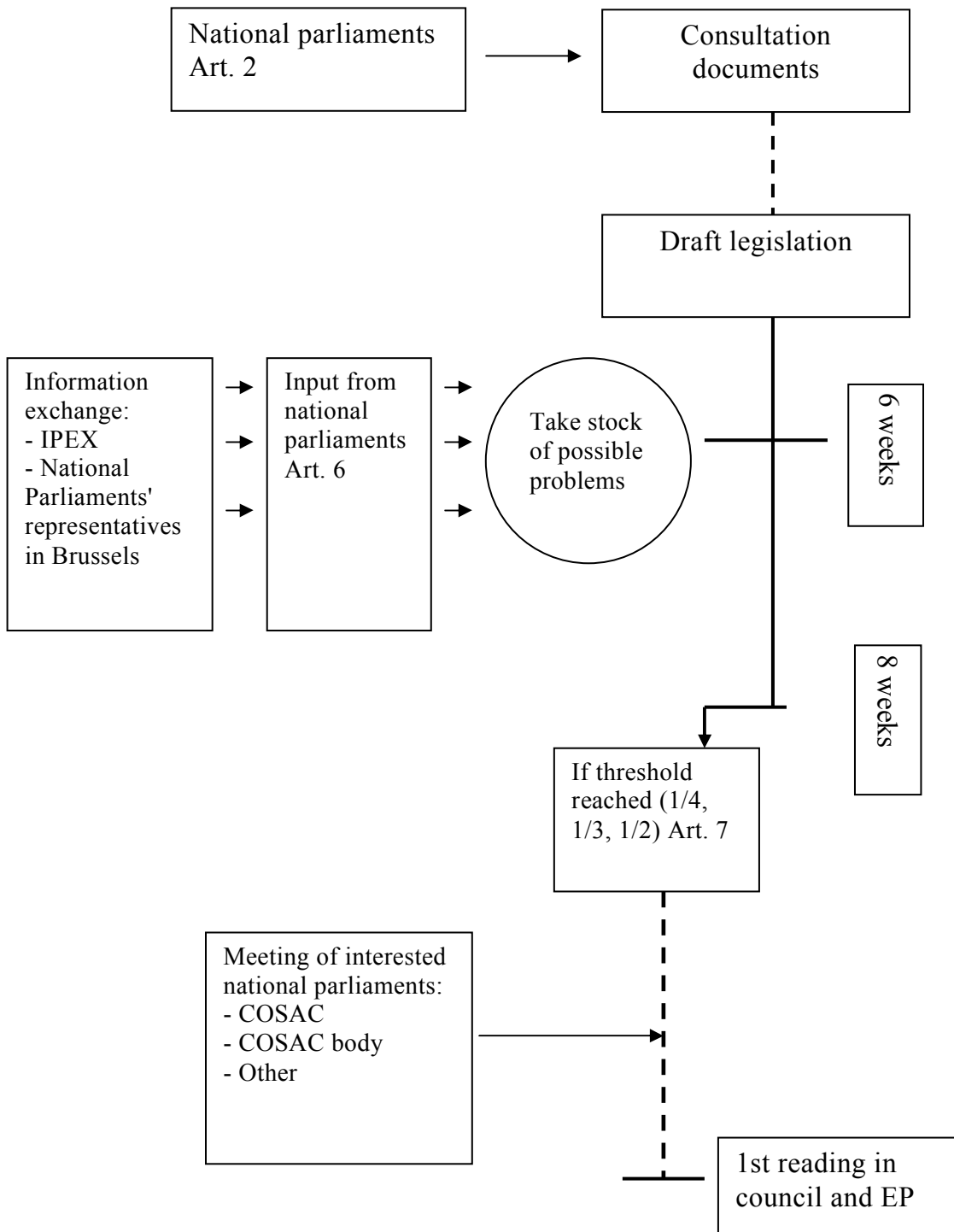
After entry into force of the Lisbon Treaty there should be no need for “pilot exercises”, as the routines of each parliament/chamber should be in place and subsidiarity checks part of everyday work, to the extent and in the forms decided by the individual parliament. As mentioned above, COSAC (or, more precisely, the “Conference” referred to in protocol 1, art. 10) might discuss, from time to time, experiences, best practices, and any ideas for new modalities related to the subsidiarity check.



## Protocol no. 2 to the Treaty of Lisbon: Proposal of the Dutch House of Representatives



## Protocol no 2 to the Treaty of Lisbon: Proposal of the Danish Parliament and the Belgian House of Representatives



## **Compte rendu de la réunion du 5 septembre 2008**

### **sur le Protocole n°2 du Traité de Lisbonne**

**M. Fernando FRUTUOSO DE MELO**, directeur chargé des relations interinstitutionnelles au sein du Secrétariat général de la Commission européenne, a répondu aux questions qui lui avaient été préalablement adressées par la Présidence du groupe de travail :

- **Quels documents la Commission considère-t-elle comme pouvant faire l'objet de la procédure de subsidiarité ? Comment ces documents seront-ils identifiés ?**

La Commission compte respecter strictement les règles énoncées dans les textes : elle continuera à envoyer tous les documents actuellement transmis au titre de l'initiative Barroso et prendra en compte les commentaires des différentes chambres.

- **Comment la Commission fera-t-elle parvenir ces documents aux parlements nationaux ?**

La Commission enverra ces documents exclusivement par voie électronique. Les supports papier prennent trop de temps et demandent une organisation trop lourde.

- **Comment la Commission fera-t-elle savoir quand toutes les versions linguistiques ont été envoyées et que le délai de 8 semaines commence à courir ? Comment la Commission va-t-elle calculer et notifier l'échéance du délai de huit semaines ?**

La Commission enverra une lettre officielle à chaque chambre pour l'informer que les documents ont été transmis à l'ensemble des Parlements nationaux. La période de 8 semaines courra à compter de cette transmission. Certaines chambres obtiendront en effet les documents plus tôt que d'autres, puisque chaque version sera transmise dès qu'elle sera prête. Pour cette raison la période de 8 semaines ne commencera à courir qu'à partir de l'envoi de la lettre de transmission.

- **La Commission enverra-t-elle les traductions au fur et à mesure ou en une seule fois ?**

Les traductions seront envoyées dès qu'elles seront disponibles, comme cela se fait actuellement avec le Parlement européen.

- **Comment la Commission souhaite-t-elle recevoir les avis motivés ? Comment en sera-t-il accusé réception ?**

La Commission souhaite recevoir les avis motivés par voie électronique. Dans le cas d'une procédure de carton jaune ou orange, une notification officielle sera envoyée pour confirmer la réception de l'avis.

- **Les avis motivés sur un texte ayant des motifs différents ou portant sur des articles différents seront-ils pris en compte ensemble pour déterminer si le seuil mentionné à l'article 7 du protocole 2 est atteint ?**

La Commission privilégiera une démarche constructive et qualitative, plutôt qu'une approche strictement quantitative. En effet, puisque l'objectif de cette procédure est une amélioration de la qualité de la législation, la Commission prendra en compte tout avis pertinent, même s'il n'est émis que par une seule chambre. Bien sûr, si, sur un sujet en particulier, le seuil est franchi, la Commission rédigera une justification formelle de son choix. Mais elle souhaite se concentrer sur la substance des propositions faites par les Parlements nationaux, et non sur l'aspect formel et quantitatif de la procédure. Les différences de motivation ou les différences dans les articles visés ne seront donc pas un obstacle à la prise en compte des avis motivés requis pour atteindre le seuil.

- **La Commission enverra-t-elle les avis motivés formulés par les parlements nationaux et ses réponses à l'ensemble des parlements nationaux ? A quel moment (durant la période de 8 semaines) ? Dans quelles langues ?**

Si le seuil n'est pas atteint, la réponse sera envoyée dans la langue de la chambre qui est à l'origine de l'avis, ainsi que dans les trois langues de travail de la Commission (l'Anglais, le Français et l'Allemand). Tous les avis et les réponses seront consultables sur le site "Europa" à la fin de la période de 8 semaines et le cas échéant également sur IPEX. Si le seuil est atteint, l'avis et sa réponse seront traduits dans toutes les langues et communiqués au Conseil et au Parlement européen à l'issue de la période de 8 semaines.

- **La Commission fournira-t-elle des informations sur le contenu et la date de publication de ses futurs textes et des documents de consultation devant être publiés ? Comment compte-t-elle prendre en compte les périodes d'intersession estivale des parlements nationaux ?**

La Commission continuera à envoyer toutes les informations pertinentes comme elle le fait déjà. En ce qui concerne les périodes d'intersession, la Commission n'est pas en mesure de toutes les prendre en compte. En effet, comme elles n'ont pas lieu simultanément dans tous les Parlements, cela créerait une période d'inactivité excessive. La Commission compte donc faire la même chose qu'avec le Parlement européen : elle s'abstiendra d'envoyer des propositions durant le mois d'août.

- **La Commission informera-t-elle les parlements nationaux des effets de leurs avis motivés sur le contenu d'un projet de texte législatif ?**

Il n'y aura pas de notification formelle, car les avis des Parlements seront pleinement intégrés dans le processus de décision. Par conséquent, il serait trop compliqué d'identifier précisément le résultat de chaque contribution.

- **Comment la Commission transmettra-t-elle au législateur européen (Conseil, Parlement européen) l'information relative aux avis motivés ?**

Si le seuil est atteint, une lettre officielle comportant l'avis de la Commission sera envoyée au Conseil et au Parlement européen. La lettre sera également transmise aux parlements nationaux.

**M. FRUTUOSO DE MELO** a ensuite répondu aux questions posées par les Représentants des parlements nationaux.

**M. Ed LOCK** (Chambre des Lords) : Les documents relatifs au budget de l'UE seront-ils également transmis aux parlements nationaux ?

**M. FRUTUOSO DE MELO** : Non. Le budget n'est pas une matière législative et la subsidiarité ne s'y applique pas.

**M. Peter LARSEN** (Parlement danois) : La Commission transférera-t-elle les documents sur le réseau IPEX ?

**M. FRUTUOSO DE MELO** : Oui, la Commission essaiera de développer autant que possible sa coopération avec IPEX.

**M. Peter LARSEN** (Parlement danois) : Les documents seront-ils envoyés immédiatement aux parlements nationaux ou bien seulement lorsque toutes les versions seront prêtes ?

**M. FRUTUOSO DE MELO** : Ils seront envoyés dès que la traduction en sera achevée.

**M. Dencho GEORGIEV** (Assemblée de Bulgarie) et **M. Peter LARSEN** (Parlement danois) : Le mois d'août sera-t-il pris en compte dans le calcul de la période des 8 semaines si un texte est envoyé en Juillet ?

**M. FRUTUOSO DE MELO** : Non. Ce mois là ne sera pas pris en compte dans le calcul du délai de 8 semaines. Par ailleurs, aucune nouvelle proposition ne sera envoyée sauf exception.

**Mme Vesna POPOVIC** (Bundestag) : La Commission pourrait-elle envoyer aux représentants permanents des parlements nationaux l'agenda de 12 semaines que certains reçoivent de manière informelle ?

**M. FRUTUOSO DE MELO** : Non. Cet agenda est un document de travail. Par conséquent, puisqu'il est souvent modifié, nous ne pourrions pas le communiquer officiellement sans créer de nombreux problèmes. Par ailleurs, le secrétariat de la COSAC le reçoit de manière informelle et il est donc possible de le consulter par ce biais. Cependant la Commission fera son possible pour informer de manière régulière les représentants permanents des parlements nationaux de ses projets pour les deux ou trois mois à venir.

**M. Sebastiano FIUME GARELLI** (Chambre italienne) : En quelles langues les réponses de la Commission seront elles formulées ?

**M. FRUTUOSO DE MELO** : Si le seuil est atteint, les réponses seront traduites dans chacune des 23 langues de l'Union. Dans le cas contraire, la réponse sera traduite dans la langue de la chambre qui a émis l'avis motivé, ainsi qu'en Français, Anglais et Allemand.

**M. Hugo d'HOLLANDER** (parlement belge) : Est-il normal que la Commission soit seule à décider si le seuil est atteint ou non ? Ne serait-il pas pertinent de créer un mécanisme de vérification ? Pourrait on envisager que le secrétariat de la COSAC prenne en charge cette tâche ?

**M. FRUTUOSO DE MELO** : Ce protocole ne doit pas être perçu comme un moyen pour les Parlements nationaux de manifester leur défiance à l'égard de la Commission, mais comme une procédure de coopération avec les institutions européennes. Par conséquent, la Commission ne juge pas nécessaire de créer un tel mécanisme de contrôle, parce qu'elle ne souhaite pas concentrer l'attention sur son aspect quantitatif. Cependant, comme les avis des Parlements nationaux seront tous publiés sur Internet, chacun sera en mesure de vérifier si le seuil a été atteint ou non. De toute manière il n'est pas dans l'intérêt de la Commission de négliger l'opposition des Parlements des Etats membres.

**M. Jan Nico VAN OVERBEEKE** (Parlement néerlandais) : Comment le Conseil et le Parlement européen intégreront-ils ce nouveau système dans leur procédure de prise de décision ? Vont-ils se contenter d'attendre formellement les avis des parlements nationaux tout en poursuivant leurs discussions ? Comment garantir que ces avis seront vraiment pris en considération ?

**M. FRUTUOSO DE MELO** : La Commission n'est pas en mesure de répondre officiellement à une question engageant les autres institutions. Ceci dit, d'un point de vue pratique, le Conseil comme le Parlement européen ont besoin la plupart du temps d'au moins huit semaines pour prendre une décision : de ce fait, les avis des parlements nationaux seront pris en compte dans leurs discussions.

**M. Peter LARSEN** (Parlement danois) : Serait-il possible de centraliser les informations recueillies par la Commission au cours de ses consultations en vue d'élaborer ses textes, et de les communiquer aux parlements nationaux ?

**M. FRUTUOSO DE MELO** : Le nombre de services organisant des consultations est si important qu'une telle base de donnée serait très compliquée à créer, très lourde à gérer et peu efficace. Cependant la Commission est disposée à accepter les invitations des représentants des parlements nationaux pour les informer des consultations en cours ou à venir.

**M. Peter LARSEN** : Dans ce cas pourrait-on obtenir une liste des documents utilisés par chaque service ?

**M. FRUTUOSO DE MELO** : Malheureusement je ne sais si de telles listes existent. La meilleure chose à faire est de contacter directement la personne concernée à la Commission.

**M. Hugo d'HOLLANDER** (parlement belge) : Comment la Commission interprétera-t-elle la différence entre subsidiarité et proportionnalité pour la mise en œuvre de la nouvelle procédure ?

**M. FRUTUOSO DE MELO** : Cette question est encore très controversée : les définitions ne sont pas encore clairement établies. La Commission privilégiera une analyse politique de ces notions. Si une majorité de parlements nationaux considère qu'un texte contrevient au principe de subsidiarité ou de proportionnalité, la Commission le révisera. Elle agira ainsi

même dans les cas où, en toute rigueur, le principe de subsidiarité ne devrait pas jouer. En effet, l'objectif de la Commission est, dans la mesure du possible, d'obtenir un consensus.

**Mme Vesna POPOVIC** (Bundestag) : Comment vont pouvoir coexister l'initiative Barroso et la nouvelle procédure ? La Commission pourrait elle informer les représentants des parlements nationaux des consultations à venir et en cours, comme elle le fait avec les Représentations permanentes de chaque Etat membre ?

**M. FRUTUOSO DE MELO** : L'initiative Barroso continuera à fonctionner : il n'y a pas de contradiction entre les deux procédures. Nous ne pouvons envoyer directement aux représentants des Parlements les documents adressés aux Représentations permanentes, car ils sont destinés exclusivement aux exécutifs.

**M. Sebastiano FIUME GARELLI** (Chambre italienne) : Comment seront discutées les questions relatives à la JAI, à Europol et Eurojust ?

**M. FRUTUOSO DE MELO** : Ce sujet doit être décidé par le Conseil. Mais il ne sera pas abordé avant que la ratification du traité de Lisbonne ne soit complète. Ce point n'est pas une priorité.

**M. Dencho GEORGIEV** (Assemblée bulgare) : Ne pourrait-on pas envisager la mise en œuvre des nouvelles procédures avant que la ratification formelle ne soit achevée ?

**M. FRUTUOSO DE MELO** : Nous ne sommes pas en faveur d'une application anticipée du traité de Lisbonne. Nous devons respecter la décision des Etats membres.

**Mme. Daniela FILIPESCU** (Parlement roumain) : Serait-il possible d'obtenir directement les documents adressés aux gouvernements par le biais des représentations permanentes ?

**M. FRUTUOSO DE MELO** : La Commission n'est pas responsable des problèmes de communication et de séparation des pouvoirs dans les Etats membres. Comme il a déjà été dit, la transmission de ces documents pose des problèmes techniques et diplomatiques.

**Mme. Daniela FILIPESCU** : La Commission a remis récemment un rapport sur la Roumanie, dont certains passages mettaient directement en cause le Parlement roumain. Or la presse en a pris connaissance avant le Parlement roumain lui même.

**M. FRUTUOSO DE MELO** : Ce cas est très spécifique: ce document devait être confidentiel et il n'est pas normal que la presse y ait eu accès ; il s'agit d'une fuite.

**Mme. Vesna POPOVIC** (Bundestag) : Lorsque la Commission entend les parties prenantes dans le cadre de ses consultations, pourrait-elle inclure les parlements dans ce processus ?

**M. FRUTUOSO DE MELO** : Je souhaiterais avoir des exemples concrets. Nous n'allons pas inviter systématiquement les parlements : tout dépend de la situation et cela n'aurait aucun sens de consulter tout le monde.

## **Account of the meeting of the 5 September 2008 on the Protocol No.2 of the Treaty of Lisbon**

**Mr. Fernando FRUTUOSO DE MELO**, the director in charge of interinstitutional relations in the General Secretary of the European Commission answered the questions asked by the Presidency of the working group. He insisted upon the fact that his declarations were only preliminary and informal reflexions, since the College has not taken position on the subject yet.

### **Which documents does the Commission consider to be subjected to the subsidiarity procedure? How will such documents be identified?**

The Commission intends to respect strictly the specifications of the texts: only legislative propositions concerning shared competences can be subjected to a control of subsidiarity. However the Commission will continue to send all the documents currently transmitted in accordance with the Barroso initiative and it will take into account the comments of the different Chambers for the sake of the political dialogue.

### **How will the Commission forward these documents to National Parliaments?**

The Commission will exclusively forward these documents by e-mail, since non-electronic devices are slower and more complicated.

### **How will the Commission communicate when all the language versions have been sent out and the 8-week period begins? How will the Commission calculate and note the date of expiry of the 8 week period?**

The Commission will send an official letter to every Chamber to inform that the documents have been sent in every National Parliament in the requested languages. The 8-week period will begin from then. Some Chambers may obtain the documents sooner than others since every version will be transmitted as soon as it is complete, but the 8-week period will only start when the letter of transmission is sent.

### **Will the Commission send translations when available, or send all translations only when the last one is available?**

The translations will be transmitted as soon as they are available, as it is presently done with the European Parliament.



**How do the Commission want to receive a reasoned opinion? How will receipt be acknowledged?**

The Commission wishes to receive the reasoned opinions through electronic transmissions. In the case of a yellow or orange card procedure, an official notification will be sent to confirm that the opinion has been received.

**Will reasoned opinions on a proposal that do not give similar reasons or reference to the same article be counted together towards the thresholds in article 7, protocol 2?**

The Commission will favour a constructive and qualitative approach, rather than a strictly quantitative one. Since the goal of the whole procedure is eventually to have a better legislation, the Commission will take into account every relevant notice, even if it is only issued by a single Chamber. Of course, if, on a specific matter, the threshold is reached, a formal justification of the choice of the Commission will be made. But the Commission would like to focus on the substance of the propositions made by the National Parliaments, rather on the formal and quantitative aspect of the process. Thereby, reasoned opinions may be taken into account together even if they do not refer to the same articles.

**Will the Commission send the reasoned opinions from national Parliaments and its answers to these to all national Parliaments? At what time (during the 8 week-period or at the end of it)? In which language?**

If the threshold is not reached, the reply will be made in the language of the Chamber that emitted the opinion as well as in the language of procedure that the services of the Commission will have used (English, French or German). All the opinions and their answers will be available for consultation on the Europa website at the end of the 8-week period, and maybe also on IPEX. If the threshold is reached, the Commission will have to communicate its decision to maintain, modify or withdraw its proposition to every National Parliament, to the European Parliament and to the Council. In the case of an orange card procedure, if the Commission maintains its position, it will submit a reasoned opinion to the European Parliament and to the Council, as well as all the reasoned opinions of the National Chambers. The decision of the Commission should be translated in every language.

**Will the Commission provide national parliaments with information on the content and the date of publication of new proposals and consultation papers which is going to be published? How will the Commission take into account the national Parliament's summer recess periods?**

The Commission intends to continue to send all the relevant information as she does presently. As for the recess periods, the Commission does not have the

possibility to take them into account. Indeed, since they don't take place simultaneously in all Chambers, it would induce an excessive period of inactivity. The Commission thus could consider doing the same as for the European Parliament. Besides, the College of Commissioners suspends its meetings during several weeks in the month of August so few propositions are made during this period.

**Will the Commission inform the national parliaments about the effects that the reasoned opinions have had on the text of a legislative proposal?**

There will be no formal notification since the opinions will have an impact only when they are fully integrated in the process of the decision. So the precise identification of the result of each contribution would be too complicated.

**How will the Commission forward the information on reasoned opinions to the EU legislator (Council and European Parliament)?**

If the threshold is reached, formal letters will be sent to the Council and the European Parliament, with the official position of the Commission. The letter will also be sent to the National Parliaments.

**Mr. FRUTUOSO DE MELO** then replied to the questions asked by the Permanent Representatives of the National Parliaments.

**Mr. Ed LOCK** (House of Lords): Will the documents related to the EU budget also be sent to National Parliaments?

**Mr. FRUTUOSO DE MELO:** No. The budget is not a shared competence, and the control of subsidiarity does not apply to it.

**Mr. Peter LARSEN** (Danish Parliament): Will the Commission transfer documents on the IPEX networks?

**Mr. FRUTUOSO DE MELO:** Yes, the Commission will try to develop the cooperation with IPEX as much as possible.

**Mr. LARSEN** (Danish Parliament): Will the documents be sent immediately to the National Parliaments or only when all the versions are ready?

**Mr. FRUTUOSO DE MELO:** They will be sent as soon as the translation is ready.

**M. Dencho GEORGIEV** (Bulgarian Assembly) and **Mr. Peter LARSEN** (Danish Parliament): will the month of August be taken into account in the 8-week period if a text is sent in July?

**MR. FRUTUOSO DE MELO:** August may not be taken into account in the 8-week period. Besides, the legislative activity is slower during this month.

**Mrs. Vesna POPOVIC** (Bundestag): Could the Commission consider sending to the Permanent Representatives the 12-week Agenda that some of them receive through informal means?

**Mr. FRUTUOSO DE MELO:** No. This agenda is a working document. Therefore, since it is frequently modified, an official communication would create numerous problems. However, the Commission will do its best to inform regularly the Representatives of the National Parliaments and the Secretariat of the COSAC about its projects for the two or three following months.

**Mr. Sebastiano FIUME GARELLI** (Italian Chamber): In what languages will the answers of the Commission be translated?

**Mr. FRUTUOSO DE MELO:** If the threshold is reached, the answers will be translated in all of the 23 languages of the European Union. If not, the answer will be translated in the language of the National Parliament that produced the opinion and in French, English or German, depending on the language of procedure used by the services of the Commission.

**Mr. Hugo D'HOLLANDER** (Belgian Chamber): Is it normal that only the Commission should decide if the threshold is reached or not? Wouldn't it be relevant to create a mechanism of checking? Could the COSAC Secretariat take on that task?

**Mr. FRUTUOSO DE MELO:** This Protocol should not be seen as a way to show mistrust towards the Commission, but as a procedure of cooperation between the EU institutions and the National Parliaments. The Commission does not find necessary to create this mechanism of control because it does not want to focus on this quantitative aspect. However since the opinions of the National Parliaments will be fully transparent, it will be easy for anyone to check if the threshold has been reached or not. And anyway it is not in the interest of the Commission to neglect the opposition of the Parliaments of the Member States.

**Mr. Jan Nico VAN OVERBEEKE** (Dutch Parliament): How are the Council and the European Parliament going to integrate this new system into their process of decision? Are they not going to discuss the texts and wait formally for the opinions of the National Parliaments without taking them into consideration?

**Mr. FRUTUOSO DE MELO:** The Commission can not answer officially to a question that involves the other institutions. However, from a practical point of view, the Council as well as the European Parliament need at least 8 weeks to make a decision, generally. So the opinions of the National Parliaments will be taken into account in their discussions.

**Mr. Peter LARSEN** (Danish Parliament): Would it be possible to centralize all the information gathered by the Commission during its consultations and communicate it to the National Parliaments?

**Mr. FRUTUOSO DE MELO:** Certain databases already exist but so many consultations are organized by so many different services of the Commission, that a unique and complete database would be complicated to create, very heavy, and inefficient. However, the Commission would accept invitations from the National Parliaments to keep them informed of the ongoing and coming consultations.

**Mr. Peter LARSEN** (Danish Parliament): Then could we have a list of the documents used by each service?

**Mr. FRUTUOSO DE MELO:** Unfortunately I don't know if such lists exist. The best thing to do is to get directly in touch with the person concerned.

**Mr. Hugo D'HOLLANDER** (Belgian Chamber): How is the Commission going to interpret the difference between subsidiarity and proportionality for the implementation of the new procedure?

**Mr. FRUTUOSO DE MELO:** The definitions of these notions are not fixed once and for all. The Commission will not focus on the formal aspect but make a political analysis of the situation. If a majority of the National Parliaments consider that a text is against the principle of subsidiarity or proportionality, the Commission will review it. It will do so even if the principle of subsidiarity, strictly speaking, should not work. Indeed, the goal is, so far as possible, to build a consensus.

**Mrs. Vesna POPOVIC** (Bundestag): How are the Barroso mechanism and the new procedure be used together? Would be possible that you inform us about the upcoming and current consultations, as you do with the Permanent Representation of each Member State?

**Mr. FRUTUOSO DE MELO:** The Barroso mechanism will go on: there is no contradiction between the two procedures. We cannot send you directly the documents sent to the Permanent Representations because they are exclusively intended for governments.

**Mr. M. Antonio ESPOSITO** (Italian Chamber): How are going to be discussed the topics related to Europol, Eurojust and the Justice and Home Affairs area?

**Mr. FRUTUOSO DE MELO:** This matter has to be discussed by the Council. But it won't be tackled until the ratification is complete. It is not a priority.

**Mr. Dencho GEORGIEV** (Bulgarian Assembly): Could not you consider implementing the new procedures before the formal ratification is complete?

**Mr. FRUTUOSO DE MELO:** We are not in favour of any early application of the Lisbon Treaty. We have to respect the decision of the Member States.

**Mrs. Daniela FILIPESCU** (Romanian Parliament): Would it be possible to obtain directly the documents sent to the governments through the Permanent Representations?

**Mr. FRUTUOSO DE MELO:** The Commission is not responsible for the problems of communication and of separation of powers in the Member States. As said before the transmission of these documents to the National Parliaments would cause technical and diplomatic issues.

**Mrs. Daniela FILIPESCU** (Romanian Parliament): The Commission recently delivered a report on Romania that referred several times to its Parliament. Yet the Press was acquainted with the text before the Parliament itself.

**Mr. FRUTUOSO DE MELO:** This is a very specific case. The document was supposed to be confidential. The press should not have had access to it. This is the result of a leak.

**Mrs. Vesna POPOVIC** (Bundestag): Whenever the Commission consults the stakeholders could it include the Parliaments in the process?

**Mr. FRUTUOSO DE MELO:** I would like to have concrete examples of such consultations. We are not going to invite systematically the Parliaments: it depends on the situation. They often concern matters that are within the competences of the governments.

**Groupe de travail des Représentants permanents  
des parlements nationaux de l'Union Européenne**

Strasbourg, le 23 octobre 2008

**Compte rendu du Groupe de Travail du 18 septembre 2008**

**Audition des services du Parlement Européen**

Remarque préliminaire :

Les services du Parlement européen ont demandé l'insertion de l'avertissement suivant : " Les points de vue exprimées sont strictement ceux des fonctionnaires du Parlement européen ayant participé à la réunion du groupe de travail du 18 septembre et ne peuvent en aucune circonstance être considérés comme reflétant la position officielle du Parlement Européen. Les informations fournies lors de la réunion n'étaient pas officielles et ne peuvent engager le Parlement Européen et ses services d'aucune façon."

**MM. Krzysztof Bernacki, chef de l'unité "Relations multilatérales" de la DG Présidence et Maximilian Schröder, administrateur au sein de cette même unité, ont tout d'abord dressé un bilan des travaux du PE concernant l'application du Protocole 2 du Traité de Lisbonne.**

Ils ont rappelé qu'un groupe de travail avait été formé au niveau administratif dès le mois de janvier 2008 pour élaborer de nouvelles procédures internes (réforme du règlement) en vue de la mise en œuvre du Traité de Lisbonne et de l'application du protocole 2 du Traité. L'interruption du processus de ratification du traité suite aux résultats du référendum irlandais a conduit à la suspension des travaux en juin 2008.

Il a été envisagé que les avis motivés, une fois reçus au Parlement européen par les services compétents, soient transmis aux commissions compétentes : la commission en charge de donner un avis sur le bien-fondé de l'invocation du principe de subsidiarité, et la commission compétente au fond, qui peut donner pour sa part un avis sur le contenu.

Ils ont souligné la volonté du Parlement européen de promouvoir le site IPEX comme outil de transmission de ces documents. En effet, la Commission européenne a annoncé mettre en place un site internet de partage d'information,

mais il conviendrait que les Parlements nationaux mettent leurs avis immédiatement en ligne sur le site IPEX, avant que ceux-ci ne soient disponibles sur celui de la Commission. Il serait en outre souhaitable d'obtenir l'accord de la Commission pour qu'elle diffuse également ses réponses sur IPEX. Quelques caractéristiques du site peuvent encore être modifiées (telles que la fonction de recherche avancée ou celle de notification automatique, et l'évolution du projet XML), mais le site est d'ores et déjà performant sur ce point. Le caractère multilingue doit encore en être amélioré. A ce sujet, il serait appréciable que les parlements rédigent au moins un résumé de leur avis motivé en français ou en anglais.

**MM. Bernacki et Schroeder ont ensuite répondu aux questions des Représentants Permanents des Parlements nationaux.**

**Comment le Parlement Européen va-t-il traiter les avis motivés des Parlements nationaux qui auront été envoyés au Président du Parlement européen, à la Commission et au Conseil, comme prévu dans l'article 6 du protocole n°2 ?**

Nous ne pouvons donner de réponse officielle puisque les travaux du groupe de travail ont été suspendus. Mais le Parlement européen respectera évidemment la période des huit semaines avant de prendre position. On pourrait envisager que les avis motivés soient transmis à la commission concernée au fond comme à celle en charge de la subsidiarité.

Dans le cas d'une procédure de carton jaune, le PE pourra inviter l'auteur de la proposition législative à expliquer sa position. Dans le cas d'un carton orange, le Parlement pourra mettre fin à l'examen de la proposition à la majorité simple des suffrages exprimés.

**Le Parlement européen doit attendre huit semaines avant de terminer ses premières lectures des propositions législatives mais commencera-t-il la procédure législative (désignation de rapporteurs, traitement des propositions en commission, rédaction de projets de rapports etc.) avant les huit semaines ? Le PE peut-il conclure un accord de première lecture avec le Conseil et la Commission avant la fin des huit semaines ?**

Le Parlement européen a normalement besoin de plus de huit semaines pour conclure sa première lecture. Le code de conduite en matière de codécision, récemment adopté par la Conférence des Présidents sur proposition du Groupe de travail Réforme, devrait contribuer à renforcer la transparence de la procédure de première lecture.

**Comment le PE traitera-t-il les "cartons oranges" lorsque la Commission décide de maintenir sa proposition selon les termes de l'article 7 paragraphe 3 ?**

Ce point reste à examiner, le groupe de travail pour l'adaptation du règlement du PE ayant suspendu ses travaux.

**Laquelle des deux commissions sera à l'origine du rapport ?**

Même réponse.

**Comment seront pris en compte les avis simples dans le cadre de l'initiative Barroso?**

Ces avis simples continueront à être diffusés, mais ils n'entrent pas dans le champ d'application du protocole 2.

**Quelle approche avez-vous de l'initiative Barroso ? Quels en sont les résultats jusqu'à présent ?**

L'initiative Barroso est une initiative bienvenue de la part de la Commission européenne ; elle est informelle et ne crée pas d'obligation pour le Parlement européen. Une fois reçue, nous en informons les commissions du Parlement, mais c'est au titre d'une initiative politique qui n'a pas de base juridique.

Son application est encore très récente, et aucune évaluation d'ensemble n'a encore été faite à ce sujet. Nous avons toutefois des retours positifs de la part des commissions.

**Comment le PE va-t-il traiter les avis motivés pendant la période de huit semaines, sans savoir si les seuils nécessaires au déclenchement du carton orange ou jaune seront atteints ?**

C'est une question qui sera résolue de manière pragmatique une fois que le traité sera entré en vigueur. Les commissions ne commenceront vraisemblablement à agir qu'après la fin des huit semaines. De toute façon il y a un objectif commun qui est d'arriver à une meilleure législation.

**La commission chargée de surveiller l'application du principe de subsidiarité prendra-t-elle sa décision entre le déclenchement de la procédure de carte jaune ou orange et la décision de la Commission européenne ?**



En conformité avec l'article 7 paragraphe 3 du Protocole 2 du Traité de Lisbonne, il semble logique que la Commission européenne présente un avis motivé en premier (si elle choisit de maintenir sa proposition) et que la commission responsable du PE adopte sa décision en tenant compte de l'avis de la Commission.

**Comment la commission responsable pour l'interprétation du principe de subsidiarité sera-t-elle informée des avis motivés et du déclenchement d'un carton jaune ou orange ?**

Cette question n'est pas encore tranchée. Mais il est évident que les commissions impliquées seront informées d'une manière officielle. En général nous souhaiterions que l'échange d'informations se fasse autant que possible par IPEX.

**Si le PE a la possibilité d'exercer un contrôle de subsidiarité, même sans avis motivé des Parlements nationaux, comment garantir que ceux-ci seront pris en compte ? Le PE pourrait en effet effectuer ce contrôle avant même la transmission de ces avis.**

Aucune décision ne sera prise pendant la période de huit semaines.

**Working group of the Permanent Representatives  
of the European Union National Parliaments**

Strasbourg, 23 October 2008

**Report of the Working group of 18 September 2008  
Hearing of the Services of the European Parliament**

Preliminary remark:

The services of the European Parliament have asked to add the following notification: "The points of view expressed here belong only to the officials of the European Parliament who have taken part in the meeting of the working group on 18th of September. They shall not be considered as reflecting the official position of the European Parliament. The information provided during the meeting was not official and can in no way bind the European Parliament or its services".

**Mr Krzysztof Bernacki, Head of the "Multilateral Relations" Unit in the DG Presidency, and Mr Maximilian Schröder, Administrator in the same unit, have first of all made an assessment of the works of the EP concerning the implementation of the Protocol 2 of the Lisbon Treaty.**

They reminded that a working group had been created at an administrative level in January 2008 in order to elaborate new internal procedures (reform of the rules of procedure) with a view to the implementation of the Lisbon Treaty and Protocol 2. The interruption of the process of ratification following the results of the Irish referendum has led to the suspension of its works in June 2008.

Once they have been received by the relevant services of the European Parliament, the reasoned opinions may be transmitted to the appropriate committees: the committee which has to give an opinion on the legitimacy of evoking the principle of subsidiarity and the committee which would be competent to give an opinion on the content.

Mr Bernacki and Mr Schröder have emphasized the willingness of the EP to promote IPEX as a tool of transmission for these documents. Indeed, the European Commission has announced that it would create a website devoted to

the exchange of information. However the National Parliaments should upload their reasoned opinions immediately on IPEX, before they are available on the Commission website. It would also be desirable that the Commission accept to upload its answers on IPEX. Some features of the website could still be modified (e.g. the advanced search feature, the automatic notification function or the evolution of the XML project) but it is already efficient for this use. The multilingual aspect still has to be improved. On that matter, the Parliaments should write at least a summary of their reasoned opinion in French or English.

**Mr Bernacki and Mr Schröder then answered the questions of the Permanent Representatives of the National Parliaments.**

**How is the EP going to deal with the reasoned opinions that will have been sent to the President of the European Parliament, to the Commission and to the Council, in accordance with the article 6 of the Protocol 2?**

We cannot give any official answer since the works of the working group have been suspended. But the EP will obviously respect the eight-week period before taking position. The reasoned opinions may be transmitted to the committee competent for the content in the same way as to the committee in charge of subsidiarity.

In the case of a yellow card procedure, the EP may invite the author of the legislative proposal to explain his or her position. In the case of an orange card, the EP may end the examination of the proposal with a simple majority of the votes cast.

**The European Parliament has to wait 8 weeks before it ends its first reading of the legislative proposals. But will it start the legislative procedure (i.e. nomination of the reporters, scrutiny of the proposals in commissions, draft reports etc.) before the end of the eight-week period? Will the EP be able to enter into an agreement with the Council and the Commission before the end of the eight-week period?**

The European Parliament generally needs more than eight weeks to end its first reading. The code of conduct about codecision that has been recently adopted by the Conference of the Presidents at the proposal of the Working Party on Parliamentary Reform should contribute to reinforce the transparency of the first reading procedure.

**How will the EP deal with the "orange cards" when the Commission decides to maintain its proposal in accordance with the article 3 paragraph 7?**

This point has not been examined yet, since the working group for the adaptation of the rules of the EP has suspended its works.

**Which of the two committees will issue the report?**

Same answer.

**How will the simple opinions be taken into account in the framework of the Barroso initiative?**

Those simple opinions will go on being circulated but the Protocol 2 does not apply to them.

**What is your approach of the Barroso initiative? What are the results of this mechanism so far?**

The Barroso initiative is welcome measure introduced by the European Commission. It is informal and does not create any obligation for the European Parliament. Once documents are received, we transmit them to the committees of the Parliament. But we do so on the ground of a political initiative that has no legal base.

Its application is still very recent, and no general assessment has yet been carried out. However we receive favourable reactions from the committees.

**How is the EP going to deal with the reasoned opinions during the eight-week period, without knowing if the thresholds for the orange or yellow card will be reached or not?**

This question will be solved in a pragmatic manner once the Treaty has entered into force. The committees will most likely be able to begin with their work after the end of the eight-week period. Anyway, the common objective is to arrive at a better legislation.

**Will the committee responsible for the supervision of the application of the principle of subsidiarity take its decision between the triggering of the yellow or orange card procedure and the decision of the European Commission?**

In accordance with the article 7 paragraph 3 of the Protocol 2 of the Lisbon Treaty, the European Commission will logically present its reasoned opinion first (if it decides to maintain its proposal). Then the responsible committee of the EP will adopt a decision that will take into account the opinion of the Commission.

**How will the committee responsible for the interpretation of the principle of subsidiarity be informed of the issuing of the reasoned opinions and of the triggering of a yellow or orange card?**

This question is not solved yet. But obviously, the involved committees will be informed officially. Generally, we wish to exchange information as much as possible through IPEX.

**If the EP has the possibility to make a subsidiarity check even without any reasoned opinion from the National Parliaments, how can it be guaranteed that the latter will be taken into account? Indeed the EP might do this control before the transmission of these opinions.**

No decision will be made during the eight-week period.