December 2009

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

National Parliaments' Opinions and Replies to the Questionnaire



Prepared by the COSAC Secretariat

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Questionnaire: in English

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
2. Was the plenary involved?
3. At which level the final decision was taken and who signed it?
4. Which administrative services of your parliament were involved and how? Please specify.
5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
7. Did you consult your regional parliaments with legislative powers?
8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
9. What was the chronology of events? Please specify the dates.
10. Did you cooperate with other national parliaments in the process? If so, by what means?
11. Did you publicise your findings? If so, by what means?

Findings:

12. Did you find any breach of the principle of subsidiarity?
13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
15. Did you encounter any specific difficulties during this subsidiarity check?
16. Any other comments?

Questionnaire: en français

Procédure :

1. Quelles commissions parlementaires ont été impliquées dans le test de subsidiarité et de quelle manière ?
2. La séance plénière a-t-elle été impliquée ?
3. A quel niveau la décision finale a-t-elle été prise et qui l'a paraphée ?
4. Quels services administratifs de votre parlement ont été impliqués et de quelle manière? Merci de préciser.
5. En ce qui concerne les parlements bicaméraux : avez-vous conduit le test de subsidiarité en coordination avec l'autre chambre ?
6. Votre gouvernement a-t-il fourni des informations relatives au respect du principe de subsidiarité par la proposition de la directive ?
7. Avez-vous consulté les parlements régionaux de votre pays qui disposeraient de pouvoirs législatifs ?
8. Avez-vous consulté des organisations non gouvernementales, des groupes d'intérêt, des experts extérieurs ou d'autres parties prenantes ?
9. Selon quelle chronologie le test a-t-il été conduit au sein de votre Parlement ? Merci de préciser les dates.
10. Avez-vous coopéré avec d'autres parlements nationaux ? Si oui, par quels moyens ?
11. Avez-vous publié vos conclusions ? Si oui, par quels moyens ?

Conclusions :

12. Avez-vous découvert un quelconque manquement au principe de subsidiarité ?
13. Avez-vous adopté un avis motivé sur la proposition de directive ? Si oui, veuillez en joindre une copie.
14. Avez-vous trouvé les justifications de la Commission sur le respect du principe de subsidiarité satisfaisantes ?
15. Avez-vous rencontré des difficultés spécifiques pendant l'examen ?
16. Avez-vous d'autres observations ?

Austria: *Nationalrat*

Statement by the Committee

on COM(2009) 338 final
Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

Statement to the European Commission

The Permanent Subcommittee on EU Affairs of the National Council – authorized by Article 23e of the Federal Constitutional Law and § 31e of the Rules of Procedure of the National Council – discussed the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings at a public session on 17 September 2009 and came to the following conclusions.

1. On the question of subsidiarity, the Commission proposal is limited to the statement that the legal instrument would increase confidence in the different criminal justice systems, which in turn would lead to an improvement in mutual cooperation.

2. In view of the fact that the proposal is essentially a codification of the decisions of the European Court of Human Rights (ECtHR), it is questionable as to whether there is an urgent need for a framework decision, since the Member States are in any case obliged in principle to comply with ECtHR decisions.

3. The small number of decisions by the ECtHR involving violations of Article 6.3(a) and 3(e) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) would also appear to indicate that there is not an urgent need for a legal instrument in this regard (ten decisions on the right to an interpreter and 37 decisions involving the right of accused persons set forth in Article 6.3(a) to be informed promptly, in a

language which they understand and in detail, of the nature and cause of the accusation against them).

4. The Member States incur considerable costs in connection with the rights granted in the framework of legal advice. This applies in particular to the extension of the legal advice granted to a suspect if his lawyer speaks a language that the suspect does not understand. In cases where a suspect has a free choice of defence council, there is no reason why the State should have to pay the costs of translation between them; this is only justified in situations where the suspect is granted legal aid.

5. In view of the ECtHR decisions, the obligation according the Article 3.2 of the proposal regarding written translation goes much to far. One consequence would be a prolongation of pre-trial custody, since it is not generally possible to obtain a written translation of the indictment within a few days.

6. The obligation to train judges and lawyers in Article 5 is also unclear; it is based on the assumption that such training is available in every Member State; if the idea is to improve the language knowledge of judges and lawyers to such an extent that an interpreter is no longer required, this would interfere with national education and advanced training regulations.

7. Altogether, the proposal appears to be problematic in terms of proportionality, because the costs would have to be borne unilaterally by the Member States without it being definitively demonstrated that legal assistance provisions, apart from the rights guaranteed in Article 6.3(e) of the ECHR, are necessary and required in order to improve cooperation between judicial authorities. The proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings cannot therefore be accepted in the present form.

Austria: *Bundesrat*

Statement by the Committee

on COM(2009) 338 final
Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

Statement to the European Commission

The EU Committee of the Federal Council discussed the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings at a public session on 21 July 2009 and come to the following conclusions.

On the question of subsidiarity, the Commission proposal is limited to the statement that the legal instrument would increase confidence in the different criminal justice systems, which in turn would lead to an improvement in mutual cooperation.

In view of the fact that the proposal is essentially a codification of the decisions of the European Court of Human Rights (ECtHR), it is questionable as to whether there is an urgent need for a framework decision, since the Member States are in any case obliged in principle to comply with ECtHR decisions.

The small number of decisions by the ECtHR involving violations of Article 6.3(a) and 3(e) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) would also appear to indicate that there is not an urgent need for a legal instrument in this regard (ten decisions on the right to an interpreter and 37 decisions involving the right of accused persons set forth in Article 6.3(a) to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them).

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In view of the ECtHR decisions, the obligation according the Article 3.2 of the proposal regarding written translation goes much to far. One consequence would be a prolongation of pre-trial custody, since it is not generally possible to obtain a written translation of the indictment within a few days.

The obligation to train judges and lawyers in Article 5 is also unclear; it is based on the assumption that such training is available in every Member State; if the idea is to improve the language knowledge of judges and lawyers to such an extent that an interpreter is no longer required, this would interfere with national education and advanced training regulations.

Altogether, the proposal appears to be extremely problematic in terms of proportionality, because the costs would have to be borne unilaterally by the Member States without it being definitively demonstrated that legal assistance provisions, apart from the rights guaranteed in Article 6.3(e) of the ECHR, are necessary and required in order to improve cooperation between judicial authorities. The proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings cannot therefore be accepted in the present form.

Evaluation of the subsidiarity check on the Proposal
for a Council Framework Decision on the right to interpretation
and to translation in criminal proceedings

Austrian Reply

EU-Committee of the Bundesrat
Permanent Subcommittee on EU-affairs of the Nationalrat

COSAC Secretariat (secretariat@cosac.eu).

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
EU-Committee of the Bundesrat
Permanent Subcommittee on EU-affairs of the Nationalrat

2. Was the plenary involved?
No

3. At which level the final decision was taken and who signed it?
The statement was issued by the respective Committe. The President transmitted the statement to its recipients.

4. Which administrative services of your parliament were involved and how? Please specify.
The EU- and International Service performed a subsidiarity pre-check of the proposal, coordinated information exchange with government and external experts, and was in charge of all organisational issues before, during and after the committee session.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
No (not on the official level)

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
The Ministry of Justice provided an explanatory memorandum and a position paper. The Minister of Justice (in the Permanent Subcommittee on EU-affairs of the Nationalrat) and officials of the Ministry of Justice (EU-Committee of the Bundesrat) provided statements.

7. Did you consult your regional parliaments with legislative powers?
Yes

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
The Chamber of Advocates (Österr. Rechtsanwaltskammertag) provided a statement.

9. What was the chronology of events? Please specify the dates.
Discussion on the Proposal in the EU-Committee of the Bundesrat on 21 July and 3 September 2009 and in the Permanent Subcommittee on EU-affairs of the Nationalrat on 17 September 2009

10. Did you cooperate with other national parliaments in the process? If so, by what means?
No

11. Did you publicise your findings? If so, by what means?
Yes. A summary of the proceedings was published on the internet website of the Parliament, and the statements were publicised through IPEX.

Findings:

12. Did you find any breach of the principle of subsidiarity?
Yes

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
Yes

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

15. Did you encounter any specific difficulties during this subsidiarity check?
No

16. Any other comments?
No

Bulgaria: *Narodno Sabranie*

Subsidiarity check on the Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings {COM(2009) 338 final}

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

- Legal Affairs Committee (LAC)
- Committee on European Affairs and Oversight of the European Funds (CEAOEF)

The LAC carries out a discussion on the proposal for a framework decision, prepares a report and submits it to the CEAOEF.

After receiving the LAC report, the CEAOEF places the proposal for a framework decision along with the LAC position for discussion.

2. Was the plenary involved?
No. The procedure for parliamentary monitoring and control on EU Affairs does not stipulate discussion in plenary.

3. At which level the final decision was taken and who signed it?
A summary report is adopted by the CEAOEF and is signed by the Chairman of the Committee. The report is then sent to the President of the National Assembly.

4. Which administrative services of your parliament were involved and how? Please specify.
"European law" Department prepares an expert position and places it to the attention of the other standing committees, participating in the scrutiny procedure.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
The Bulgarian parliament consists of one chamber.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
The government submitted an explanatory memorandum and a position on the proposal for a framework decision, incl. compliance with the principle of subsidiarity. Within the framework of the discussion in the standing committees, experts from the Ministry of Justice expressed their attitude on the question of compliance with the principle of subsidiarity.

7. Did you consult your regional parliaments with legislative powers?
N/A

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No

9. What was the chronology of events? Please specify the dates.
1) *July, 08 2009* Adoption of the EC proposal;
2) *August, 27 2009* Submission by the Council of Ministers of the proposal for a framework decision and an explanatory memorandum to the National Assembly;
3) *August, 28 2009* The President of the National Assembly distributes the draft proposal and the Council of Minister's position to the CEAOEF and the LAC;
4) *August, 31 2009* The "European Law" Department submits an opinion on the proposal for a framework decision to the relative standing committees;
5) *September*, 0*3 2009* The draft proposal is being examined by the LAC which adopts a report and submits it to the CEAOEF;
6) *September, 10 2009* The proposal for a framework decision is being scrutinized by the CEAOEF which adopts a report and submits it to the President of the National Assembly;
7) *September, 14 2009* The President of the National Assembly submits the report to the Council of Ministers.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
Yes, via IPEX.

11. Did you publicise your findings? If so, by what means?
Yes, the CEAOEF report is published on the web page of the National Assembly:
http://www.parliament.bg/?page=ns&lng=bg&nsid=5&action=show&Type=cmStan&SType=show&gid=240&id=1435

A summary of the reports is published in the "Euronews" newsletter of the National Assembly.

Findings:

12. Did you find any breach of the principle of subsidiarity?
No. The CEAOEF did not find any breach of the principle of subsidiarity.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
No, though the report of the CEAOEF includes some remarks.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
The expert opinion of the "European Law" Department indicates that the EC justifications, leading to the conclusion that the objective of the proposal for a framework decision may better be accomplished at EU level, are not backed up with sufficient quantitative and qualitative indicators.

15. Did you encounter any specific difficulties during this subsidiarity check?
In general, there weren't any major obstacles during the subsidiarity check. Nevertheless, it should be mentioned that the deadline for the subsidiarity check was quite tight.

16. Any other comments?
The CEAOEF report registers that the EC proposal in its entirety in not in breach of the principle of subsidiarity. Yet, with regards to Art. 5 (2) of the proposal for a framework decision, it shall be noticed that the order is formulated in a general manner and may give grounds to some uncertainty regarding the compliance with the principles of subsidiarity and proportionality. Hence, the article, mentioned above, should be specified.

CEAOEF conclusions stipulate the following:

1. The Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings shall be supported, as it will contribute to the improvement of the rights of the defendants, thus facilitating the application of the principle of mutual acquisition of the court's judgments.

2. In general, it is stipulated that the Proposal for a Council Framework Decision does not contradict to the subsidiarity principle.

3. The CEAOEF confirms the Council of Minister's position according to which the Republic of Bulgaria supports in general the Proposal for a Council Framework Decision, but insists that certain terms in the text of the proposal should be clarified.



NATIONAL ASSEMBLY
OF THE REPUBLIC OF BULGARIA

REPORT

On a Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings **№ 902-00-9/27.08.2009**

I. At its session, held on 10th of September, the Committee on European Affairs and Oversight of the European Funds considered a Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings, included as a clause No.10 in the Annual Programme for the Participation of the Republic of Bulgaria in the European Union decision-making process for 2009.

II. The proposal for a Council Framework Decision provides common minimum standards related to the right of translation and interpretation in criminal proceedings of the EU member states. Although the right of translation and interpretation within the criminal proceedings is enshrined in Articles 5 and 6 of the ECHR, as interpreted by the case law of the European Court of Human Rights, the European Commission considers that it's necessary to take measures within the EU in order to endorse the principle of mutual recognition.

According to the text of the Proposal, all persons suspected in respect of a criminal offence until final conviction have the right of translation and interpretation during the criminal proceeding. The Article clarifies that the proposal also applies to European Arrest Warrant cases (art. 1). The right on translation and interpretation should be provided during the investigative and judicial phases of the proceedings. The right is also extended to legal advice given to the suspect if his lawyer speaks a language that he does not understand (art. 2). In accordance with art. 3 the suspect has the right to translation of essential documents as the arrest warrant, the accusation act, the main evidences and the judgment. Member States shall ensure that there is a right of appeal against a decision finding that there is no need for interpretation of some of the essential documents. Article 4 provides that the costs of interpretation and translation are to be met by the Member State. Art. 5 (1) defines the basic requirements to ensure the quality of translation and interpretation. According to par. 2 'Member States should be under a duty to provide training to judges, lawyers and other relevant court personnel in order to ensure the suspect's ability to understand the proceeding.' The purpose of this Article is to ensure that setting common minimum standards in accordance with this Framework Decision does not have the effect of lowering standards in

certain Member States and that the standards set in the ECHR are maintained. Member States remain entirely at liberty to set standards higher than those agreed upon in this Framework Decision.

III. According to the Council of Minister's position, the Republic of Bulgaria, generally endorses the Council Framework Decision on the right of translation and interpretation in criminal proceedings, while explicitly considers that certain provisions such as art. 1, par. 2 / about the stage of the criminal proceeding /, art. 2, par. 1-4 /referred to the requirement of translation during all necessary meetings between the suspect and his lawyer/; the overlap of par. 2 and par. 1 and the elaboration of specific procedure to ascertain whether the suspect understands and speaks the language of the criminal proceedings, which provides also a right of appeal/; art. 3, par. 1 and 2 /concerning the right on translation of all essential documents, without providing the criteria, that defines them as such/; art. 5, par. 2 /about the training to judges, lawyers and other relevant court personnel in order to ensure the suspect's ability to understand the language of the proceeding/, should be additionally corrected and specified. The government position reckons that no formalism in the criminal proceedings should be favoured, that would lead to prolongation of the criminal proceedings, thus preventing the possibility of the suspect/accused to use the procedural warranties for prolongation of the trial. Considering the above, the Republic of Bulgaria shall insist on specifying the stage of the criminal proceeding, from which the suspect could use the right on translation and interpretation, as well as to clarify the meaning of the definitions "necessary meetings between the suspect and his lawyer" and "legal advices, received throughout the pre-trial proceeding", where the use of translation and interpretation is envisaged. There is no evident need of developing a special procedure to ascertain whether the suspect understands and speaks the language of the criminal proceedings. This fact could be proved without any difficulty by the respective inquiry or judicial authority. In case of misunderstanding of the language of the proceeding, the right of appeal is guaranteed by a provision in the ECHR, and this could lead to abolition of the act. The misuse of the right on translation of "all essential documents" shouldn't be allowed, and certain criteria should be elaborated in order to define who or how should assess the importance of the mentioned documents. The provision that settles down the training of the judges, lawyers, and the court personnel to ensure the ability of the suspect to understand the proceeding is pointless. In order to facilitate the criminal proceedings it's necessary that clear and precise definitions are applied.

IV. The Proposal on Council Framework Decision has been discussed on a session of the Legal Affairs Committee, held on 3rd of September 2009. The Committee approved the adoption of the Council Framework Decision and the government position, according to which the Republic of Bulgaria generally accepts the draft decision, while explicitly considers that some of the definitions should be additionally specified.

V. As a whole the proposal does not contradict to the principle of subsidiarity. Notwithstanding, it should be mentioned that the provision of art. 5, par. 2 is very general and arise uncertainty in the observation of the principle of subsidiarity and proportionality. The provision mentioned above should be specified.

VI. On the basis of the conducted discussion, the Committee on European affairs and Oversight of the European Funds accepted the following references and conclusions:

1. The Proposal of a Council Framework Decision should be endorsed as the proposal would contribute to the approvement of the rights of the accused while at the same time facilitating the application of the principle of mutual recognition of the court decisions.

2. Generally considers that the Proposal for a Framework Decision does not contradict to the principle of subsidiarity.

3. Approves the presented positions, in accordance to which the Republic of Bulgaria generally accepts the proposal for a Council Framework Decision, while explicitly considers that some of the definitions should be additionally specified.

The Report has been approved with 19 voices "pro"

Chairman
of the Committee on European Affairs
and Oversight of the European Funds

Svetlin Tanchev

Cyprus: *Vouli ton Antiprosopon*

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
The parliamentary committee on European Affairs carried out the subsidiarity check.

2. Was the plenary involved?
The plenary of the House of Representatives was not involved in this experimental exercise, but this does not preclude the possibility of the plenary being involved in future proceedings.

3. At which level the final decision was taken and who signed it?
The final decision was taken by the Parliamentary Committee on European Affairs and was signed by the President of the said Committee.

4. Which administrative services of your parliament were involved and how? Please specify.
The European Affairs Service was involved in the subsidiarity check, through the study of the proposal at hand and the compilation of a report for the members of the Parliamentary Committee on European Affairs to aid them in the carrying out of the subsidiarity and proportionality check. Furthermore, the European Affairs Service carried out various administrative tasks such as the distribution all the relevant documents, information and views to the members of the Parliamentary Committee on European Affairs and the communication with the COSAC Secretariat.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
A bicameral system does not exist in Cyprus.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
Yes, an opinion concerning the compliance of the Proposal with the principle of subsidiarity and proportionality was received by the Ministry of Justice and Public Order.

7. Did you consult your regional parliaments with legislative powers?
No regional parliaments exist in Cyprus.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
No.

9. What was the chronology of events? Please specify the dates.
On 28 July 2009, the legislative proposal, accompanied by material concerning the principle of subsidiarity and proportionality and the explanatory note of the COSAC Secretariat concerning the matter, were distributed to the members of the Parliamentary Committee on European Affairs.

The documents were also accompanied by a letter from the President of the Parliamentary Committee on European Affairs, explaining the requirements of the task before the Committee. A report of the European Affairs Service, which studied the legislative proposal and put down its recommendations concerning the principle of subsidiarity and proportionality, was distributed to all the members of the House of Representatives.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
No direct communication with other national parliaments was made concerning the subsidiarity check. However, the IPEX system was frequently consulted during the process to obtain information on the subsidiarity check from the parliaments of other member states.

11. Did you publicise your findings? If so, by what means?
No publication of the findings was made. However a summary of the findings will be uploaded on the IPEX system and a report will be forwarded to the EU institutions.

Findings:

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

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
No.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
Unfortunately, the Commission's justification with regard to the principle of subsidiarity was deemed, to have been unsatisfactory since only a very brief section in the proposal was dedicated to the justification of the compliance of the said proposal with the principle of subsidiarity.

15. Did you encounter any specific difficulties during this subsidiarity check?
Due to the fact that the Commission proposal in question was transmitted to the House of Representatives during the summer recess, it was difficult to involve other sectoral committees of the House of Representatives other than the Parliamentary Committee on European Affairs. The said Committee, due to time constraints, completed the examination of the above mentioned proposal without having the opportunity to hear the opinions of interested parties, out of necessity in order to complete the subsidiarity check within the prescribed eight week period.

16. Any other comments?
None.

Czech Republic*: Senát*

T H E P A R L I A M E N T O F T H E C Z E C H R E P U B L I C
S E N A T E

Evaluation of the COSAC Subsidiarity Check on the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
Two Committees were involved in the subsidiarity check – the Committee on Foreign Affairs, Defence and Security (hereinafter referred to as the Designated Committee) and the Committee on EU Affairs that was requested by the former to submit its opinion on the Proposal.

2. Was the plenary involved?
Yes as is stipulated by the Senate Rules of Procedure, when a Senate resolution within the framework of EU legislation ex-ante scrutiny is to be passed, it always needs to be submitted to the plenary.

3. At which level the final decision was taken and who signed it?
The plenary level/ the Speaker of the Senate.

4. Which administrative services of your parliament were involved and how? Please specify.
European Union Unit and EU Committee advisor by preparing background documents, analyses, briefings and the draft resolution.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
No.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
Yes, the government analyzed this issue in its Explanatory Memorandum.

7. Did you consult your regional parliaments with legislative powers?
There are no regional parliaments with legislative powers in the Czech Republic.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
Czech Senate did not directly consult any non-governmental organisations. Nevertheless, positions of various stakeholders were compiled by the EU Unit (for example from Fair Trials International), which were taken into consideration while discussing the Proposal.

9. What was the chronology of events? Please specify the dates.

21st July – the document was chosen for scrutiny by the Committee on Foreign Affairs, Defence and Security which at the same time requested the Committee on EU Affairs to submit its opinion on the Proposal
9th September – the opinion was taken by the Committee on EU Affairs as requested
23. September - meeting of the Committee on Foreign Affairs, Defence and Security – adoption of a resolution on the Proposal
7th October –plenary session, adoption of a resolution based on the EU Affairs Committee opinion.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
No, but we are examining other parliaments' resolutions via IPEX.

11. Did you publicise your findings? If so, by what means?
All the above mentioned resolutions are published (in Czech) on Senate's web pages.

Findings:

12. Did you find any breach of the principle of subsidiarity?
The Senate did not find explicit breach of the principle of subsidiarity. However, it is of the opinion that the compliance with this principle is to be examined thoroughly with regard to the requirement of the necessity of adoption of a legal act in this area as stated in Article 31 Paragraph 1 of the EU Treaty. The Senate pointed out that there is legal regulation in force within the framework of the Council of Europe (of which all EU countries are members) and expressed its concerns about the possible duplication of the regulation. It also stressed the need for conformity of the proposed framework decision with existing legal framework developed by the Council of Europe.
Moreover, the Senate is not convinced that the Proposal is fully in accordance with the principle of proportionality with regard to its scope and the possible financial implications for the Member States.

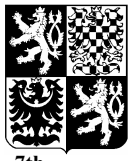
13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
Yes, the opinion is included in the resolution of the Senate. Copy enclosed.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
No. With regard to the fact that the provisions cover the sensitive area of cooperation in the matters of criminal justice, the justification by the Commission should be more thorough, as explained above.

15. Did you encounter any specific difficulties during this subsidiarity check?
The timing of the Proposal posed problems due to the summer recess. Therefore, by the 8-weeks' deadline we only managed to obtain the opinion of the Committee on EU Affairs, whereas the resolution of the Designated Committee and the resolution of the plenary were not available until the end of September/beginning of October.

16. Any other comments?

T H E P A R L I A M E N T O F T H E C Z E C H R E P U B L I C
S E N A T E



7th term

154th RESOLUTION

COMMITTEE ON EU AFFAIRS

delivered on the 15th meeting held on 9th September 2009

on *Proposal* **for a Council** *Framework Decision* **on the right to interpretation and** *translation* **in criminal proceedings**

(Senate Press no. M 061/07)

Following the 84th resolution of the Committee on Foreign Affairs, Defence and Security of the Senate from 21st July 2009 and following introductory information from Mr. Tomáš Boček, Deputy Minister of Justice, the rapporteur's report by Senator Luděk Sefzig and after a debate

the Committee

I. Adopts
at the request of the Committee on Foreign Affairs, Defence and Security a position to this document, attached to this resolution;

II. Authorises
the Committee Chairperson Senator Luděk Sefzig to submit this resolution to the Chairperson of the Committee on Foreign Affairs, Defence and Security, to the President of the Senate of the Parliament of the Czech Republic and to the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) that, according to the opinion of the Committee, should continue coordinating subsidiarity checks of selected legislative proposals.

Luděk Sefzig
sign manual
Committee Chairperson

Luděk Sefzig
sign manual
Committee Rapporteur

Pavel Trpák
sign manual
Committee Verifier

Position
on Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

(Senate Press no. M 061/07)

The Committee on EU Affairs

I. 1. **Considers**
necessary that the compliance of the proposal with the principle of subsidiarity is unambiguously proved before the adoption of the framework decision, also with regard to the requirement of necessity of adoption of a legal act, which follows from the Article 31 Paragraph 1 of the Treaty on European Union;

2. **Points out**
in this context that there is legal regulation in force within the framework of the Council of Europe, with which the possible EU regulation should be in conformity;

II. 1. **Emphasises**
the need to avoid wording that enables ambiguous interpretation (for example demonstrative listing of essential documents for translation, right of the suspect for interpretation during all necessary meetings between him and his lawyer or during any necessary interim hearing without further specification, etc.);

2. **Recommends,**
in connection with the abovementioned, to review and reconsider the scope of the proposed obligation of the state to cover the expenses of interpretation and translation;

3. **Considers**
unnecessary the provisions of the proposal requiring guarantee of the right of appeal against the decision that interpretation is not necessary, all the more so as there is no procedural tool such as decision on translation regulated in the Czech Republic;

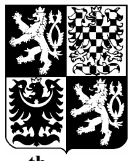
4. **Recommends**
to support the position of the government aimed, in accordance with the principle of proportionality, at minimizing of financial costs, reduction of the administrative burden and limitation of the risk of delays in the criminal proceedings;

III. 1. **Requests**

the Government to inform the Senate about the way this position was taken into account and to provide the Senate with further information on the proceeding of negotiations;

2. **Authorises**
the President of the Senate to forward this resolution to the European Commission**.**

THE PARLIAMENT OF THE CZECH REPUBLIC
SENATE



7th term

300th RESOLUTION OF THE SENATE

delivered on the 11th meeting held on 7th October 2009

on Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

(Senate Press no. M 061/07)

The Senate

III. 1. **Considers**
necessary that the compliance of the proposal with the principle of subsidiarity is unambiguously proved before the adoption of the framework decision, also with regard to the requirement of necessity of adoption of a legal act, which follows from the Article 31 Paragraph 1 of the Treaty on European Union;

2. **Points out**
in this context that there is legal regulation in force within the framework of the Council of Europe, with which the possible EU regulation should be in conformity;

IV. 1. **Emphasises**
the need to avoid wording that enables ambiguous interpretation (for example demonstrative listing of essential documents for translation, right of the suspect for interpretation during all necessary meetings between him and his lawyer or during any necessary interim hearing without further specification, etc.);

2. **Recommends,**
in connection with the abovementioned, to review and reconsider the scope of the proposed obligation of the state to cover the expenses of interpretation and translation;

3. **Considers**
unnecessary the provisions of the proposal requiring guarantee of the right of appeal against the decision that interpretation is not necessary, all the more so as there is no procedural tool such as decision on translation regulated in the Czech Republic;

4. **Supports**

the position of the government aimed, in accordance with the principle of proportionality, at minimizing of financial costs, reduction of the administrative burden and limitation of the risk of delays in the criminal proceedings;

III. 1. **Requests**
the Government to inform the Senate about the way this position was taken into account and to provide the Senate with further information on the proceeding of negotiations;

2. **Authorises**
the President of the Senate to forward this resolution to the European Commission**.**

Denmark: *Folketing*

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

The European Affairs Committee and the Legal Affairs Committee

2. Was the plenary involved?

No, the Plenary was no involved

3. At which level the final decision was taken and who signed it?

The final decision was taken by the European Affairs Committee

4. Which administrative services of your parliament were involved and how? Please specify.

The European Affairs Committee Secretariat and the EU-Advisory unit of the International Secretariat in the Folketing + the clerk of the Legal Affairs Committee.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

No. Normally a subsidiarity note is provided by the Government on all proposals of major importance.

7. Did you consult your regional parliaments with legislative powers?

No, we don't have Regional assemblies with legislative powers.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No

9. What was the chronology of events? Please specify the dates.

On 10 July 2008 the EAC decided to ask the LAC to examine whether the proposal for a framework decision complied with the principle of subsidiarity. The Legal Affairs Committee agreed on 9 September an opinion, which was submitted to the EAC.
The EAC endorsed the joint text at its meeting on 11 September.

10.

11. Did you cooperate with other national parliaments in the process? If so, by what means?

No

12. Did you publicise your findings? If so, by what means?

The findings will be made available to the public on the Folketing's website

Findings:

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

14. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
Yes. A copy has been enclosed.

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

16. Did you encounter any specific difficulties during this subsidiarity check?
No

Any other comments?
No

FOLKETINGET

The European Affairs Committee and the Committee on Health

The EU-Secretariat of the Folketing

Date: 14 September 2009

Opinion adopted by the European Affairs Committee and the Legal Affairs Committee of the Danish Parliament

On the Commission's proposal COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings - COM(2009) 338 final

At the request of COSAC, the European Affairs Committee and the Legal Affairs Committee of the Danish Parliament have conducted an assessment of whether the "proposal for a Council framework decision on the right to interpretation and to translation in criminal proceedings" complies with the principle of subsidiarity.

The objective of the proposal is to enhance mutual recognition in criminal matters between Member States.

The point of departure is that if the accused cannot understand the language used during the criminal proceedings concerned (including appeal cases), he should have right to the assistance of an interpreter from the time where he is informed that he is suspected of having committed a criminal offence until the conclusion of the proceedings.

The proposal provides in this regard all accused in criminal proceedings with the right to interpretation and translation free of charge and lays down a number of further requirements to the scope and quality of the translation and interpretation provided.

The Commission states in its justification of the proposal's compliance with the principle of subsidiarity that the aim of the proposal - to promote trust between Member States in criminal proceedings - cannot be sufficiently achieved by Member States alone.
The Commission furthermore states in its impact assessment of the proposal that differences in implementation by Member States of the right to interpretation and translation stemming from national legal orders and obligations under the "European Convention on the protection of Human Rights", have led to differences in the level of protection provided by each Member State. In some Member States this has also led to speculations as to which standards apply in other Member States.

A majority of the European Affairs Committee and the Legal Affairs Committee, composed of the Liberal Party, the Social Democrats, the Conservatives, the Socialist People's Party, the Social-Liberal Party, the Red-Green Alliance and the Liberal Alliance, finds that the question of setting out rules regarding the right to interpretation and translation in criminal proceedings has transnational aspects, which cannot be satisfactorily regulated by action by Member States.

Recalling the aim of the proposal, the majority finds that action at Community level would produce clear benefits compared with action at the level of the Member States.
The majority therefore finds the proposal in full compliance with the principle of subsidiarity.

Minority opinion:

A minority composed of the Danish People's Party wishes to express the view that Protocol 30 (to the Amsterdam Treaty) on the application of the principle of subsidiarity and proportionality sets out the following in paragraph 4: "For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators".

The Commission justifies the proposal's compliance with the principles of subsidiarity and proportionality with the fact that it will promote trust between the peoples of Europe. This justification is, according to the Danish People's Party, not an objective and relevant criterion under the Treaty and Protocol 30. Here it is decisive that the aim – that is stemming from the legal basis -could be achieved better in this way. There is no legal basis in the EC Treaty or the EU Treaty to promote trust between the peoples of Europe. Such a legal basis would by the way be a blank cheque to the EU to adopt regulatory measures.
Against this background the Danish Peoples' Party finds the Commission's proposal in non-conformity with the Treaties.

The Danish Peoples' Party demands as a minimum requirement that an assessment of the level of protection in the 27 EU Member States is elaborated. As is well known they are all members of the Council of Europe and thereby bound by article 6 of the European Convention on the protection of Human Rights laying down the right to a fair trial. This ought to be a minimum requirement for all EU Member States. And it must be dealt with by the Strasbourg Court and not by the EU institutions.

Yours sincerely

Per Skaarup
Chairman of the Legal Affairs Committee

Anne-Marie Meldgaard
Chairman of the European Affairs Committee

Estonia: *Riigikogu*

RIIGIKOGU
PARLIAMENT OF ESTONIA
EUROPEAN UNION AFFAIRS COMMITTEE

Ms Loreta Raulinaityté
COSAC Secretariat
E-mail: secretariat@cosac.eu

18 September 2009 No. 2.1-3/1749-1

Dear Ms Raulinaityté,

Based on the proposals from national parliaments, the COSAC Chairpersons in their meeting on 10 February 2009 in Prague agreed to carry a COSAC-coordinated subsidiarity check on the Proposal for a Framework Decision on procedural rights in criminal proceedings (2009/JLS/047) in 2009. This decision was confirmed by the XLI COSAC meeting on 12 May 20091 in Prague. Following the decision of the COSAC Chairpersons, the European Union Affairs Committee of the Riigikogu (Parliament) of the Republic of Estonia has carried out a subsidiarity check on the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings [COM(2009)338]. In order to facilitate the compiling of the response we structured it in the form of answers to the question in the aide-mémoire.

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
A: The Legal Affairs Committee and the European Union Affairs Committee of the Riigikogu were involved.

2. Was the plenary involved?
A: No, the plenary was not involved.

3. At which level the final decision was taken and who signed it?
A: Final decision was taken by the European Union Affairs Committee and was signed by the Chairman of the Committee.

4. Which administrative services of your parliament were involved and how?
A: The European Union Affairs Committee and the Legal Affairs Committee. Other administrative services of Riigikogu were not involved.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
A: Estonia has a unicameral parliament.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
A: Yes, the Government provided its position.

7. Did you consult your regional parliaments with legislative powers?
A: There are no regional parliaments in Estonia.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders? **A: No, we did not.**

9. What was the chronology of events? Please specify the dates.
A: On 24 July 2009, the European Union Affairs Committee asked the Ministry of Justice to present the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings to the Government. On 10 September 2009, the Government presented its position regarding the Proposal to Riigikogu. On 15 September 2009, the Legal Affairs Committee gave its opinion to the European Union Affairs Committee on that subject. On 18 September 2009 the issue was examined and final decision was taken by the European Union Affairs Committee.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
A: No, we did not. The European Union Affairs Committee followed subsidiarity checks in other EU parliaments through IPEX and Permanent Representative to the European Parliament.

11. Did you publicise your findings? If so, by what means?
A: The positions of the Committees are public (Minutes are available on the website of the Riigikogu).

Findings:
12. Did you find any breach of the principle of subsidiarity?
A: The European Union Affairs Committee of the Parliament of Estonia did not find any breach of the principle of subsidiarity.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
A: No, just the decision/position was taken.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
A: Yes, the Commission's justification with regard to the principle of subsidiarity was considered satisfactory.

15. Did you encounter any specific difficulties during this subsidiarity check?
A: No, we did not.

16. Any other comments? **A: We have no other comments.**

Yours sincerely,

(signed)

Mr. Marko Mihkelson
Chairman
EU Affairs Committee of the Riigikogu

Helgi Kundla +372 6316499 helgi.kundla@riigikogu.ee

Finland: *Eduskunta*

EDUSKUNTA - PARLIAMENT OF FINLAND

15 September 2009

The Grand Committee

Subsidiarity check on Proposal for a Council Framework Decision on the right interpretation and to translation in criminal proceedings

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
Legal Affairs Committee

2. Was the plenary involved?
No

3. At which level the final decision was taken and who signed it?
At the level of the specialised committee. The minutes is signed by the Secretary of the Committee as usual.

4. Which administrative services of your parliament were involved and how? Please specify.
The EU secretariat and the secretariat of the Legal Affairs Committee, members of the secretariats analysed the proposal.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber? –

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
Yes. The Government provided a memo of the proposal (prepared by the Ministry of Justice), where question of subsidiarity was also considered. And an expert from the Ministry of Justice was heard in the Legal Affairs Committee. The Government did not find any breach of the subsidiarity principle.

7. Did you consult your regional parliaments with legislative powers? –

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
No. The specificity of the subject did not require larger hearing.

9. What was the chronology of events? Please specify the dates.

Because of the summer break of Eduskunta (until 8th September) the timetable was very rapid. The secretariats had prepared the matter with the Ministry of Justice beforehand in August and the Legal Affairs Committee handled the matter 11th and 15th of September.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
No.

11. Did you publicise your findings? If so, by what means?
The decision is included in the minutes of the Legal Affairs Committee. The minutes are found in the webpage of Eduskunta.

Findings:
12. Did you find any breach of the principle of subsidiarity?
No.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
Yes. Translated copy of the reasoned opinion will follow.

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

15. Did you encounter any specific difficulties during this subsidiarity check?
No.

16. Any other comments?-

France: *Assemblée nationale*

DOCUMENT E 4597

PROPOSITION DE DECISION-CADRE DU CONSEIL
relative au droit à l'interprétation et à la traduction
dans le cadre des procédures pénales

COM(2009) 338 final du 8 juillet 2009

La COSAC (Conférence des Organes Spécialisés dans les Affaires Communautaires et Européennes des Parlements de l'Union européenne) a choisi d'examiner la présente proposition de décision-cadre au titre de la subsidiarité. Les premiers résultats de ce test de subsidiarité seront examinés au cours de la prochaine réunion de la COSAC les 3 et 4 octobre 2009 à Stockholm. Le délai d'examen du texte court jusqu'au 12 octobre 2009, le texte ayant été transmis dans toutes les langues de l'Union le 20 juillet 2009 (soit un délai de huit semaines, le mois d'août n'étant pas pris en compte).

Le conseil européen de Tampere des 15 et 16 octobre 1999 a fait de la reconnaissance mutuelle des décisions de justice la pierre angulaire de la coopération judiciaire pénale.

Plusieurs textes ont été adoptés depuis. Le plus emblématique est la décision-cadre du 13 juin 2002 relative au mandat d'arrêt européen[(1)] ayant supprimé l'exigence de double incrimination pour une liste de trente-deux infractions graves. Ont également été adoptées les décisions-cadres relatives à la reconnaissance mutuelle des décisions de gel des biens ou d'éléments de preuves[(2)], des sanctions pécuniaires[(3)] et des décisions de confiscation[(4)]. Ont été adoptées plus récemment la décision cadre concernant l'application du principe de reconnaissance mutuelle aux jugements en matière pénale prononçant des peines ou des mesures privatives de liberté[(5)] et la

[(1)] *Décision-cadre 2002/584/JAI du Conseil, du 13 juin 2002, relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres.*
[(2)] *Décision-cadre 2003/577/JAI du Conseil, du 22 juillet 2003, relative à l'exécution dans l'Union européenne des décisions de gel de biens ou d'éléments de preuve.*
[(3)] *Décision-cadre 2005/214/JAI du Conseil, du 24 février 2005, concernant l'application du principe de reconnaissance mutuelle aux sanctions pécuniaires.*
[(4)] *Décision-cadre 2006/783/JAI du Conseil, du 6 octobre 2006, relative à l'application du principe de reconnaissance mutuelle aux décisions de confiscation.*
[(5)] *Décision-cadre 2008/909/JAI du Conseil du 27 novembre 2008 concernant l'application du principe de reconnaissance mutuelle aux jugements en matière pénale prononçant des peines ou des mesures privatives de liberté aux fins de leur exécution dans l'Union européenne.*

décision-cadre concernant l'application du principe de reconnaissance mutuelle aux jugements et aux décisions de probation[(6)].

Cette proposition de décision-cadre tend, par la mise en œuvre d'un socle minimal de droits procéduraux, à renforcer la confiance mutuelle entre les Etats membres. Il existe en effet une demande forte des Etats pour garantir l'exercice de certains droits fondamentaux, contrepartie à la mise en application prochaine des textes relatifs à la reconnaissance mutuelle précités. La proposition se limiterait au droit à l'interprétation et à la traduction de certaines pièces du dossier pour les suspects dans un procès pénal ne comprenant pas la langue du pays dans lequel ils sont poursuivis.

I. Un contexte marqué par l'échec, en 2004, des précédentes négociations sur un texte de grande ampleur

Un précédent projet de décision-cadre portant sur les droits procéduraux avait été déposé par la commission européenne en 2004. Ce texte avait un champ d'application beaucoup plus large et prévoyait, outre le droit à l'interprétation et à la traduction, le droit à l'assistance d'un avocat, le droit de communiquer et l'information des suspects sur leurs droits.

Le texte a été abandonné en 2007 suite à l'échec des négociations. Plusieurs Etats membres y étaient fermement opposés (République Tchèque, Irlande, Autriche, Slovaquie, Danemark, Royaume-Uni et Malte). L'Assemblée nationale et la Chambre des Communes britannique s'y étaient également opposés.

Les principales difficultés soulevées avaient trait à :

- la base juridique du texte qui apparaissait incertaine, notamment au vu du caractère extensif et détaillé des droits procéduraux prévus ;

- les difficultés d'articulation des nouvelles normes avec les principes reconnus par la Convention européenne des droits de l'Homme.

L'Assemblée nationale avait adopté une résolution (texte adopté n° 674 du 7 février 2007) selon laquelle l'Assemblée nationale :

« I. – Sur les principes directeurs que l'Union européenne devrait respecter en matière de procédure pénale :

1. Estime que l'Union européenne, conformément au principe de subsidiarité, doit fixer, en ce qui concerne la procédure pénale dans les matières ayant une dimension transfrontalière, des principes fondamentaux apportant une

(6) *Décision-cadre 2008/947/JAI du Conseil du 27 novembre 2008 concernant l'application du principe de reconnaissance mutuelle aux jugements et aux décisions de probation aux fins de la surveillance des mesures de probation et des peines de substitution.*

valeur ajoutée par rapport aux dispositions de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales ;

2. Rappelle qu'il appartient ensuite aux États membres de mettre en oeuvre ces principes fondamentaux conformément à leurs traditions et systèmes juridiques, sous le contrôle des juridictions européennes ;

II. – Sur la proposition de décision-cadre relative à certains droits procéduraux accordés dans le cadre des procédures pénales dans l'Union européenne :

3. Approuve la volonté de renforcer la protection des droits fondamentaux dans le cadre des procédures pénales, s'il s'agit de conforter la confiance mutuelle entre les États membres ;

4. Estime que le traité sur l'Union européenne ne donne pas compétence à l'Union européenne pour harmoniser les droits procéduraux accordés aux mis en cause dans des procédures strictement internes, ne comportant aucun élément transfrontalier […] »

S'agissant de la base juridique, la Commission européenne avait fondé sa proposition sur l'article 31 du traité sur l'Union européenne, interprété de manière large, permettant d'inclure une plus grande compatibilité entre les règles applicables aux droits procéduraux dans les actions de l'Union, car cela a pour effet d'accroître la confiance mutuelle entre les systèmes judiciaires des différents Etats membres. Le service juridique du Conseil avait rendu un avis le 30 septembre 2004 selon lequel le Conseil pouvait adopter les mesures proposées si, dans le respect du principe de subsidiarité, elles ne dépassaient pas ce qui est nécessaire pour l'amélioration de la coopération judiciaire pénale.

Cette lecture du traité n'avait pas convaincu les Députés, notamment au regard de la comparaison avec le nouvel article 82 du traité sur le fonctionnement de l'Union, tel que résultant du traité de Lisbonne, lequel prévoit explicitement une intervention dans le domaine des droits procéduraux, dans la mesure où cela est nécessaire pour faciliter la reconnaissance mutuelle des jugements et décisions judiciaires. Une lecture très large de l'actuel article 31 aboutirait à ce que le traité de Lisbonne, précis sur le point des droits procéduraux, constitue un recul des compétences de l'Union dans ce domaine.

Les Députés avaient suggéré de limiter le champ d'application de la future décision-cadre aux instruments de reconnaissance mutuelle des décisions judiciaires, afin d'en circonscrire l'application aux affaires comportant un élément transfrontalier, conformément au traité sur l'Union européenne.

Article 31 du traité sur l'Union européenne (le c du 1 constitue la base juridique appropriée selon la Commission européenne) :

1. **L'action en commun dans le domaine de la coopération judiciaire en matière pénale vise, entre autres, à**:

a) faciliter et accélérer la coopération entre les ministères et les autorités judiciaires ou équivalentes compétents des États membres, y compris, lorsque cela s'avère approprié, par l'intermédiaire d'Eurojust, pour ce qui est de la procédure et de l'exécution des décisions;

b) faciliter l'extradition entre États membres;

c) **assurer, dans la mesure nécessaire à l'amélioration de cette coopération, la compatibilité des règles applicables dans les États membres**;

d) prévenir les conflits de compétences entre États membres;

e) adopter progressivement des mesures instaurant des règles minimales relatives aux éléments constitutifs des infractions pénales et aux sanctions applicables dans les domaines de la criminalité organisée, du terrorisme et du trafic de drogue.

Article 82 (2) du traité sur le fonctionnement de l'Union,
tel que résultant du traité de Lisbonne :

2. **Dans la mesure où cela est nécessaire pour faciliter la reconnaissance mutuelle des jugements et décisions judiciaires**, **ainsi que la coopération policière et judiciaire dans les matières pénales ayant une dimension transfrontière**, le Parlement européen et le Conseil, statuant par voie de directives conformément à la procédure législative ordinaire, **peuvent établir des règles minimales. Ces règles minimales tiennent compte des différences entre les traditions et systèmes juridiques des États membres**. **Elles portent sur**:

a) l'admissibilité mutuelle des preuves entre les États membres;

b) **les droits des personnes dans la procédure pénale**;

c) les droits des victimes de la criminalité;

d) d'autres éléments spécifiques de la procédure pénale, que le Conseil aura identifiés préalablement par une décision; pour l'adoption de cette décision, le Conseil statue à l'unanimité, après approbation du Parlement européen.

L'adoption des règles minimales visées au présent paragraphe n'empêche pas les États membres de maintenir ou d'instituer un niveau de protection plus élevé pour les personnes.

II. Le fond du texte est intéressant, bien que plusieurs précisions doivent encore être apportées

La stratégie retenue par la présidence suédoise consiste à procéder par étape, le droit à l'interprétation et à la traduction étant présenté comme le premier volet d'une série de mesures visant à remplacer progressivement la proposition de décision-cadre de 2004. La base juridique retenue est la même qu'en 2004 (le c du 1 de l'article 31 du traité sur l'Union européenne).

L'accueil politique du projet de texte est très différent de celui réservé à la proposition de 2004, en premier lieu parce que l'ampleur du texte est toute autre et que les droits à l'interprétation et à la traduction sont consensuels, et en second lieu parce que la demande pour un rapprochement des droits procéduraux, dans le respect des traditions juridiques des Etats membres, se fait plus pressante à l'heure où nombre d'instruments relatifs à la reconnaissance mutuelle des décisions judiciaires vont effectivement être mis en oeuvre.

Le gouvernement britannique, qui était hostile à la proposition de 2004, soutient ainsi le présent projet, tout comme devrait le faire la Chambre des Communes, selon les informations transmises au rapporteur. Les délégations tchèque et slovaque, traditionnellement hostiles à une intervention sur les droits procéduraux en matière pénale, semblent ne plus remettre en cause la base juridique. A l'heure actuelle, seul le Parlement irlandais a estimé que le traité actuel ne donne pas de base juridique pour un tel projet. L'Assemblée nationale slovène a émis de sérieux doutes sur la base juridique sans toutefois prendre position de manière tranchée. Le Sénat français a jugé ce projet de texte conforme au principe de subsidiarité et de proportionnalité.

Les autorités françaises soutiennent pleinement ce projet de texte. La France avait fait partie des Etats membres qui avaient proposé, en 2006, d'engager une coopération renforcée afin de faire aboutir le précédent projet de 2004. Bien que certains points doivent encore être négociés, la proposition actuelle bénéficie de l'appui du gouvernement français.

Le fait est également que les dernières négociations autour des textes instituant la reconnaissance mutuelle ont été de plus en plus ardues, à l'exemple de la négociation de la proposition de décision-cadre relative à la décision européenne de contrôle judiciaire dans le cadre des procédures présentencielles, car les Etats membres veulent des garanties sur le fonctionnement des systèmes judiciaires de leurs partenaires.

Le fond du texte est intéressant. Il est en effet prévu que les suspects dans une procédure pénale dont ils ne comprennent ni ne parlent la langue bénéficient de :

- un droit à un interprète pendant l'instruction, lors des contacts avec les autorités judiciaires, policières et avec l'avocat ;

- un droit à la traduction des documents essentiels de la procédure (terme à définir) pour le suspect qui ne comprend pas la langue.

Le droit à l'interprétation trouve son origine dans la Convention européenne de sauvegarde des droits de l'Homme. Son article 5 dispose que « *toute*

personne arrêtée doit être informée, dans le plus court délai et dans une langue qu'elle comprend, des raisons de son arrestation et de toute accusation portée contre elle ». Son article 6, relatif au droit à un procès équitable, dispose que « *tout accusé a droit notamment : à être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui,* […] *se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience*. »

La Cour européenne des droits de l'Homme a jouté à ces droits celui de voir les pièces présentant un intérêt dans la procédure traduites dans une langue que l'accusé comprend (CEDH, 19 décembre 1989, Kamasinki contre Autriche).

Le projet de décision-cadre prévoit que les droits à l'interprétation et à la traduction s'appliqueraient dès lors que la personne est informée par les autorités qu'elle est soupçonnée d'avoir commis une infraction (suspect) et jusqu'au terme de la procédure.

L'article 2 consacre le droit à l'assistance d'un interprète au profit du suspect qui ne comprend ni ne parle la langue de la procédure (ce qui inclut les personnes présentant des troubles de l'audition ou de la parole). Ce droit s'étendrait à tous les contacts avec les autorités policières et judiciaires au cours de la procédure, et aux contacts entre le suspect et son avocat. Il s'appliquerait également aux procédures liées à l'exécution d'un mandat d'arrêt européen. Les Etats membres devraient vérifier si le suspect comprend et parle la langue de la procédure. Une procédure de recours devrait être prévue contre une décision qui conclurait à l'inutilité de l'interprétation.

L'article 3 traite du droit à la traduction. Les États membres devraient veiller à ce que le suspect qui ne comprend pas la langue de la procédure pénale concernée bénéficie de la traduction de tous les documents essentiels de cette procédure. Parmi les documents essentiels à traduire figureraient la mesure de sûreté privative de liberté, l'acte d'accusation, les preuves documentaires essentielles et le jugement. Le suspect ou son avocat pourraient présenter une demande motivée de traduction d'autres pièces.

Les frais de traduction et d'interprétation seraient pris en charge par les Etats membres. Enfin, la traduction et l'interprétation devraient être de qualité afin que le suspect puisse exercer pleinement ses droits.

Plusieurs éléments doivent encore faire l'objet de négociations (définition du suspect, du moment de la procédure pénale à partir duquel les droits s'appliqueraient). Pour les autorités françaises, le champ du droit à interprétation est trop vaste. Il couvre ainsi tous les contacts entre le suspect et son avocat, ce qui est trop imprécis.

Il en est de même pour le droit à la traduction, dont les coûts seraient trop élevés. Les autorités françaises souhaitent qu'une traduction orale puisse être effectuée. La question du moment de l'accès à une traduction est également posée car il n'y a pas en France d'accès au dossier dans la phase préalable à la mise en examen.

Malgré tout, les chances d'aboutir sont grandes d'ici la fin de l'année.

En ce qui concerne l'articulation avec la jurisprudence de la Cour européenne des droits de l'Homme, le considérant n° 8 dispose que « *le droit à l'interprétation et à la traduction, accordé aux personnes qui ne comprennent pas la langue de la procédure, est consacré aux articles 5 et 6 de la CEDH, tels qu'ils sont interprétés dans la jurisprudence de la Cour européenne des droits de l'homme. Les dispositions de la présente décision-cadre facilitent l'exercice de ce droit dans la pratique*. » En outre, une consultation du conseil de l'Europe est prévue afin de s'assurer que la proposition ne peut entrer en conflit avec les normes de la Convention européenne des droits de l'Homme, telle qu'interprétée par la CEDH.

Parallèlement à ce texte, une feuille de route sur l'ensemble des garanties minimales en matière de droits procéduraux est également en cours de négociation. Sans valeur contraignante et demeurant assez générale, elle traite des mesures d'informations relatives aux droits et à l'accusation, de l'assistance d'un conseiller juridique, du droit de communication avec les proches ou encore des garanties pour les plus vulnérables. Un livre vert sur le réexamen périodique des motifs de détention provisoire pourrait être rédigé. La France a plusieurs réserves majeures sur ces sujets et veille à ce que le système juridique français et les traditions juridiques des Etats membres soient préservés.

III. Appréciation au titre de la subsidiarité

Il convient de tenir compte du contenu du texte et de l'évolution des besoins concrets liés à la reconnaissance mutuelle des décisions judiciaires en matière pénale.

La base juridique est la même que celle proposée en 2004. Néanmoins, le lien entre le besoin d'un socle de droits procéduraux communs minimaux et le développement de la reconnaissance mutuelle s'est affirmé. Il ne semble ainsi plus possible de progresser sur la voie de la reconnaissance mutuelle sans garanties procédurales partagées au sein de l'Union.

Il faut rappeler que la France soutient ce projet dans l'actuelle négociation.

En outre, le projet de texte, encore en négociation, ne faisait pas partie des mesures très critiquées dans le projet de 2004 et, sous réserve des évolutions souhaitées par les autorités françaises, parait proportionné aux objectifs de renforcement de la confiance mutuelle.

La matière en question (droit à l'interprétation et à la traduction) présente également un lien évident avec la confiance mutuelle entre les pays de l'Union ainsi qu'un aspect transfrontalier certain car la traduction et l'interprétation concernent le plus souvent les non nationaux, ressortissants de l'Union européenne ou de pays tiers.

S’agissant par ailleurs des projets qui seront inscrits dans la feuille de route, la plus grande vigilance demeure de mise. Il convient à cet égard de rappeler que la règle de l’unanimité continue de s’appliquer.

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Au titre de l’examen du respect du principe de subsidiarité, la Commission a considéré que le projet de texte *respecte* le principe de subsidiarité, au cours de sa réunion du 16 septembre 2009.

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La Commission *a approuvé* la proposition de décision-cadre, sous réserve des aménagements demandés par les autorités françaises, en l’état des informations dont elle dispose, au cours de sa réunion du 16 septembre 2009.

ASSEMBLÉE NATIONALE

RÉPUBLIQUE FRANÇAISE
LIBERTÉ-ÉGALITÉ-FRATERNITÉ

SECRETARIAT DE LA COMMISSION
DES AFFAIRES EUROPEENNES

Paris, le 12 octobre 2009

Réponse au questionnaire relatif au test de subsidiarité dans le cadre de la COSAC
Proposition de décision-cadre du Conseil sur le droit à l'interprétation et à la traduction dans les procédures pénales.

Procédure :

1. Quelles commissions parlementaires ont été impliquées dans le test de subsidiarité et de quelle manière ?

La Commission des affaires européennes a réalisé le test de subsidiarité. La proposition de décision-cadre a été présentée dans une communication de M. Guy Geoffroy, Député, membre de la Commission des affaires européennes.

2. La séance plénière a-t-elle été impliquée ?

Non.

3. A quel niveau la décision finale a-t-elle été prise et qui l'a paraphée ?

La Commission des affaires européennes a approuvé la proposition de décision-cadre et rendu son avis au titre de la subsidiarité.

4. Quels services administratifs de votre parlement ont été impliqués et de quelle manière? Merci de préciser.

Le secrétariat de la Commission des affaires européennes a travaillé avec M. Guy Geoffroy pour préparer sa communication.

5. En ce qui concerne les parlements bicaméraux : avez-vous conduit le test de subsidiarité en coordination avec l'autre chambre ?

La Commission des affaires européennes s'est tenue informée des résultats du test de subsidiarité au Sénat.

6. Votre gouvernement a-t-il fourni des informations relatives au respect du principe de subsidiarité par la proposition de la directive ?

Les autorités françaises ont été consultées.

7. Avez-vous consulté les parlements régionaux de votre pays qui disposeraient de pouvoirs législatifs ?

Sans objet.

8. Avez-vous consulté des organisations non gouvernementales, des groupes d'intérêt, des experts extérieurs ou d'autres parties prenantes ?

Cela relève des travaux de préparation du rapporteur.

9. Selon quelle chronologie le test a-t-il été conduit au sein de votre Parlement ? Merci de préciser les dates.

Le projet de décision-cadre a été examiné le 16 septembre 2009 par la Commission des affaires européennes.

10. Avez-vous coopéré avec d'autres parlements nationaux ? Si oui, par quels moyens ?

La Commission des affaires européennes s'est tenue informée des résultats du test de subsidiarité dans les parlements nationaux s'étant prononcés.

11. Avez-vous publié vos conclusions ? Si oui, par quels moyens ?

Le compte rendu de la réunion de la Commission des affaires européennes est diffusé dans l'Assemblée nationale et publié sur le site Internet www.assemblee-nationale.fr.

La communication présentée par M. Guy Geoffroy est incluse dans un rapport de la Commission des affaires européennes publié et disponible sur le site Internet www.assemblee-nationale.fr.

Conclusions :

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

Non.

13. Avez-vous adopté un avis motivé sur la proposition de directive ? Si oui, veuillez en joindre une copie.

Oui, voir le rapport adressé précédemment.

14. Avez-vous trouvé les justifications de la Commission sur le respect du principe de subsidiarité satisfaisantes ?

En partie.

15. Avez-vous rencontré des difficultés spécifiques pendant l'examen ?

Difficultés liées à la base juridique du texte.

16. Avez-vous d'autres observations ?

Non.

France: *Sénat*

Procédure :

1. Quelles commissions parlementaires ont été impliquées dans le test de subsidiarité et de quelle manière ? **La commission des affaires européennes du Sénat.**
2. La séance plénière a-t-elle été impliquée ? **Non**
3. A quel niveau la décision finale a-t-elle été prise et qui l'a paraphée ? **La décision a été arrêtée par les sénateurs membres de la commission des affaires européennes.**
4. Quels services administratifs de votre parlement ont été impliqués et de quelle manière? Merci de préciser. **Le service des affaires européennes.**
5. En ce qui concerne les parlements bicaméraux : avez-vous conduit le test de subsidiarité en coordination avec l'autre chambre ? **Non.**
6. Votre gouvernement a-t-il fourni des informations relatives au respect du principe de subsidiarité par la proposition de la directive ? **Non.**
7. Avez-vous consulté les parlements régionaux de votre pays qui disposeraient de pouvoirs législatifs ? **Non.**
8. Avez-vous consulté des organisations non gouvernementales, des groupes d'intérêt, des experts extérieurs ou d'autres parties prenantes ? **Non**.
9. Selon quelle chronologie le test a-t-il été conduit au sein de votre Parlement ? Merci de préciser les dates. **Procédure écrite par le président de la commission le 22 juillet puis adoption formelle le 7 septembre.**
10. Avez-vous coopéré avec d'autres parlements nationaux ? Si oui, par quels moyens ? **Non.**
11. Avez-vous publié vos conclusions ? Si oui, par quels moyens ? **Oui. Sur la page Europe du site internet du Sénat (www.senat.fr).**

Conclusions :

12. Avez-vous découvert un quelconque manquement au principe de subsidiarité ? **Non.**
13. Avez-vous adopté un avis motivé sur la proposition de directive ? Si oui, veuillez en joindre une copie. **Oui.**
14. Avez-vous trouvé les justifications de la Commission sur le respect du principe de subsidiarité satisfaisantes ? **Oui.**
15. Avez-vous rencontré des difficultés spécifiques pendant l'examen ? **Non.**
16. Avez-vous d'autres observations ? **Non.**

SÉNAT

Paris, le 7 septembre 2009

COMMISSION
DES
AFFAIRES EUROPÉENNES

PROPOSITION DE DECISION-CADRE RELATIVE AU DROIT A L'INTERPRETATION ET A LA TRADUCTION DANS LE CADRE DES PROCEDURES PENALES (E 4597)

***

Examen de subsidiarité

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1°/ Le choix d'une approche graduelle après l'échec des discussions sur un précédent texte plus global présenté par la Commission européenne en 2004

Le Conseil de Tampere des 15 et 16 octobre 1999 a fait de la reconnaissance mutuelle des décisions de justice la pierre angulaire de la coopération judiciaire en matière tant civile que pénale au sein de l'Union. Ce principe suppose une confiance mutuelle des États membres dans leurs systèmes judiciaires respectifs et en particulier leur procédure pénale. C'est pourquoi, après un livre vert élaboré en février 2003, la Commission européenne avait présenté, en 2004, une proposition de décision-cadre pour définir **un socle minimal de droits procéduraux accordés aux personnes soupçonnées d'avoir commis des infractions pénales**. Outre le droit de bénéficier gratuitement des services d'interprétation et de traduction, ce texte prévoyait le droit à l'assistance d'un avocat, le droit d'être informé de ses droits, le droit à une attention particulière pour les personnes mises en cause vulnérables, le droit de communiquer avec les autorités consulaires et avec la famille.

Après l'échec des négociations sur ce texte, la Commission européenne a décidé de retenir une approche graduelle qui contribuerait à instaurer et à renforcer progressivement un climat de confiance mutuelle. Dans cette perspective, la nouvelle proposition de décision-cadre, qu'elle a présentée le 8 juillet 2009, tend à définir des **normes minimales communes concernant le droit à l'interprétation et à la traduction dans le cadre des procédures pénales** conduites dans l'Union européenne. Elle est présentée par la Commission européenne comme le premier volet d'une série de mesures destinées à remplacer la proposition de décision-cadre de 2004.

En choisissant d'axer sa nouvelle proposition sur le droit à l'interprétation et à la traduction, la Commission européenne privilégie le droit qui a été le moins controversé lors des discussions sur sa proposition de 2004. Ce droit trouve son origine dans la convention

européenne de sauvegarde des droits de l'homme (CEDH) qui, prévoit, dans son article 5, que *« toute personne arrêtée doit être informée, dans le plus court délai* ***et dans une langue qu'elle comprend,*** *des raisons de son arrestation et de toute accusation portée contre elle. »* et, dans son article 6 qui pose le principe du droit à un procès équitable, que *« tout accusé a droit notamment à être informé, dans le plus court délai****, dans une langue qu'il comprend*** *et de manière détaillée de la nature et de la cause de l'accusation portée contre lui »* et de ***« se faire assister gratuitement d'un interprète,*** *s'il ne comprend pas ou ne parle pas la langue employée à l'audience. »* Ces droits sont repris aux articles 6 et 47 à 50 de la Charte des droits fondamentaux de l'Union européenne, auquel le traité de Lisbonne confère une valeur obligatoire. La portée de ces droits a été explicitée dans la jurisprudence de la Cour européenne des droits de l'homme.

2°/ Que prévoit la proposition de décision-cadre ?

Concrètement, ces droits à l'interprétation et à la traduction s'appliqueraient à toutes les personnes suspectées dans le cadre d'une infraction pénale jusqu'à la condamnation finale (y compris les recours éventuels). Ils seraient mis en œuvre à compter du moment où la personne est informée qu'elle est soupçonnée d'avoir commis une infraction (par exemple, au moment de son arrestation ou lors de son placement en garde à vue). Les affaires donnant lieu à un mandat d'arrêt européen seraient également prises en compte.

L'interprétation devrait être assurée pendant la phase d'instruction et la phase judiciaire de la procédure, c'est-à-dire durant les interrogatoires menés par la police, le procès, les audiences en référé et les recours éventuels. Ce droit s'étendrait aux conseils juridiques prodigués au suspect, si son avocat parle une langue qu'il ne comprend pas. En outre, le suspect aurait le droit de recevoir la traduction des documents essentiels afin que le caractère équitable de la procédure soit préservé. Le mandat d'arrêt européen ferait l'objet d'une traduction. La Cour européenne des droits de l'homme a déjà eu l'occasion de spécifier que le droit à l'assistance d'un interprète vaut aussi pour les pièces écrites.

Les États membres devraient supporter les frais d'interprétation et de traduction. Il s'agit là de l'application du droit de bénéficier **gratuitement** des services d'un interprète, même en cas de condamnation, consacré par la jurisprudence de la Cour européenne des droits de l'homme. En outre, la proposition établit l'obligation d'assurer la qualité de l'interprétation et de la traduction. Elle précise, enfin, que cette définition de normes minimales communes n'aura pas pour effet d'abaisser les normes en vigueur dans certains États membres ou d'écarter les protections résultant de la convention européenne des droits de l'homme. Les États membres pourront toujours décider d'adopter des normes plus élevées que celles résultant de la proposition de décision-cadre

3°/ Quelle appréciation peut-on porter au titre de l'examen de subsidiarité ?

La proposition se fonde sur l'article 31, § 1, du traité sur l'Union européenne qui, dans son point c), prévoit que l'Union peut mener une « action en commun » de manière à assurer, dans la mesure nécessaire à l'amélioration de la coopération judiciaire en matière pénale, la compatibilité des règles appliquées dans les États membres. La Commission européenne fait valoir que la coopération judiciaire, et notamment la reconnaissance mutuelle, exige une confiance réciproque et qu'un certain degré d'harmonisation est nécessaire pour renforcer la confiance mutuelle et, partant, la coopération. La proposition ayant pour objet de promouvoir

la confiance entre États membres, la Commission européenne souligne que cet objectif ne peut être atteint d'une manière adéquate par les seuls États membres. Elle serait donc conforme au principe de subsidiarité. En outre, se limitant au minimum requis pour réaliser cet objectif au niveau européen, elle n'excéderait pas ce qui est nécessaire à cette fin.

Lors de l'examen de la proposition présentée en 2004, la Délégation pour l'Union européenne du Sénat s'était interrogée sur la base juridique d'un instrument communautaire concernant la procédure pénale. En effet, aux termes des traités, les possibilités d'harmonisation en matière pénale semblent limitées au droit matériel – la définition des infractions et des peines – dans des domaines limitativement énumérés comme la criminalité organisée, le terrorisme ou la drogue. C'est pourquoi le traité constitutionnel (article III-270) puis le traité de Lisbonne (article 82 du traité sur le fonctionnement de l'Union européenne) ont pris soin d'introduire une nouvelle base juridique visant expressément l'harmonisation des droits des personnes dans les procédures pénales. Les critiques des États membres contre le texte de 2004 portaient précisément sur l'incertitude de la base juridique, le caractère extensif et excessivement détaillé des droits procéduraux énoncés, ainsi que sur les modalités d'articulation de la décision-cadre avec les principes d'ores et déjà reconnus par la convention européenne des droits de l'homme du Conseil de l'Europe. La très grande majorité des États membres s'étaient toutefois montrés favorables à la poursuite des discussions à condition que la décision-cadre soit limitée aux droits procéduraux les plus fondamentaux.

Sur le rapport de notre collègue Pierre Fauchon au nom de la commission des lois, le Sénat avait jugé nécessaire, dans une résolution du 24 mars 2007, une harmonisation des droits procéduraux reconnus aux suspects sans attendre une modification des traités en vigueur. Le Sénat avait souhaité que les principes posés dans la décision-cadre présentent un caractère contraignant et général tout en préservant les régimes procéduraux particuliers applicables à certaines infractions tels que le terrorisme et la criminalité ou la délinquance organisées. Il avait aussi considéré que si l'opposition d'une minorité d'États membres ne permettait pas d'aboutir, il serait souhaitable de procéder par la voie d'une coopération renforcée ou, à défaut, d'accords interétatiques. Il avait, enfin, jugé utile d'établir un mécanisme de contrôle indépendant.

Le rapporteur du Sénat avait, en effet, relevé les progrès très significatifs acquis au cours des négociations. Dans un avis du 30 septembre 2004, le service juridique du Conseil avait estimé que le Conseil pouvait adopter les mesures proposées si, dans le respect du principe de subsidiarité, celles-ci ne dépassaient pas ce qui était nécessaire pour l'amélioration de la coopération judiciaire pénale. Le gouvernement français s'était rangé à ces arguments. Au-delà de ces éléments de droit, notre collègue Pierre Fauchon avait fait valoir des considérations plus pragmatiques : l'adoption du traité constitutionnel étant différée, il n'était pas possible de s'en remettre à la reconnaissance expresse d'une base juridique pour avancer dans l'harmonisation des procédures pénales. Au reste, l'adoption par le Conseil, le 15 mars 2001, de la décision-cadre sur le statut des victimes dans le cadre des procédures pénales, sans que la question de la base juridique ait constitué un obstacle, semblait ouvrir la voie à de nouvelles initiatives en matière de procédure pénale. La proposition avait, par ailleurs, été recentrée autour de quatre droits principaux (droit à un avocat, droit à l'information, droit à l'interprétation et à la traduction, droit à l'aide juridictionnelle). Enfin, la décision-cadre ne devait pas déterminer un niveau de garantie inférieur à celui assuré par la convention européenne des droits de l'homme.

La présente proposition traitant de l'un des volets du dispositif proposé en 2004, force est de constater que le débat sur la base juridique se pose dans les mêmes termes et appelle de la part du Sénat une réponse analogue à celle contenue dans sa résolution du 24 mars 2007. Dès lors que l'objectif est d'établir une norme minimale commune qui soit applicable dans l'ensemble de l'Union européenne en matière d'interprétation et de traduction dans le cadre des procédures pénales, une action au niveau communautaire apparaît nécessaire. Seul un instrument contraignant peut permettre d'atteindre cet objectif. La faculté restera ouverte aux États membres d'adopter des normes plus élevées que celles résultant de la proposition de décision-cadre. En outre, sous réserve des précisions éventuelles qui pourront être apportées au cours des discussions qui vont s'engager, celle-ci ne paraît pas aller au-delà de ce qui est nécessaire pour atteindre l'objectif poursuivi. La prise en compte du mandat d'arrêt européen semble en particulier justifiée dès lors que, comme le fait valoir la Commission européenne, la décision-cadre du 13 juin 2002 relative au mandat d'arrêt européen n'aborde ces droits qu'en des termes très généraux.

Sous le bénéfice de ces observations, je vous propose de considérer que la proposition de décision-cadre respecte les principes de subsidiarité et de proportionnalité.

Germany: *Bundestag*

Subsidiarity check under the provisions of the Treaty of Lisbon on the Commission proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

Two committees of the German Bundestag were involved in the subsidiarity check: Committee on Legal Affairs (lead committee) and the Committee on the Affairs of the European Union participating in advisory capacity (committee asked for an opinion).

2. Was the plenary involved?

Yes. The final decision of the German Bundestag on the proposal's compliance with the subsidiarity principle was taken by the plenary. It was prepared by the named committees and communicated to the plenary within (reasoned) statements. On that basis the plenary took its final vote.

3. At which level the final decision was taken and who signed it?

The decision of the plenary based on the lead committee's recommendation for a decision. It was signed by the president of the German Bundestag, Prof. Dr. Norbert Lammert.

4. Which administrative services of your parliament were involved and how?

The deliberation and decision process was supported by the administrative units of the involved committees (Secretariats), by the division PA 1 (Europe) and by the Parliamentary Secretariat of the German Bundestag.

The division PA 1 (Europe) supported the lead committee with a notation on the proposal's compliance with the subsidiarity principle and further information on the legal framework of the subsidiarity check. The named notation was distributed to all involved committees and their members.

The Secretariat of the Committee on Legal Affairs prepared and organized the deliberation and decision process of the lead committee and prepared the committee's recommendation for a decision and report to the plenary. In cooperation with the Parliamentary Secretariat it finally coordinated the information of the EU institutions.

As the responsible division for the Bundestag's COSAC-membership, the Secretariat of the Committee on the Affairs of the European Union was in charge with the general coordination of the subsidiarity check. It distributed all relevant information (subject, procedure, responsibilities, deadline, schedule) on the COSAC subsidiarity check, examined the proposal for committee deliberations and communicated the decision to the lead committee. Finally, it sent the German Bundestag's vote and the questionnaire to the COSAC Secretariat.

5. In case of bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

There was no special cooperation with the Bundesrat.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

Written information/reports on the Proposal were provided by the Federal Ministry of Justice and the Federal Ministry of the Interior.

7. Did you consult your regional parliaments with legislative powers?

Federal State parliaments were not involved.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No.

9. What was the chronology of events?

The German Bundestag basically worked within its usual scrutiny procedure on EU documents.

- referral of the proposal to the German Bundestag
- prioritization proposal concerning subsidiarity check and notation on subsidiarity questions (provided by division PA 1 (Europe))
- deliberation and decision of the involved committees
- Committee on Legal Affairs: recommendation for a decision and report to the plenary
- deliberation and decision of the plenary (final vote)

- transmission of the German Bundestag' decision to the EU institutions by the president of the German Bundestag
- transmission of the reasoned opinion/ recommendation for a decision and report to the plenary and the questionnaire to the COSAC Secretariat

10. Did you cooperate with other national parliaments in the process? If so, by what means?

No.

11. Did you publicise your findings?

A short summary of the decision of the Bundestag will be published on the IPEX website.

Findings:

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

Concerning the principle of subsidiarity the German Bundestag in its final vote did not find any breach of the principle of subsidiarity.

Wording of the German Bundestag's final vote:

> "Having noted the communication from the Federal Government contained in printed paper 16/13912 A.4, the Bundestag notes: that it does not wish to express reservations as regards compliance with the principle of subsidiarity enshrined in Community law against the proposal by the EU Commission for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings."

13. Did you adopt a reasoned opinion on the Proposal?

No. A letter of the President of the German Bundestag is sent within the deadline, however, to the EU institutions, containing the final vote of the plenary.

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

Within the parliamentary discussions the Commission's justification has not been criticized for not being sufficient.

15. Did you encounter any specific difficulties during this subsidiarity check?

No.

16. Any other comments?

No.

Germany: *Bundesrat*

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

   The Committee on European Union Questions is the lead committee in the Bundesrat when examining draft EU legislation and other EU proposals. The EU Committee deliberates on the basis of recommendations from the sector-specific committees. The draft Framework Decision was also examined by the Legal Affairs Committee.

2. Was the plenary involved?

   On the basis of deliberations in the committees, the Bundesrat adopted an Opinion on the draft Framework Decision in its plenary session on 18th September 2009.

3. At which level the final decision was taken and who signed it?

   See answer to question 2.

4. Which administrative services of your parliament were involved and how? Please specify.

   The Bureau of the Committee on European Union Questions compiles the recommendations from the Bundesrat's sector-specific committees into a consolidated text. These texts form the basis for votes on EU documents in the Bundesrat's plenary session.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

   The subsidiarity check was carried out independently of the check done by the German Bundestag.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

   The federal government explained its appraisal of the draft Framework Decision in deliberations in the committees.

7. Did you consult your regional parliaments with legislative powers?

   It is incumbent on the governments of the federal states to ensure that the regional parliaments are consulted.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

Interested parties, such as non-governmental organisations, are generally consulted directly by the federal states.

9. What was the chronology of events? Please specify the dates.

   The draft Framework Decision was transmitted to the Bundesrat on 8th July 2009 by the Commission and on 16th July 2009 by the federal government, in both instances in the German language version. The Secretary-General of the Bundesrat, acting on behalf of the President of the Bundesrat, allocated this document to the Legal Affairs Committee for deliberations in addition to the lead committee, the Committee on European Union Questions (c.f. question 1). The deliberations could not be initiated until after the summer recess. The two committees met in the week from 31st August to 4th September 2009 and adopted their recommendations for a Bundesrat Opinion. The draft Framework Decision was examined in the EU Committee on 4th September 2009. The EU Committee adopted its recommendation to the Bundesrat for an Opinion on the basis of the recommendation from the Legal Affairs Committee.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

    There was no cooperation with other national parliaments. Where available, the results of deliberations were consulted via the IPEX system. Progress in deliberations and the results of the deliberations in the Bundesrat were also entered into the IPEX system promptly.

11. Did you publicise your findings? If so, by what means?

    The Bundesrat's decisions are public and are available for public consultation via the Internet.

Findings:

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

    The Bundesrat concluded that the comments in the explanatory memorandum and in the recitals of the draft Framework Decision in respect of the legal basis of Article 31 Sub-section 1, Point c TEU in principle provide justification for competence to adopt provisions of this nature. No breaches of the principles of subsidiarity or proportionality were identified.

    However, in the light of the substantive issues, the Bundesrat is of the opinion that the extent of the provisions proposed by the Commission in the Framework Decision is not necessary. This applies in any case to those parts of the draft Decision that extend beyond the obligations arising from the European Convention on Human Rights (ECHR).

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

The Bundesrat adopted the appended Opinion on the draft Framework Decision on 18th September 2009.

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

The Bundesrat did not criticise the Commission's justification with regard to the principle of subsidiarity.

15. Did you encounter any specific difficulties during this subsidiarity check?

No.

16. Any other comments?

Due to the summer recess the Bundesrat could not comply with the 8-week deadline. If the early warning system had already been in force, the Bundesrat would have been apply to meet the deadline, as the Commission has announced that it will not take the four weeks in August into account in computing the length of the deadline. Furthermore the Bundesrat's Chamber for European Affairs ensures that the Bundesrat is always able to adopt an Opinion within the stipulated deadline. In urgent cases the Chamber for European Affairs can take a decision for the Bundesrat in lieu of the Bundesrat plenary session.

Bundesrat **Drucksache 657/09**
(Beschluss)

18.09.09

Beschluss
des Bundesrates

Vorschlag für einen Rahmenbeschluss des Rates über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren

KOM(2009) 338 endg.; Ratsdok. 11917/09

Der Bundesrat hat in seiner 861. Sitzung am 18. September 2009 gemäß §§ 3 und 5 EUZBLG die folgende Stellungnahme beschlossen:

1. Der Bundesrat begrüßt das mit dem Rahmenbeschlussvorschlag verfolgte Anliegen, durch die Festlegung gemeinsamer Mindeststandards für Verdolmetschung und Übersetzung im Strafverfahren innerhalb der EU das Vertrauen in die Rechtssysteme der anderen Mitgliedstaaten zu stärken und die gegenseitige Anerkennung von gerichtlichen Entscheidungen zu fördern. Die Ausführungen in der Begründung und in den Erwägungen des Rahmenbeschlussvorschlags sind im Hinblick auf die Rechtsgrundlage des Artikels 31 Absatz 1 Buchstabe c EUV auch grundsätzlich geeignet, die Kompetenz für eine entsprechende Regelung zu begründen.

2. Der Bundesrat hält den Rahmenbeschluss jedoch in fachlicher Hinsicht nicht in dem von der Kommission vorgeschlagenen Umfang für erforderlich - vgl. auch die Stellungnahmen des Bundesrates vom 24. September 2004, BR-Drucksache 409/04 (Beschluss), und vom 23. Mai 2003, BR-Drucksache 155/03 (Beschluss) -. Das gilt jedenfalls für den Teil des Beschlussvorschlags, der über die Verpflichtungen hinausgeht, die sich aus der Europäischen Menschenrechtskonvention (EMRK) ergeben. Insoweit nimmt der Bundesrat wie folgt Stellung:

3. Das Recht auf Verdolmetschung ausdrücklich auch auf Personen auszudehnen, die hör- oder sprachgeschädigt sind, ist zu begrüßen. Der Bundesrat weist darauf hin, dass dieses Recht und die Rechte der Beschuldigten, die die Verfahrenssprache nicht verstehen, im deutschen Strafprozess hinreichend gewährleistet sind.

4. Der Bundesrat sieht keinen Bedarf für ein förmliches Verfahren zur Feststellung der sprachlichen Kompetenz eines Beschuldigten. Maßgeblich dürfte allein sein, ob der Betroffene sich darauf beruft, einen Dolmetscher/Übersetzer zu benötigen. Im Übrigen hat das Gericht von Amts wegen aufzuklären, ob alle Verfahrensbeteiligten der Verhandlungssprache genügend mächtig sind. Das Gericht hat diese Entscheidung im Rahmen des tatrichterlichen Beurteilungsspielraums zu treffen. Unterbleibt die notwendige Hinzuziehung eines Dolmetschers, so führt dies auf ein zulässiges Rechtsmittel hin zur Aufhebung des Urteils. Ein gesondertes Rechtsmittel gegen einen die Hinzuziehung eines Dolmetschers ablehnenden Beschluss lehnt der Bundesrat schon wegen der damit einhergehenden Verfahrensverzögerung und als systemfremd ab. Die isolierte Anfechtung der Entscheidung des Gerichts, mit der eine Verdolmetschung oder eine Übersetzung von Unterlagen abgelehnt wird, widerspricht dem im Strafprozess geltenden Grundsatz einer konzentrierten und beschleunigten Durchführung des Verfahrens. Dieser Gedanke liegt der Regelung des § 305 Satz 1 StPO zugrunde, wonach Entscheidungen der erkennenden Gerichte, die der Urteilsfällung vorausgehen, nicht der Beschwerde unterliegen.

5. Der Bundesrat sieht keine Notwendigkeit, über die von dem Europäischen Gerichtshof für Menschenrechte (EGMR) aufgestellten Grundsätze hinaus Regelungen zur Übersetzung von Unterlagen zu treffen. Insbesondere wird nicht für geboten erachtet, zwingend eine Übersetzung wichtigen Beweismaterials sowie des Urteils vorzusehen. Der EGMR hat festgestellt, dass nicht jedes Schriftstück übersetzt werden muss, solange ein faires Verfahren sichergestellt ist. Eine Übersetzung von Beweismaterial ist schon deshalb nicht notwendig, weil alle Beweise mündlich in der Hauptverhandlung erhoben werden und ein Urteil nur auf dieser Hauptverhandlung - und nicht auf dem Akteninhalt - beruhen kann. Der schriftlichen Übersetzung bedürfen auch nicht Urteile, die in Anwesenheit des Angeklagten unter Mitwirkung eines Dolmetschers verkündet und begründet worden sind. Zudem ist zu bedenken, dass umfangreiche Übersetzungen zu Verfahrensverzögerungen führen können, die nach Artikel 5 Absatz 3 Satz 1, Artikel 6 Absatz 1 Satz 1 EMRK zu vermeiden sind. Soweit sprachunkundige Angeklagte durch fehlende Übersetzungen benachteiligt werden könnten, kann dies sachgerecht dadurch ausgeglichen werden, dass für sie ein Verteidiger bestellt wird. In diesem Fall entfällt das Bedürfnis für die Übersetzung weiterer Aktenbestandteile und das Verfahren kann - auch im Interesse des Angeklagten - beschleunigt werden. Unabhängig von diesen grundsätzlichen Bedenken hält der Bundesrat es jedenfalls für erforderlich, dass die Strafverfolgungsbehörden und die Gerichte bestimmen, welche Dokumente "wichtiges Beweismaterial" sind. Der Rahmenbeschluss lässt im Übrigen ungeklärt, wie sich das Recht auf

schriftliche Übersetzung von Unterlagen - insbesondere Beweismittel - zum Akteneinsichtsrecht des Beschuldigten verhält. Der Bundesrat hält es an dieser Stelle jedenfalls für erforderlich klarzustellen, dass das Recht auf Übersetzung unter dem Vorbehalt steht, dass bezüglich der zu übersetzenden Aktenteile auch ein Akteneinsichtsrecht des Beschuldigten bzw. des Verteidigers besteht. Es kann nicht Ziel des Rahmenbeschlusses sein, nicht sprachkundige Beschuldigte besser zu stellen als Beschuldigte, die der Verfahrenssprache mächtig sind.

6. Das im Rahmenbeschluss vorgesehene Recht des Verteidigers, die Übersetzung weiterer Dokumente zu verlangen (Artikel 3 Absatz 3), lehnt der Bundesrat entschieden ab. Die Regelung lässt offen, ob und unter welchen Voraussetzungen das Gericht dem Antrag nachkommen muss. Verfahrensverzögerungen wären in jedem Fall die Folge.

7. Soweit der Rahmenbeschlussvorschlag die Einführung eines Rechtsmittels gegen die kostenfreie Übersetzung von Unterlagen verweigernde Entscheidungen vorsieht, lehnt der Bundesrat dies ab. Einem solchen Rechtsmittel käme weitere Verfahrens verzögernde Wirkung zu. Beruht das Urteil im Einzelfall auf einer die Grundsätze des fairen Verfahrens verletzenden Ablehnung von Übersetzungen, so kann es als deshalb rechtsfehlerhaft aufgehoben werden.

8. Ein Bedürfnis für eine besondere Schulung von Richtern, Rechtsanwälten und sonstigen am Verfahren beteiligten Gerichtsbediensteten zur Gewährleistung, dass die verdächtige Person dem Verfahren folgen kann, sieht der Bundesrat nicht, da sie aufgrund ihrer Ausbildung und beruflichen Stellung dazu in der Lage sind.

9. Der Bundesrat vermisst eine hinreichende finanzielle Folgenabschätzung. Da die Umsetzung der Maßnahmen in erster Linie Aufgabe der Ermittlungsbehörden, der Gerichte, des Justizvollzugs und weiterer Einrichtungen der Länder sein wird, ist zu erwarten, dass finanzielle Mehrbelastungen zunächst die Länder treffen werden. Eine spürbare Mehrbelastung der Länderhaushalte kann angesichts der äußerst angespannten Haushaltslage und angesichts der knappen personellen und sachlichen Ressourcen bei Polizei und Justiz nicht hingenommen werden. Die Rahmenvorgaben sollten so ausgestaltet sein, dass zusätzliche Belastungen für die Strafverfolgungsbehörden und die Gerichte vermieden werden.

Annex 8 to § 74 para. 1 Joint Rules of Procedure

Review questionnaire for review of compliance with the principles of subsidiary and proportionality by the Federal Ministries

(Version of 7 July 1999)

Proposals of the European Commission for measures - both for **legal acts** (directives, regulations, resolutions, recommendations) as well as for **subsidy and action programmes** -of the European Community are to be reviewed in terms of **subsidiarity and proportionality** (Article 5 para. 2 and 3 – ex-Article 3b – of the EC Treaty) under the subsidiarity protocol to the Treaty on the European Union, using the **review questionnaire** below:

I. Preliminary questions

1 Does the EC Treaty provide for **jurisdiction** in respect of the measure considered?

2 Are the measures considered compatible with the **aims** of the EC Treaty?

3 Is the Community's **jurisdiction** in respect of the measures considered **exclusive** or **non-exclusive**?

4 Has the Commission held comprehensive **consultations** before presenting the proposals and published **consultative documents** where appropriate?

II. Subsidiarity:

Only to be considered, if the Community's jurisdiction is **non-exclusive**:

1) Can the aims of the measures considered be realised sufficiently at Member State level – in Germany: at Federation, *Länder* and local government level?

- What measures have the Member States already taken to achieve the aim of the measure at their level?
- Does the area concerned have **transnational aspects** which cannot sufficiently be covered by measures by Member States?

- Can problems of individual Member States perhaps be overcome through **targeted assistance** from existing programmes?

- Can the aims of the measures considered be sufficiently achieved through **co-operation between individual Member States**?

- Would measures by Member States on their own or the absence of Community measures be in breach of the **requirements of the Treaty** (e.g. need to correct distortions of competition, avoiding concealed restraints of trade or reinforcing economic and social cohesion) or otherwise constitute a significant detriment to the **interests of Member States** (e.g. constant use of reservation clauses such as Article 30, Article 39 para. 3, Article 46 and Article 55 in conjunction with Article 46 of the EC Treaty)?

- Will the **acquis communautaire** and the **institutional balance** be safeguarded by actions at Member State level?

2) Where actions by Member States are insufficient:

Could the aims of the measures considered be achieved **better at Community level** on account of their scope or effects?

- Would measures at Community level have **clear advantages** because of their scope or effects compared with action at Member State level?

- On what **quantitative or qualitative criteria** are the European Commission's findings that Community aims can be achieved better at Community level based?

III. Proportionality

The following is to be reviewed irrespective of whether the Community's jurisdiction is exclusive **or** non-exclusive:

1. Is the measure considered proportionate to the aims of the Treaty?

a) Is the measure **suitable, necessary and reasonable** with regard to the aims of the Treaty (minimum intervention)?

b) Does the measure considered require **a legal act**, or could the aims of the measure considered be achieved by **alternative** means (such as voluntary agreements, action by social partners)?

c) Is the legal form proposed for the measure one that imposes the least restrictions on the Member States, having regard to the suitability of the measure (generally directives when harmonising legislation)?

d) Do the **regulatory scope** and the **regulatory density** of the measure considered leave sufficient room for national decisions?

e) Does the measure considered take account of the **particular conditions** in individual Member States (such as tried and tested national provisions as well as the structure and functioning of their legal systems)?

f) Are the **financial burdens** and the **administrative workload** on the Community, Member States, the economy and citizens as low as possible, and are they in reasonable proportion to the aims pursued?

2. Should the measure considered be **limited as to time**?

IV. If funded through the Community budget:

Exist particular grounds which would justify partial or full Community **funding?**

V. Implementation:

1 Is it necessary to transfer **legislative implementation** to the European Commission (comitology procedure) rather than to the Member States?

2 Is it necessary to transfer **administrative implementation** to the Commission rather than to the Member States, if provided for exceptionally (e.g. in the case of subsidy and action programmes)?

VI. Explanatory memorandum

1 Has the pertinence of the proposal under the aspect of subsidiarity been substantially explained by the Commission in the **explanatory memorandum**? Has the Commission explained the reasons for Community funding, if applicable?

2 Are **all considerations** substantiated sufficiently in the recitals?

Hungary: *Országgyűlés*

Hungarian National Assembly
Committee on European Affairs

Reasoned opinion concerning the subsidiarity check

of the Proposal for a Council Framework Decision
on the right to interpretation and to translation in criminal proceedings
COM(2009) 338 final, 2009/0101 (CNS)

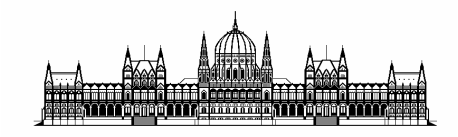
Following the thorough examination of the Proposal by the secretariat of the Committee on European Affairs and the experts of the political groups, the Committee on European Affairs discussed the Proposal on its meeting of 22 September 2009.

It must be noted that the Commission's Proposal is based overwhelmingly – with regard to the scope and content of the suspected person's right to interpretation and translation – on its previous proposal on certain procedural rights in criminal proceedings throughout the European Union [COM(2004) 328 final], which has already been scrutinised by the Committee.

The Committee on European Affairs finds that in recital 14 and the explanatory memorandum of the current Proposal, the compliance with the subsidiarity principle is generally justified by the aim of achieving common minimum standards and the development of mutual trust between Member States. In this aspect, the Commission's staff working document [SEC(2009) 9151] goes further and in section IV (point 47) also relies on the requirements established by the Protocol attached to the Treaty of Amsterdam, without, however, providing an accurate and detailed assessment of the possible administrative, procedural and financial burden of the Proposal falling upon the national governments and authorities.

The Committee considers that the Proposal includes only a brief justification without a detailed examination of the proportionality principle, but concludes that the breach of subsidiarity was not found since the Proposal seems to respect the relevant competence of the Member States.

Budapest, 22 September 2009.



Hungarian National Assembly
Committee on European Affairs

Answers to the COSAC questionnaire concerning the subsidiarity check

of the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings
COM (2009) 338 final, 2009/0101 (CNS)

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
   The Committee on European Affairs was involved in the subsidiarity check. Following the internal preparations within the Secretariat of the Committee and with experts of factions, the subsidiarity check was put on the agenda of the Committee sitting of 22 September.

2. Was the plenary involved?
   No. According to the Standing Orders of the Hungarian National Assembly the plenary is involved in the procedure if a breach of the principle of subsidiarity is found by the Committee on European Affairs. If that was the case, the plenary should decide on the motion of the Committee on European Affairs of the Hungarian National Assembly within fifteen days.

3. At which level the final decision was taken and who signed it?
   The final decision was taken by the Committee on European Affairs since the breach of subsidiarity was not found.

4. Which administrative services of your parliament were involved and how? Please specify.
   Generally, subsidiarity check is carried out by the Committee on European Affairs. Besides the secretariat the permanent representatives in Brussels has been involved in the professional preparations.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
   The Hungarian National Assembly is a unicameral parliament.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
   At this stage there has been no information provided by the government on the Proposal.

7. Did you consult your regional parliaments with legislative powers?
   No, in Hungary there are no regional parliaments.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
   No, the advisers at the Secretariat of the Committee on European Affairs examined the Proposal thoroughly and presented their findings in a paper. No external expertise was used.

9. What was the chronology of events? Please specify the dates.
   The first language versions of the Proposal were published on 8 July 2009, the official eight-week period started on 20 July 2009.
   The members of the Committee and the experts of the political groups were informed through email by the adoption of the Proposal and the launch of the subsidiarity check on the following day.
   The advisors of the Secretariat started the examination of the draft and their preliminary findings were sent to the Members of the Committee by the end of August.
   The proposal was discussed by the Committee on European Affairs on its very first meeting in the autumn parliamentary session of 22 September 2009.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
    Yes, the Committee on European Affairs cooperated through the permanent representatives in Brussels and through COSAC.

11. Did you publicise your findings? If so, by what means?
    No special press release was published, but the minutes of the Committee meeting and a short memo summarizing the main discussion points were published on the website of the Committee. The Committee made available its reasoned opinion on the IPEX website.

Findings:

12. Did you find any breach of the principle of subsidiarity?
    No breach of subsidiarity was found by the Committee on European Affairs.
13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
    Yes, a reasoned opinion was adopted by the Committee and it was published through the IPEX. (The reasoned opinion is enclosed.)
14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
    The Committee on European Affairs found the justification satisfactory, nevertheless, it might be noted that the Commission failed to provide an accurate and detailed assessment of the possible administrative, procedural and financial burden of the Proposal falling upon the national governments and authorities.
15. Did you encounter any specific difficulties during this subsidiarity check?
    The timing of the adoption of the Proposal may not contribute to the effective intra- and inter-parliamentary works, since the large part of the eight-week period falls between the ordinary sessions of parliaments.
16. Any other comments?
    The Committee expects the Commission to provide more detailed justification with regard to the subsidiarity and proportionality principle in its forthcoming legislative proposals.

Ireland: *Houses of the Oireachtas*

Joint Committee on European Scrutiny

Evaluation of the 4th subsidiarity check – COSAC questionnaire

Procedures

1. Which parliamentary committees were involved in the subsidiarity check and how?
The subsidiarity check with regard to the Proposed Framework Decision on Interpretation and Translation was conducted by the Joint Committee on European Scrutiny (JCES). As this is the parliamentary committee with the primary responsibility for subsidiarity checks and the scrutiny of EU legislative proposals, there were no other committees involved.

2. Was the plenary involved?
As the Lisbon Treaty has not been ratified, and procedures for the implementation of Protocol 2 of the Treaty have not been decided, the plenary was not involved. The subsidiarity check was undertaken by the JCES acting as a committee of the Houses of the Oireachtas.

3. At which level the final decision was taken and who signed it?
The check and the reasoned opinion were finalised and subsequently adopted by the JCES acting as a committee of the Houses of the Oireachtas.

4. Which administrative services of your parliament were involved and how (please specify)?
The Office of the Parliamentary Legal Advisor and the Secretariat of the JCES, including policy advisors, were involved in facilitating and administering the subsidiarity check.

5. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
At the request of the JCES, information was provided by the Department of Justice which is the Government department with primary responsibility.

6. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
As the JCES is a joint committee of the Houses of the Oireachtas it includes members of both the Dáil and the Seanad. Therefore, both Houses were involved simultaneously in the subsidiarity check.

7. Did you consult your regional parliaments with legislative powers?
There are no such regional parliaments in Ireland. Local authorities were not consulted.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
Given the difficulties of conducting the check during a parliamentary recess, it was not possible to consult such external bodies.

9. What was the chronology of events?

The draft proposal was first considered by the JCES on 28 July 2009. At this meeting, an initial consideration was given to the views of the relevant Government department (Department of Justice) and the views of the Parliamentary Legal Advisor. On the basis of the submissions received, a policy advice note and draft reasoned opinion were prepared. The JCES adopted its reasoned opinion on 3 September 2009.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

Given the timeline involved coupled with the recess of the parliament for the summer period, it did not prove possible for the JCES to consult widely other national parliaments on this occasion. Informal contacts were made through the National Parliaments representative in Brussels and the information on the IPEX website was also assessed.

11. Did you publicise your findings? If so, by what means?

The reasoned opinion was posted on the website of the JCES.

12. Has your parliament introduced any procedural changes with regard to the subsidiarity check mechanism since September 2008? If so, please specify how.

No procedural changes have been introduced since September 2008. Under the subsidiarity check mechanism as foreseen in the Lisbon Treaty, each House of the Oireachtas will have an independent vote. Each House has yet to decide how, if the Lisbon Treaty comes into force, it wishes to carry out the subsidiarity monitoring function.

Findings

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

The Committee concluded that some parts of the proposal may not comply fully with the principle of subsidiarity and the Committee is looking forward to hearing the views of other national parliaments, and receiving further information from the European Commission.

14. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy)

Yes, copy attached.

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

The JCES found the Commission's justification to be incomplete with regard to the subsidiarity principle. It appears that the Commission did not complete all the elements of the detailed statement as required under the Protocol on the Principles of Subsidiarity and Proportionality.

- In particular information is lacking as regards the quantitative or qualitative indicators to substantiate the need for the proposal.
- It is also not clear how the circumstances have changed since the 2004 proposal was rejected by 6 Member States to satisify the concerns raised about its legal base and subsidiarity.
- Given the legal implications of making the proposal applicable to all persons in criminal proceedings, rather than just cross border cases, there is not enough justification given for choosing that option over those that would have had less legal, political and financial implications.

16. Did you encounter any specific difficulties during this subsidiarity check?

Similar difficulties were experienced to the last two subsidiarity checks undertaken during the lead-in to parliamentary recess periods. This is an ongoing concern regarding the publication date of proposals selected for checking.

17. Any other comments?

Again the JCES remains of the opinion that the subsidiarity check highlights the need for

- the national parliaments to develop an agreed definition and interpretation of the principle of subsidiarity
- due regard to be had to the publication dates of proposals being used for the check
- consideration of the practicalities of separating subsidiarity alone for checking by national parliaments in isolation from the inter-related issues of the legal basis and proportionality of any new EU legislation.

Reasoned Opinion for COM (2009) 338

The Oireachtas Joint Committee on European Scrutiny ("the Committee") has considered the Council Framework Decision on the right to interpretation and to translation in criminal proceedings in accordance with the procedures laid down in the Lisbon Treaty.

The Committee supports the principle of minimum standards being set in this area to provide clarity and certainty to persons suspected in respect of criminal offences.

The Committee had regard to the following matters in assessing the proposal for its compliance with the principle of subsidiarity:

1. The draft Framework Decision was originally part of a 2004 proposal which was opposed by a number of Member States on the grounds of its legal basis, and some doubts as to its compliance with the principles of subsidiarity and proportionality. Given that the new proposal is quite similar to what went before and is using the same legal basis (ie Article 31(1)c of the TEU), further clarification is needed from the Commission as to how these matters are addressed in the context of the new proposal.

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

Accordingly **the Committee has concluded that some parts of the proposal may not comply fully with the principle of subsidiarity and the Committee looks forward to considering in more detail**

- the views of other national parliaments conducting the subsidiarity test and
- further information from the European Commission on the matters raised in paragraphs 1 and 2 above.

The Committee also recommends that COSAC consider in its final report

- the practical and logistical difficulties that have arisen again when a proposal being tested on subsidiarity grounds is one published heading into the summer recess period for most parliaments
- the ongoing difficulty in separating subsidiarity from proportionality in weighing up the legal basis and requirement for new EU legislation.

Italy: *Senato della Repubblica*

Replies of the Italian Senate to the COSAC Questionnaire on subsidiarity compliance check on the Proposal for a Council framework decision on the right to interpretation and to translation in criminal proceedings (COM (2009) 338 def.)

***Procedures**:*

1. Which parliamentary committees were involved in the subsidiarity check and how?
On 23 July 2009 the proposal was referred for consideration to the Committee on Justice. The Committee on European Union Policies and the Committee on Foreign Affairs were asked to issue opinions. Under the Rules of the Senate, if the Committee on Justice does not issue its final resolution within 15 days of receiving the opinion of the Committee on European Union Policies, the latter may become the final position of the Senate.

2. Was the plenary involved?
No.

3. At which level the final decision was taken and who signed it?
The Committee on European Policies adopted an opinion on the proposal. Sen. Boscetto, also member of the Constitutional Affairs Committee, was the rapporteur.

4. Which administrative services of your parliament were involved and how? Please specify.
The European Affairs Office, which published a dossier on the matter (available on the Internet), and the Secretariat of the Committee on European Union Policies.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
No.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
No.

7. Did you consult your regional parliaments with legislative powers?
No.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No.

9. What was the chronology of events? Please specify the dates.
The Committee on European Union Policies started consideration and adopted its opinion on 30 July 2009. The short scrutiny time was due to summer recess.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
No.

11. Did you publicise your findings? If so, by what means?
The minutes of the sitting of 30 July 2009, together with the opinion issued on the matter, are available on the Senate website. On the same date the Committee on European Union Policies issued opinions on the proposals regarding trafficking of human beings and sexual exploitation of children.
(http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=428124)

Findings:

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

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
See copy attached.

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

15. Did you encounter any specific difficulties during this subsidiarity check?
No.

16. Any other comments?
The Committee on European Union Policies issued an opinion which refers, as usual, to the subsidiarity and proportionality aspects of the proposals (point 1) and to aspects related to the substance (points 2 to 6).

OPINION
PASSED BY THE SENATE EU POLICIES COMMITTEE ON
THE PROPOSAL FOR A COUNCIL FRAMEWORK DECISION ON THE RIGHT TO INTERPRETATION AND TO TRANSLATION IN CRIMINAL PROCEEDINGS (COM (2009) 338 DEF.)

The Committee,

following consideration of the Community Document above,

whereas

the proposal is part of a broader EU policy to improve judicial cooperation among member States, for the purpose of developing and maintaining a space of freedom, security and justice;

judicial cooperation is based on the principle of mutual recognition of judicial decisions, which is in turn based on the existence of a spirit of mutual trust in other member States' judicial systems;

the proposal for a framework decision is part of a package of measures aimed at ensuring minimum common standards for a better protection of suspects and defendants in criminal cases;

the right to interpretation and translation is enshrined in the European Convention for the Protection of Human Rights;

Italian legislation substantially complies with the provisions of the framework decision;

expresses, in so far as its jurisdiction is concerned, a positive opinion with the following remarks:

1. The proposal complies with the principle of subsidiarity, in that the goal of establishing minimum common standards may not be achieved individually by member States, and can only be attained by action at community level; the proposal also complies with the proportionality principle, since the action of the Union is confined to what is necessary in order to achieve the its goals.

2. Under the proposal, suspects and defendants should be granted the right to interpretation and translation during the investigative and judicial phases of the proceedings; it might be appropriate to grant such right also during enforcement of the penalty.

3. With reference to Article 1, it might be appropriate to include a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to expressly recognise the rights enshrined in such Convention.

4. With reference to Article 4, requiring Member States to meet the costs of interpretation and translation, it might be appropriate to emphasize that such costs should be met regardless of the outcome of the trial.

5. For the purposes of safeguarding the quality of translation and interpretation, as per Article 5, the selection of interpreters and translators should be subject to passage of a test ascertaining their professional skill; furthermore, a roster should be established and regularly updated, from which the judicial authorities may recruit interpreters.

6. The same system of training and recruitment should be used to provide assistance to people suffering from hearing or communication impediments.

Latvia: *Saeima*

Opinion of the Saeima European Affairs Committee on the subsidiarity and proportionality check for the final wording of the Proposal for a Council Framework Decision COM (2009) 338 on the right to interpretation and to translation in criminal proceedings

Procedure:

1. Which parliamentary committees were involved in the subsidiarity check and how?

The Saeima European Affairs Committee and Legal Affairs Committee considered the proposal.

2. Was the plenary involved?

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

3. At which level the final decision was taken and who signed it?

Final decision was taken by Saeima European Affairs Committee and covering letter signed by Chairperson of the Saeima European Affairs Committee.

4. Which administrative services of your parliament were involved and how (please specify)?

The Saeima European Affairs Committee and Legal Affairs Committee. Other administrative services of the Saeima were not involved in the scrutiny process.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

Latvia has a unicameral parliament.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

On the part of the Latvian government, the Ministry for Justice was involved in the scrutiny process. Ministry for Justice provided opinion regarding the observation of the principles of subsidiarity and proportionality in the given item.

7. Did you consult your regional parliaments with legislative powers?

Since the given proposal does not lie within the competence of Latvian local governments, local governments were not consulted on this issue.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

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

9. What was the chronology of events?

On 27 July 2009, the Saeima European Affairs Committee transmitted a letter to the Ministry of Justice of the Republic of Latvia and Legal Affairs Committee with a request to assess the compatibility of the given proposal with the principles of subsidiarity and proportionality.

On 31 August 2009, the Saeima European Affairs Committee received the opinion of the Ministry of Justice of the Republic of Latvia regarding the observation of the principles of subsidiarity and proportionality in the given proposal.

On 2 September 2009 the issue was examined and final decision was taken by the Saeima European Affairs Committee. Chairperson and members of Legal Affairs Committee participate in European Affairs Committee meeting and contributed their views to the European Affairs Committee.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

While preparing its opinion on subsidiarity and proportionality check the Saeima European Affairs Committee did not directly cooperate with other EU national parliaments. European Affairs Committee followed subsidiarity and proportionality checks in other EU parliaments through IPEX and Permanent Representative to the EU of the Parliament of Latvia.

11. Did you publicise your findings? If so, by what means?

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

Findings:

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

Breaches of the subsidiarity and proportionality principles were not detected.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

Taking into account the fact that no breaches of the subsidiarity and proportionality principles were detected, the Saeima opinion on the given item was not adopted.

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

The justification elaborated in Explanatory memorandum where considered as satisfactory.

15. Did you encounter any specific difficulties during this subsidiarity check?

No.

16. Any other comments?

The Saeima European Affairs Committee's initial assessment about observance of subsidiarity and proportionality principles is as follows: the European Commission has chosen an adequate framework for developing legislative act. Cause aims put forward in of the Council Framework Decision can not be fully achieved by Member States acting alone. Considering proportionality, Saeima European Affairs Committee considered that planned requirements put forward in Council Framework Decision are adequate and do not exceed the minimum necessary to achieve the aims.

Taking into consideration the above-mentioned, the Saeima European Affairs Committee considers that the final wording of the Proposal for a Council Framework Decision COM (2009) 338 on the right to interpretation and to translation in criminal proceedings complies with the principles of subsidiarity and proportionality and the regulation of the said issue falls within the competence of the European Commission.

Riga, September 2, 2009
No. 9/17-

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On the subsidiarity and proportionality check

The participants of the COSAC Chairpersons meeting on 10 February 2009 in Prague agreed to carry out the subsidiarity check on the Proposal for a Framework Decision on procedural rights in criminal proceedings.

Accordingly, the Saeima (Parliament) of the Republic of Latvia has carried out a subsidiarity and proportionality check concerning the final wording of the Proposal for a Council Framework Decision COM (2009) 338 on the right to interpretation and to translation in criminal proceedings.

On 2 September 2009 the given issue was examined and final decision was taken by the Saeima European Affairs Committee. The Saeima European Affairs Committee's initial assessment about observance of subsidiarity and proportionality principles is as follows: Saeima European Affairs Committee considers that the final wording of the Proposal for a Council Framework Decision COM (2009) 338 on the right to interpretation and to translation in criminal proceedings complies with the principles of subsidiarity and proportionality and the regulation of the said issue falls within the competence of the European Commission.

In order to facilitate the compilation of the replies, we have structured our reply in the form of answers to the questions posed in the aide-mémoire prepared by the COSAC Secretariat.

Annex: A copy in English (three pages) of the opinion of the Saeima European Affairs Committee on the subsidiarity and proportionality check for the final wording of the Proposal for a Council Framework Decision COM (2009) 338 on the right to interpretation and to translation in criminal proceedings.

Sincerely,

(signed)

Vaira Paegle
Chairperson of the Saeima
European Affairs Committee

Lithuania: *Seimas*

REPORT TO COSAC

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

ON THE SUBSIDIARITY CHECK OF THE COMMISSION PROPOSAL FOR A COUNCIL FRAMEWORK DECISION ON THE RIGHT TO INTERPRETATION AND TO TRANSLATION IN CRIMINAL PROCEEDINGS

17 September 2009

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

Two parliamentary committees were involved: the Committee on European Affairs and one specialised committee, the Committee on Legal Affairs. The specialised committee submitted its expert conclusions to the Committee on European Affairs, which made the final decision.

2. Was the plenary involved?

No.

In accordance with the provisions of the Statute (Rules of Procedure) of the Seimas, reasoned opinions are subject to adoption at the plenary in cases where the Committee on European Affairs has established non-compliance with the principle of subsidiarity. In cases where the European Affairs Committee, having obtained an opinion of the specialised committee, concludes that draft legislative proposal does not violate the principle of subsidiarity, the matter is completed without involvement of the plenary.

3. At which level the final decision was taken and who signed it?

The final decision was taken by the Committee on European Affairs and signed by the Chairman of the Committee.

4. Which administrative services of your parliament were involved and how (please specify)?

The Legal Department of the Office of the Seimas was asked to submit its conclusion on the compliance of the Proposal with the principle of subsidiarity.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

Not relevant.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

Yes.

The Ministry of Justice of the Republic of Lithuania was commissioned to draft, in cooperation with other authorised institutions, the Government's position on the Proposal for the Council Framework Decision. The position also contains the primary opinion on whether the Proposal for Framework Decision of the European Union is in conformity with the principle of subsidiarity.

The Ministry of the Interior and the Prosecution Service of the Republic of Lithuania were invited to submit their opinion on the compliance of the Proposal with the principle of subsidiarity.

In addition, the European Law Department under the Ministry of Justice was asked to present its expert opinion.

7. Did you consult your regional parliaments with legislative powers?

Not relevant.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

Yes. The Institute of Law, a public research institution established by the Government of the Republic of Lithuania and designed to coordinate the reform of the legal system and legal institutions as well as harmonize the process with the economic and social reform of the state was asked to submit its opinion. According to the Institute of Law, the Proposal complies with the principle of subsidiarity.

9. What was the chronology of events? Please specify the dates.

The subsidiarity check organised through the COSAC is conducted following the usual control mechanism of the principle of subsidiarity provided for in Article 180^6 of the Seimas Statute, with one exception: the procedure is initiated by the Committee on European Affairs rather than by a specialised committee, which is normally responsible, within its competence, for proper and timely control of the principle of subsidiarity, as generally provided in $180^6(1)$ of the Seimas Statute.

22 July 2009	**The Committee on European Affairs initiated the subsidiarity check at the Seimas. The Committee informed the responsible specialised committee (Committee on Legal Affairs) in writing and requested its conclusion. The Committee also sent a written request to the Legal Department of the Seimas and the European Law Department under the Ministry of Justice to present their expert opinion on the compliance of the Commission Proposal with the principle of subsidiarity. Two members of the Committee on European Affairs were nominated as reporters.**

End of August 2009 **ıe Ministry of Justice presented the position of the Government on the Proposal for the Council Framework Decision. The position also contained the primary conclusion that the Proposal for the legal act of the European Union is in conformity with the principle of subsidiarity.**

The European Law Department under the Ministry of Justice submitted its opinion to the Committee on European Affairs. In the opinion of the Law Department, there are doubts as to whether the conditions of the subsidiarity principle are met due to the fact that the proposed EU actions do not create, or in any case the EC Commission has not proved them to create any added value compared to the guarantees under the European Convention on Human Rights as interpreted by the European Court of Human Rights.

The Legal Department of the Office of the Seimas issued its legal conclusion. It claims that even though it is important to ensure the implementation of the suspects' right to translation and interpretation, yet the enforcement of this right through a Framework Decision may conflict with the principle of subsidiarity insofar as this legal provision does not relate to international criminal acts.

The Ministry of the Interior and the Prosecution Service of the Republic of Lithuania in their conclusions say there is no obvious conflict with the principle of subsidiarity.

16 September 2009 **The Committee on Legal Affairs held a meeting and issued its conclusion. The specialised committee supports the initiative of the Commission to set common minimum standards as regards the right to interpretation and translation in criminal proceedings in order to facilitate the enforcement of the principles of mutual recognition of judicial measures and enhance mutual trust of member states, which is particularly important for EU in the area of justice and internal affairs. Nevertheless, the Committee notes that the provisions of the Proposal which provide the suspects with the right to interpretation and translation in all criminal proceedings raise certain doubts as to compliance with the subsidiarity principle, therefore, they need to be clarified (for instance, through finding ways to regulate by the framework decision exclusively those criminal proceedings that involve an EU element).**

The Committee on European Affairs debated the issue at its meeting. No possible breach of the principle of subsidiarity was found.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

The Committee on European Affairs followed subsidiarity checks in other EU national parliaments through IPEX and Permanent Representative to the EU of the Seimas of Lithuania.

11. Did you publicise your findings? If so, by what means?

No.

Findings:

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

No. Subsequent to its initial assessment, the Committee on European Affairs adopted the conclusion that it has found no possible breach of the principle of subsidiarity.

13. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy)

No.

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

Yes.

15. Did you encounter any specific difficulties during this subsidiarity check?

Yes, we had timing difficulties. The subsidiarity check coincided with the summer recess period of Seimas. With the opening of Parliament for the autumn session in September, an examination of the matter was immediately conducted by the specialised committee and then by the Committee on European Affairs at the same day.

17. Any other comments?

At its meeting of 16th September 2009 the Committee on European Affairs adopted the following conclusion.

In view of the facts, that

- upholding and enhancing the principles of international cooperation and mutual recognition is the cornerstone of the EU policy in the areas of justice and internal affairs,

- the right of suspects to fair trial belongs to fundamental human rights and the EU considers it to be a general principle established under Paragraph 2 Article 6 of the Treaty on European Union. The enforcement of this right and its effective implementation in criminal proceedings is deemed to be the key precondition for mutual trust of the EU member states,

- according to the information from the European Commission, the EU member states are implementing their commitments on fair trial to a differing extent, in view of the specificity of their national legislation and on the basis of the European Convention

for the Protection of Human Rights and Fundamental Freedoms, therefore these member states have in place different levels of provision of this type of guarantees,

- the Proposal is aimed at guaranteeing internationally effective protection of the rights of suspects by providing linguistic aid to any suspect in the cases where it is established that the suspect does not speak and does not understand the language of the criminal proceedings; this will enhance mutual trust of member states and cooperation in criminal investigations and criminal proceedings,

- the adoption of the judicial measures under the Proposal would improve the quality of interpretation and translation and ensure the implementation of guarantees of this nature in criminal proceedings,

- the Proposal does not aim at making uniform the criminal proceedings of the member states, yet is designed to detail the rules of provision of linguistic aid,

the Committee considers that the Commission Proposal does not breach the subsidiarity principle.

Noting, that

1) the Commission Proposal establishes the minimum judicial measures and the minimally harmonised procedural law standards that are not excessive for the purpose of reaching the aim of the Proposal for a Council Framework Decision;

2) the Framework Decision binds the member states only insofar as the results are concerned, therefore, the member states are free to chose the implementation measures;

3) the Framework Decision needs to be adopted by acclamation in the Council; this will ensure that the measure adopted at the EU level will not interfere more than necessary with the area that is under the competence of the member states;

4) the Framework Decision is one of the instruments under the third pillar, which promotes the harmonisation of national legislation and other legal acts,

the Committee considers the Proposal to essentially comply with the requirements of the principle of proportionality.

Nevertheless, the Committee notes that negotiations in the EU institutions should aim for more explicitness and provide the full justification for certain particular provisions of the EC Proposal. For instance, the provision under Paragraph 1 of Article 2, to the extent it foresees the implementation of the right of the suspect to interpretation and translation during all the meetings of the suspect with the lawyer, should be revised and made more explicit. The same recommendation is applicable to the term "essential documents" in paragraph 1 Article 3. The revision should be done in view of the financial burden associated with the implementation of the aforementioned provisions and the preconditions for abuse of the aforementioned provisions to delay the criminal proceedings. In an effort to avoid the creation of a system that would be alternative to the standards established by the European Convention on Human Rights, the Committee highlights the need to ensure that the provisions under the Proposal are in conformity with the rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the associated case law of the European Court of Human Rights.

Luxembourg: *Chambre des Députés*

Commission juridique de la Chambre des Députés

Résultats du 7ième test de subsidiarité
(23 septembre 2009)

Procédure

1. Quelles commissions parlementaires ont été impliquées dans le test de subsidiarité et de quelle manière ?

La Commission juridique a été saisie par la Présidence de la Chambre des Députés afin de procéder à l'examen du 7ième test de subsidiarité de la COSAC sur la proposition de décision-cadre relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales. En tout, la Commission juridique a consacré deux réunions à la mise en œuvre de ce 7ième test de subsidiarité. La Commission juridique a désignée Mme la Présidente comme rapportrice aux fins de rédiger un avis reprenant les observations et conclusions de la commission.

2. La session plénière a-t-elle été impliquée?

La session plénière de la Chambre des Députés n'a pas été impliquée dans la mise en œuvre du 7ième test de subsidiarité de la COSAC.

3. A quel niveau la décision finale a-t-elle été prise et qui l'a paraphée ?

Les membres de la Commission juridique ont adopté par un vote unanime un avis préparé et présenté par Mme la Rapportrice.

4. Quels services administratifs de votre parlement ont été impliqués et de quelle manière? Merci de préciser.

Le secrétariat de la Commission juridique a assuré la préparation de l'avis mentionné ci-avant. Le Service des Relations internationales a assuré la réception et la transmission, via un courrier de la Présidence de la Chambre des Députés, des documents officiels pour attribution à la Commission juridique.

5. En ce qui concerne les parlements bicaméraux : avez-vous conduit le test de subsidiarité en coordination avec l'autre chambre ?

Le Luxembourg ne disposant que d'un parlement monocaméral, la question est sans objet.

6. Votre gouvernement a-t-il fourni des informations relatives au respect du principe de subsidiarité par la proposition de la directive ?

Des représentants du Gouvernement ont assisté aux deux réunions et ont fourni des précisions d'ordre technique à la demande des membres de la commission.

7. Avez-vous consulté les parlements régionaux de votre pays qui disposeraient de pouvoirs législatifs ?

Le Luxembourg ne disposant pas de parlements régionaux, cette question est sans objet.

8. Avez-vous consulté des organisations non gouvernementales, des groupes d'intérêt, des experts extérieurs ou d'autres parties prenantes ?

Mme la Rapportrice a contacté un certain nombre de représentants du monde judiciaire afin de disposer de renseignements quant à la mise en œuvre des dispositions légales nationales relatif au droit d'interprétation et de traduction dans le cadre d'une procédure pénale.

9. Selon quelle chronologie le test a-t-il été conduit au sein de votre Parlement ? Merci de préciser les dates.

Les membres de la Commission juridique ont été saisis par courrier de la Présidence en date du 28 juillet 2009. Étant donné la nouvelle composition de la Chambre des Députés suite aux élections législatives du 7 juin 2009 et le fait que les commissions parlementaires ne siègent pas d'ordinaire pendant le mois d'août, la réunion du 16 septembre 2009 a été consacré à l'examen de la proposition de décision-cadre. L'avis présenté par Mme la Rapportrice a été adopté par les membres de la Commission juridique lors de la réunion du 23 septembre 2009.

10. Avez-vous coopéré avec d'autres parlements nationaux ? Si oui, par quels moyens ?

La Chambre des Députés n'a pas coopéré avec un parlement national d'un autre Etat membre.

11. Avez-vous publié vos conclusions ? Si oui, par quels moyens ?

Les observations et les conclusions de la Commission juridique, consignées dans l'avis transmis aux autorités compétentes, n'ont pas été publiées.

<u>Conclusions</u>

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

La Commission juridique a conclu que la proposition de décision-cadre relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales est conforme au principe de subsidiarité.

13. Avez-vous adopté un avis motivé de la proposition de directive ? Si oui, veuillez en joindre une copie.

La Commission juridique a partant adopté un avis confirmant le respect du principe de subsidiarité.

14. Avez-vous trouvé les justifications de la Commission sur le respect du principe de subsidiarité satisfaisantes ?

Les membres de la Commission juridique ont jugé les justifications de la Commission quant à la nécessité d'une action législative communautaire au niveau du droit à l'interprétation et à la traduction dans le cadre des procédures pénales de satisfaisantes.

15. Avez-vous rencontré des difficultés spécifiques pendant l'examen?

La Commission juridique n'a éprouvé aucune difficulté spécifique pendant l'examen de la proposition de décision-cadre sous rubrique.

16. Avez-vous d'autres observations ?

Il n'y a aucune autre observation à formuler.

Luxembourg, le 23 septembre 2009

La Présidente-Rapportrice

Christine Doerner

Avis de la Commission juridique de la Chambre des Députés

(23 septembre 2009)

Il est admis qu'une amélioration de la confiance mutuelle entre Etats membres quant à leurs décisions judiciaires prises, notamment quant à la garantie d'un procès équitable, permettrait une meilleure application du principe de reconnaissance mutuelle de ces décisions judiciaires.

Il est partant proposé d'offrir, dans le cadre du respect des droits de la défense, des garanties minimales aux suspects et accusés et ce indépendamment de leur nationalité. En d'autres termes, il s'agit d'améliorer le statut juridique d'une personne ayant la qualité de suspect et cela quels que soient sa nationalité et le lieu de son interpellation à l'intérieur de l'Union européenne.

La Commission juridique est consciente des inconvénients de la situation actuelle due à la complexité et à la diversité des dispositions nationales respectives applicables quant au droit à l'interprétation et à la traduction dans le cadre d'une procédure pénale.

La fixation de normes minimales communes relatives au droit d'interprétation et à la traduction dans le cadre des procédures pénales permet de neutraliser les divergences existantes entre les législations nationales.

Il en résultera certainement une diminution sensible des litiges portés devant la Cour Européenne des Droits de l'Homme pour violation de l'article 6, paragraphe (3), points a) et e), de la Convention Européenne de Sauvegarde des Droits de l'Homme et des Libertés publiques.

L'augmentation constante des procédures pénales dites « transfrontalières » rend nécessaire l'adoption d'un tronc de règles minimales quant au droit à l'interprétation et à la traduction dans le cadre d'une procédure pénale.

La Commission juridique de la Chambre des Députés du Grand-Duché de Luxembourg, eu égard aux constations et aux observations ci-avant, a conclu à la nécessité d'une action législative communautaire quant à l'accès aux services d'interprétation et de traduction dans le cadre d'un procès pénal.

La Commission juridique est d'avis que ces nouvelles règles minimales, tout en écartant le manque de sécurité juridique actuel, seront des garants tant contre :

- le déséquilibre persistant entre les droits de la défense et la coopération judiciaire ;
- la garantie du respect des droits de la personne informée qu'elle est soupçonnée d'avoir commis une infraction et ce quel que soit le lieu de son interpellation en tant que suspect dans l'Union européenne.

Luxembourg, le 23 septembre 2009

La Présidente - Rapportrice

Christine Doerner

Malta: *Kamra tad-Deputati*

COM (2009) 338
-
PROPOSAL FOR A COUNCIL FRAMEWORK DECISION
on the right to interpretation and to translation in criminal proceedings
-
Evaluation of the Subsidiarity Check

Procedures

1. Which parliamentary committees were involved in the subsidiarity check and how?
The Foreign and European Affairs Committee of the House of Representatives, Malta

2. Was the plenary involved?
No

3. At which level the final decision was taken and who signed it?
The final decision was taken by the Foreign and European Affairs Committee. The Clerk of the House forwarded the reasoned opinion to the EU Institutions.

4. Which administrative services of your parliament were involved and how? Please specify.
The Clerk of the House and the Committee Secretary provided administrative support. The EU Analysts with the House, working conjointly with the Chair of the Committee, provided the draft position for the attention of all members.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
n/a

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
No

7. Did you consult your regional parliaments with legislative powers?
n/a

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

Time was limited and this was during the summer recess so consultation was limited to that with the Maltese Law Courts in order to establish the current practices in this area.

9. What was the chronology of events? Please specify the dates.

- 19/08/09 - Request for information from the Maltese Law Courts

- 26/08/09 - Draft reasoned opinion was drawn up by the EU analysts

- 07/09/09 - Draft reasoned opinion was circulated to all the Members of the Foreign and European Affairs Committee

- 14/09/09 - Draft reasoned opinion was amended to reflect the feedback of the Members of the Foreign and European Affairs Committee

- 14/09/09 - Clerk of the House forwarded the reasoned opinion as approved by the Foreign and European Affairs Committee to the EU Institutions

10. Did you cooperate with other national parliaments in the process? If so, by what means?

Checked the position of other parliaments on the IPEX website where the position of the national parliament was available in a familiar language. In the instances where the language was not a familiar one, direct contact was made with the national parliaments' IPEX correspondents.

11. Did you publicise your findings? If so, by what means?

Not immediately, but will publicise through the press and media.

Findings:

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

Yes, and beyond it. It is felt that this Proposal represents an instance of overregulation and duplication since the matter is already sufficiently uniformly regulated by each individual member state in accordance with an agreed common standard as set out in the European Convention for the Protection of Human Rights (forming part of the general principles of law in EU Law) and the Human Rights Charter to be given legal effect on ratification of the Treaty of Lisbon. This proposal therefore goes beyond the issue of subsidiarity and constitutes an unwarranted measure at the level of the EU.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

Yes, enclosed.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
No for the reasons given above

15. Did you encounter any specific difficulties during this subsidiarity check?
Unfortunately, the adoption of this Proposal by the Commission and the subsequent launch of the COSAC subsidiarity check coincided yet again with a period in which the Parliament is in recess.

The 8-week period in the Lisbon Treaty is not sufficient to cover periods when parliaments are in recess.

16. Any other comments?
No

COM (2009) 338
-
Proposal for a
COUNCIL FRAMEWORK DECISION
on the right to interpretation and to translation in criminal proceedings

Aim of the Proposal

The aim of this Framework Decision is to commit Member States to ensure that any person suspected or accused of a criminal offence who does not understand the language used in proceedings is provided with interpretation throughout all proceedings.

Legal Basis quoted in the Proposal

Article 31 1(c) of the Treaty on European Union

1. Common action on judicial cooperation in criminal matters shall include:
   (a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;
   (b) facilitating extradition between Member States;
   (c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;
   (d) preventing conflicts of jurisdiction between Member States;
   (e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.

Purpose of the COSAC Subsidiarity Check

The COSAC Chairpersons in their meeting on 10 February 2009 in Prague agreed to carry a COSAC-coordinated subsidiarity check on the Proposal for a Framework Decision on procedural rights in criminal proceedings in 2009. This decision was confirmed by the XLI COSAC meeting on 12 May 2009 in Prague.

This document is one which the Malta House of Representatives had selected from the Commission Work Programme for 2009 to be submitted to the COSAC Subsidiarity Check in 2009. The actual proposal is very watered down version of a more complex Proposal in 2004, in favour of a step-by-step approach way of proceeding. In fact, the Proposal in question is limited to the provision of translation and interpretation to suspects being charged in a Member State other than their own.

Commission's Justification for the need of action at EU Level

Subsidiarity

The objective of the proposal cannot be sufficiently achieved by Member States alone, since the aim of the proposal is to promote trust between them and it is therefore important to agree on a common minimum standard that applies throughout the whole of the European Union. The proposal will approximate Member States' substantive procedural rules in respect of interpretation and translation in criminal proceedings in order to build mutual trust. The proposal therefore complies with the subsidiarity principle.

Proportionality

The proposal complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.[7]

Convention for the Protection of Human Rights and Fundamental Freedoms

Right to liberty and security - According to Article 5(2) everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Right to a fair trial - Furthermore Articles 6 (a) and (e) state that anyone charged with a criminal offence is to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him and that they have the right to free assistance of an interpreter if he cannot understand or speak the language of the court.

Malta ratified this Convention on 28 February 1967.

Article 6 of the **Treaty on European Union** states that the Union shall respect the rights as guaranteed by this Convention and as they result from the constitutional traditions common to Member States. [8]

Current national situation

The current national situation is defined in Section 516 (1) of the Criminal Code and Article 3 of the Judicial Proceedings (Use of English Language) Act.

When a foreigner appearing in the Maltese Courts declares that he/she neither understands Maltese nor English, all the proceedings are held in Maltese, which are translated into a language he/she understands by an interpreter appointed by the Court. The interpretation expenses are borne by the State.

In the event that an accused understands English, the proceedings are held in English.

With regard to requests for translation, the Courts have two persons with a legal background who are responsible for the translation of documents. The expenses are borne by those requesting the translation. Furthermore, an accused, who feels that the laws in Malta are more favourable than in his/her native country, has the right to be tried in Malta.

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[7] COM (2009) 338

[8] The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Statement of the Foreign and European Affairs Committee

The Foreign and European Affairs Committee of the House of Representatives of Malta examined the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings and on the basis of information given by the competent national institutions, arrived at the following conclusion:

Article 31 (1) (c) of the Treaty on European Union, quoted as the legal basis for this Proposal, states that:

> "Common action on judicial cooperation in criminal matters shall include:
>
> (c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation"

The Proposal in question however relates essentially to human rights, particularly those related to the right to a fair trial. A fair trial is one in which the accused, amongst other things, can understand the language of the proceedings.

It is submitted that Article 31 (1) (c) does not have the objective of regulating the procedures of a fair trial. The right of a fair trial is already regulated by each member state in accordance with a common standard laid out in the human rights provisions of each member state in line with the Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms signed and ratified by all member states and considered by the ECJ as forming part of the general principles of Community law. Furthermore, on ratification of the Treaty of Lisbon, this matter will additionally be regulated by the Human Rights Charter which shall have the effect of EU law.

Furthermore, the practice in the EU countries of adhering to the rule of law will be further established when the Charter of Human Rights is adopted by the EU once the Lisbon Treaty comes into force.

Consequently it is felt that this Proposal represents an instance of overregulation and duplication since the matter is already sufficiently uniformly regulated by each individual member state in accordance with an agreed common standard as set out in the European Convention for the Protection of Human Rights (forming part of the general principles of law in EU Law) and the Human Rights Charter to be given legal effect on ratification of the Treaty of Lisbon. This proposal therefore goes beyond the issue of subsidiarity and constitutes an unwarranted measure at the level of the EU.

Netherlands: *Tweede Kamer*

Replies to the Questionnaire
Subsidiarity Check on the Commission proposal
for a Council Framework Decision on the right to interpretation and translation in criminal proceedings – COM(2009)338

1. Which parliamentary committees were involved in the subsidiarity check and how?
   - Standing Committee on Justice

2. Was the plenary involved?
   - Yes

3. At which level the final decision was taken and who signed it?
   - In the Plenary. The letter was signed by the Speaker

4. Which administrative services of your parliament were involved and how? Please specify.
   - The EU staff prepared a Memorandum to support the debate in the Committee.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
   - Yes, according to the standard joint procedure. However, this did not result in a joint letter. The committees on Justice from both Houses held divergent views and there was no time for mediation.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
   - Not in time. The Government Memorandum is due next week.

7. Did you consult your regional parliaments with legislative powers?
   - No

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
   - No

9. What was the chronology of events? Please specify the dates.
   - 18/8: consultation document by Joint Committee on Subsidiarity Check was sent to Standing Committees on Justice of both Houses.
   - 8/9 Senate handed in its opinion
   - 9/9: Standing Committee on Justice of House of Representatives finalised its opinion. Because of divergence in the opinions it was decided that each House send its own opinion.
   - 10/9 Plenary endorsement of opinion by House of Representatives

- 11/9 sending of letters to European Commission, cc. to European Parliament, Council, COSAC and NL Government.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
- No

11. Did you publicise your findings? If so, by what means?
- Only in the official Parliamentary records

Findings:

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

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
- Just a brief letter without statement of reasons.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
- Yes, although it could have been more balanced by adding a consideration to the relation of the proposal to the European Convention on Human Rights (ECHR). The common minimum standard on interpretation and translation in criminal proceedings that the proposal introduces is also covered by (articles 5 and 6 of) the ECHR.

15. Did you encounter any specific difficulties during this subsidiarity check?
- Time constraints due to recess period made it impossible to mediate between both Chambers.

16. Any other comments?
- No

The Hague, September 10th, 2009
Jos Kester and Frank Mittendorff
EU Staff House of Representatives of the States General.

COURTESY TRANSLATION

To:
Ms. M. Wallström
Vice-president of the European Commission
B – 1049 Brussels
Belgium

City/town and Date	The Hague, 11 September 2009
Subject	Subsidiarity assessment of the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (COM(2009)338)
Our reference	32010-4

Dear Ms. Wallström,

In accordance with the applicable procedure, the Dutch House of Representatives of the States General has assessed the proposal for a Framework Decision on the right to interpretation and to translation in criminal proceedings (COM(2009)338) on the basis of the principles of subsidiarity and proportionality. As such, use was made of Article 5 of the EC Treaty and Protocol 30 of the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

This letter is intended to inform you about the position of the House of Representatives of the States General. Copies of this document were sent to the European Parliament, the Council, COSAC and the Dutch government.

The House of Representatives considers the legal basis for the proposed framework decision to be adequate and sees no objections with respect to the requirements of subsidiarity and proportionality.

Yours sincerely,

(signed)

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

Netherlands: *Eerste Kamer*

Procedures:

1. **Which parliamentary committees were involved in the subsidiarity check and how?**

Answer:

- The Temporary Committee on Subsidiarity of both Houses of the States General of the Kingdom of The Netherlands (TGCS) launched the subsidiarity check.
- The proposal was scrutinized by the Committee for JHA-Council of the Senate

2. **Was the plenary involved?**

Answer:

- Yes

3. **At which level the final decision was taken and who signed it?**

Answer:

- The final decision concerning the content of the written opinion was taken by the plenary of the Senate and the letter was signed by the President of the Senate of the States General

4. **Which administrative services of your parliament were involved and how? Please specify.**

Answer:

- The staff of the Committees mentioned in the reply to question 1.

5. **In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?**

Answer:

- Yes, although the outcome of the subsidiarity check slightly differs between the two Houses. The TGCS (a mixed committee of the two Houses of Parliament) launched the check. Prior to the discussions in the Committee of JHA-Council of the Senate of The Netherlands the staff of this Committee exchanged information and analyses with the staff of the Committee for Justice of the Lower House (Tweede Kamer). As soon as the Committee of the Senate and the plenary of The Senate reached the final conclusion these were communicated to the Committee for Justice of the Lower House in order to examine as whether a joint letter of both Houses to the European Commission would be possible. It was decided in the Tweede Kamer that a separate letter with a slightly different opinion should be sent.

6. **Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?**

Answer:

- Yes, but not prior to the moment the plenary of the Senate reached to its final conclusions

7. Did you consult your regional parliaments with legislative powers?

Answer:

- Not applicable

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

Answer:

- No

9. What was the chronology of events? Please specify the dates.

Answer:

18th of August 2009: request by the TGCS to the responsible Committees of both Houses of the States General to start the subsidiarity check;
27th August 2009: exchange of information and analysis between the Committee Staff of both Houses of Parliament;
1st of September 2009: Analysis of the Staff of the Committee for JHA-Council; of the Senate sent to Senators. E-mail consultation of members of the Senate;
8th of September 2009: Start of Committee and Plenary Meetings in the Senate (Recess finished);
8th of September 2009: Committee for JHA-Council decides on her advice to the plenary of the Senate;
8th of September 2009: Plenary of the Senate accepts the opinion proposed by the Committee for JHA-Council;
8th of September 2009: Opinion of the Senate communicated to the Committee for Justice of the Lower House (Tweede Kamer);
10th of September 2009: Letters (and e-mails) of the Senate sent to the vice-President of the European Commission (and also to European Parliament, Council, COSAC-secretariat and Dutch Government);
15th of September 2009: Courtesy translation (in English) of letter to European Commission sent to EC, EP, Council and COSAC-secretariat

10. Did you cooperate with other national parliaments in the process? If so, by what means?

Answer:

- No

11. Did you publicise your findings? If so, by what means?

Answer:

- Yes: as Parliamentary Documents, on the website www.europapoort.nl and on IPEX

Findings:

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

Answer:

- No, but additional information is requested from the European Commission

13.Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

Answer:

- Yes, please find attached

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

Answer:

- No, the Senate kindly requests additional information on specific topics mentioned in the letter

15.Did you encounter any specific difficulties during this subsidiarity check?

Answer:

- Yes, due to the start of the Committee and Plenary Meetings of the Sennate there was little time for carrying out the subsidiarity check.

16.Any other comments?

Answer:

- No

APPENDIX

WRITTEN OPINION OF THE SENATE OF THE KINGDOM OF THE NETHERLANDS

The Vice-President of the European Commission
Mrs M. Wallström
B – 1049 BRUSSELS
Belgium

date *10 September 2009*
reference *144755.u/YTB/FB/eos*
subject *Subsidiarity check on the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings, COM (2009)338*

Dear Mrs Wallström,

The Senate of the States General of the Kingdom of the Netherlands has checked the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings, COM(2009)338, for compliance with the principles of subsidiarity and proportionality. In doing so, it has applied Article 5 of the EC Treaty and Protocol 30 to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

The Senate of the States General has concluded that Article 31 (1)(c) of the EU Treaty provides a sufficient legal basis for the Proposal for a Framework Decision. Nonetheless, the Senate requests the European Commission to provide a convincing and more detailed justification of why this article is indeed the correct legal basis.

As regards the principles of subsidiarity and proportionality the Senate is able to agree, subject to some reservation. It would accordingly like to receive further information about what would be the added value of the Framework Decision in relation to the provisions of the European Convention on Human Rights and the case law based on it. The European Commission is kindly requested to provide more detailed reasoning of its thinking on this issue. The Senate of the States General also considers that more explanation is needed of the European Commission's assertion that the application of the provisions of the European Convention on Human Rights (ECHR) in the Member States is inconsistent and that this problem could be addressed by the Framework Decision.

The Senate of the States General trusts that it has provided you with sufficient information and awaits the reply of the European Commission with particular interest.

Yours sincerely,

Yvonne E.M.A. Timmerman-Buck
President of the Senate of the States General

An identical letter has been sent to the presidents of the Council of the European Union and the European Parliament and to the Dutch government and the secretariat of COSAC.

SEJM
OF THE REPUBLIC OF POLAND

EUROPEAN UNION AFFAIRS COMMITTEE

CHAIRMAN
Stanisław Rakoczy

Warsaw, August 28th, 2009

Answers on the following questions concerning subsidiarity check on the 'Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (COM(2009) 338)' adopted by European Union Affairs Committee of the Sejm of the Republic of Poland on the 28th August 2009.

1. **Which parliamentary committees were involved in the subsidiarity check and how?**

The European Union Affairs Committee (EUAC) was involved in the subsidiarity check. The EUAC is a specialized body of the Sejm, that gives opinions on behalf of the whole Chamber on the European Union matters.

2. **Was the plenary involved?**

No, it was not.

3. **At which level the final decision was taken and who signed it?**

The final decision was taken on the level of the European Union Affairs Committee of the Sejm of the Republic of Poland. The opinion concerning subsidiarity check on the 'Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (COM(2009) 338)'was signed by Mr Stanisław Rakoczy, the Chairman of the EUAC.

4. **Which administrative services of your parliament were involved and how? Please specify.**

According to practice in the subsidiarity check the following administrative bodies of the Chancellery of the Sejm were involved:

- The European Union Division in the European Union Affairs Bureau, as a competent section to organize and coordinate works of the EUAC meetings,
- The Bureau of Research of the Chancellery of the Sejm, which prepared expertise on the subsidiarity check.

5. **In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?**

No. we did not. The European Union Affairs Committee of the Sejm and The European Union Affairs Committee of the Senate worked separately.

6. **Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?**

No, the government did not provide any written information.

7. **Did you consult your regional parliaments with legislative powers?**

No, we didn't consult. In Poland, regional parliaments do not exist.

8. **Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?**

No, we did not consult.

9. **What was the chronology of events?**

The EUAC meeting on 28th August 2009 the opinion concerning subsidiarity check was adopted. The opinion of the EUAC was held in accordance with the Protocol (No 2) on the Application of the principles of Subsidiarity and Proportionality to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, on the 'Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (COM(2009) 338)'.

10. **Did you cooperate with other national parliaments in the process? If so, by what means?**

No, we did not cooperate.

11. **Did you publicise your findings? If so, by what means?**

The Committee's opinion was forwarded to the government and was published on the website of the EUAC. Additionally, the transcript of the EUAC meeting is available on the website of the Sejm.

Findings:

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

No, the Committee did not find any breach of the subsidiarity principle.

13. **Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.**

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

1. acknowlegdes the 'Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (COM(2009) 338)' in conformity with subsidiarity principle.
2. does not raise objections to the proposal for a directive referred to the above-mentioned point 1 and to the relevant government's draft position."

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

The European Union Affairs Committee found THE Commission's justification satisfactory. The written opinion of the Bureau of Research of the Chancellery of the Sejm, was also positive.

15. Did you encounter any specific difficulties during this subsidiarity check?

No, there was no specific difficulties.

16. Any other comments?

No, we do not have any other comments.

Chairman of the Committee

(Signed)

Stanisław Rakoczy

SENATE OF THE REPUBLIC OF POLAND
THE EUROPEAN UNION AFFAIRS COMMITTEE

Warsaw, September 11, 2009

SENATE OF THE REPUBLIC OF POLAND

Report on the subsidiarity check under the Treaty of Lisbon on the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings, COM(2009) 338

At the sitting on 9th September 2009 the Senate's European Union Affairs Committee carried out a subsidiarity check following the procedure agreed by the COSAC. The check was completed and the conclusions formulated as follows:

Procedures:

1. **Which parliamentary committees were involved in the subsidiarity check and how?**

Two parliamentary committees were involved in the subsidiarity check in the Senate of the Republic of Poland: the European Union Affairs Committee and the Human Rights, the Rule of Law and Petitions Committee.

At the first sitting concerning the subsidiarity check the European Union Affairs Committee discussed the procedures regarding the subsidiarity check, as well as approved the working agenda, the sectoral committees to give opinions on the said proposal and the choice of the experts.

The Human Rights, the Rule of Law and Petitions Committee joined the EU Affairs Committee at the second sitting concerning the subsidiarity check. After a discussion both committees came to the conclusion that the above-mentioned proposal complies with the principle of subsidiarity.

2. **Was the plenary involved?**

No.

3. **At which level the final decision was taken and who signed it?**

The decision was taken by the European Union Affairs Committee and signed by the chairman of the Committee.

4. **Which administrative services of your parliament were involved and how (please specify)?**

The Analyses and Documentation Office (seeking external experts and concluding agreements with them), the European Union Unit (preparing a sitting, drafting an opinion, making a report).

5. **In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?**

No.

6. **Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?**

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

7. **Did you consult your regional parliaments with legislative powers?**

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

8. **Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?**

Yes, the Committee was provided with an external expertise prepared by an independent expert.

9. **What was the chronology of events? Please specify the dates.**

- ***8 July 2009**, the European Commission published all linguistic versions of the Proposal for*
  a Council Framework Decision

- ***29 July 2009** – the sitting of the European Union Affairs Committee:*
  - *discussing the procedures regarding the subsidiarity check*
  - *approving the working agenda*
  - *appointing the sectoral committees to give opinions on the said proposal*
  - *choosing the experts*

- ***9 September 2009** – the joint sitting of the European Union Affairs Committee and the Human Rights, the Rule of Law and Petitions Committee:*
  - *hearing the opinions of the government representatives*
  - *hearing the opinions of the Committee expert*
  - *discussion*
  - *adopting an opinion on the basis of the tabled motions*

- ***11 September 2009** - preparing and forwarding the report to the COSAC secretariat.*

10. Did you cooperate with other national parliaments in the process? If so, by what means?

No.

11. Did you publicise your findings? If so, by what means?

Yes, a report on the subsidiarity check has been publicised on the website of the European Union Affairs Committee and in the IPEX network.

Findings:

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

The European Union Affairs Committee came to the conclusion that the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings ***does not breach the subsidiarity principle.***

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

No.

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

In the Committee's opinion the Commission has not identified all necessary arguments and those put forward in the justification are not sufficiently well formulated.

15. Did you encounter any specific difficulties during this subsidiarity check?

No.

16. Any other comments?

The possible entry into force of the Treaty of Lisbon will make it necessary to make amendments both in the so-called "cooperative act", which deals with the cooperation between the government and the Sejm and the Senate in matters related to Poland's EU membership, and the rules of procedure of each chamber. It will be also indispensable to formulate a new legal basis to enable the Sejm and the Senate to exercise their newly acquired powers resulting from the Protocol on the application of principles of subsidiarity and proportionality. Changes will have to be introduced to the rules of procedure of the Sejm and the Senate to make it clear whether the opinions on the compliance with the subsidiarity principle - because of their special status - should be adopted by the plenary of each chamber or their authorised EU committees. Legal expert opinions on possible changes in this respect are being prepared now.

Accepted by:

Edmund Wittbrodt
Chairman
EU Affairs Committee
Senate of the Republic of Poland

SENATE OF THE REPUBLIC OF POLAND
THE EUROPEAN UNION AFFAIRS COMMITTEE

Warsaw, September 9, 2009

Ms. Anna Kinberg Batra
Chairwoman of the Committee on European Union Affairs
Swedish/Sveriges Riksdag

Dear Colleague,

The participants of the COSAC Chairpersons meeting on 10 February 2009 in Prague agreed to carry out the subsidiarity check on the Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings.

With this in view, the European Union Affairs Committee of the Senate of the Republic of Poland at the sitting on 9th September 2009 conducted a subsidiarity check concerning the final version of above-mentioned EU proposal following the procedure agreed by the COSAC. The European Union Affairs Committee, with the co-operation of the Human Rights, the Rule of Law and Petitions Committee, has come to the conclusion that the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings does not breach the subsidiarity principle.

We have prepared our reply in the form of answers to the questions posed in the aide-mémoire prepared by the COSAC Secretariat.

Please find enclosed the report on the subsidiarity check on the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings COM(2009) 338.

Yours sincerely,

(Signed)

Edmund Wittbrodt
Chairman of the European Union Affairs Committee

Portugal: *Assembleia da República*

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

The European Affairs Committee, which always triggers the scrutiny process, and the Committee on Constitutional Affairs, Freedoms, Rights and Guarantees, competent for the issues covered by this Proposal for a Directive.

2. Was the plenary involved?

No. Even though the proposal was adopted by the Commission on 8 July, the subsidiarity test was only launched on 20 July, when all the official translations were published. Given that the last formal plenary session of this parliamentary term was held on 10 July, the plenary was not involved.

It should also be added that, in the light of Article 3, paragraph 2 of the Law 43/2006, dated 25 August 2006 on the *Monitoring, assessement and pronouncement of the Assembleia da República within the scope of the EU*, "(...) in cases where there are grounds for urgency, a formal written opinion issued by the the European Affairs Committe shall suffice."

3. At which level the final decision was taken and who signed it?

The final decision was taken by the EU Affairs committee and signed by its Chairman and the Rapporteur, who was the same in both Committees involved.

4. Which administrative services of your parliament were involved and how? Please specify.

Only the above mentioned Committees and the translation service.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

N.a.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

There was no direct request for information sent to the government. Nevertheless, the government provides the Parliament with all the documents received from the EU, namely the working group documents, etc.

7. Did you consult your regional parliaments with legislative powers?

N.a., since the matter concerned does not fall within their remit.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No.

9. What was the chronology of events? Please specify the dates.

Attention must be drawn to a previous question. This proposal was adopted on 8 July and the subsidiarity check was launched on 20 July. Given that the last plenary session of the current parliamentary term ended was scheduled for 10 July and two other exceptional plenary sessions were to be held on 21 and 22 July for voting purposes only, there would have been no timeframe available to conduct the subsidiarity check if the Parliament was to wait for the official launch of the subsidiarity check. Therefore, and on an exceptional basis, the EAC and the competent Committee chose to work with the English version of the proposal, in order to be able to express the Parliament's opinion in due course.

8 July: the EC Affairs Committee asked the relevant Committee (Committee on Constitutional Affairs, Rights, Freedoms and Guarantees) to issue its opinion on the compliance of this Proposal for a Directive with the principle of subsidiarity.

16 July – the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees approved its report on the the Proposal.

21 July – the European Affairs Committee endorsed the report from the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees an adopted a reasoned opinion on the *Proposal for a Framework Decision with a view to assuring the right to interpretation and translation in criminal proceedings*, concluding that it complies with the principle of subsidiarity.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

IPEX was consulted throughout the scrutiny process.

11. Did you publicise your findings? If so, by what means?

Yes, the findings were uploaded to IPEX.

Findings:

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

No.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

Yes. A copy is enclosed.

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

Yes.

15. Did you encounter any specific difficulties during this subsidiarity check?

Yes, the eight week period in which this subsidiarity test took place was outside the normal parliamentary term which limited the capacity for a more in-depth debate.

Moreover, the initial planning of the Commission was to put forward *a Proposal for a Framework Decision on procedural rights in criminal proceedings* and this was the one chosen by national Parliaments in the framework of COSAC. However, the proposal being scrutinized by the current subsidiarity check is a *Proposal for a Framework Decision with a view to assuring the right to interpretation and translation in criminal proceedings*, i.e., referring only to a specific aspect of the broader issue relating to procedural rights in criminal proceedings.

Therefore, it should be noted that this subsidiarity check is not exactly about the same proposal national Parliaments chose to scrutinize in the framework of COSAC.

16. Any other comments?

ASSEMBLEIA DA REPÚBLICA

EUROPEAN AFFAIRS COMMITTEE

OPINION

COM/2009/338 FIN – COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings

[SEC (2009) 915 - COMMISSION STAFF WORKING DOCUMENT –Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings – Accompanying the **Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings – IMPACT ASSESSMENT]**

[SEC (2009) 916 - COMMISSION STAFF WORKING DOCUMENT – Accompanying the Proposal for a **COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings – SUMMARY OF THE IMPACT ASSESSMENT]**

I. Introductory Note

The Committee on Constitutional Affairs, Rights, Freedoms and Guarantees received **COM/2009/338 FIN**, relating to the "**Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings –** Proposal for a Framework Decision with a view to assuring the right to interpretation and translation in criminal proceedings**"** forwarded by the European Affairs Committee, in accordance with the provisions of Article 7 of Law 43/2006, of 25 August, on the "*monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union*".

It should be noted that the proposal in question was forwarded to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees accompanied by two working documents **{SEC (2009) 915 and SEC (2009) 916}** which formed the basis for the proposal and for the drafting of this opinion, and consequently a full understanding of this opinion necessarily requires analysis of these working documents.

II. Preliminary considerations

1. Framework

The European Union adopts legislation which is directly binding on its citizens. It is therefore an essential condition for the democratic legitimacy and transparency of the Union that its citizens should have the possibility of communicating with its institutions, of reading EU legislation in their own national language and of taking part in the European project without facing any linguistic barriers. The very first regulations adopted by the Council consequently define the European Community as a multilingual entity, stipulating that legislation shall be published in the official languages and requiring its institutions to deal with citizens in the official languages of their choice.

Reflecting its concern with equity and transparency, the Union operates an important online service, providing access to the Union's legislation and case law; this is the EUR-Lex service, which is fully multilingual and includes the 23 official languages.

2. The Underlying Rationale

This proposal envisages the establishment of common minimum standards for certain procedural rights applicable in criminal proceedings in the European Union, specifically the **right of the suspect to interpretation free of charge, if he does not understand or speak the language used in the proceedings.**

This initiative is designed to guarantee the rights of persons facing proceedings and who neither understand nor are able to express themselves in the language in which the proceedings are conducted. The existence of common standards and procedures derives from, and indeed facilitates, the application of the principle of mutual recognition.

As regards the legal basis, the proposal in question is based on Article 31 of the Treaty on European Union and the need for common action by the European Union in the field of judicial cooperation on criminal matters. This provision envisages that the EU may develop "common action" so as to ensure compatibility in rules where necessary to improve cooperation. Judicial cooperation, and mutual recognition in particular, is a field where compatibility is necessary in order to improve cooperation. This is why the parameters for the mutual recognition programme include "mechanisms for protecting the rights […] of suspects" (parameter 3) and "definition of common minimum standards to facilitate mutual recognition" (parameter 4).

3. Proposal's background

- Article 6 of the Treaty on European Union (TEU) provides that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and as they result from the constitutional traditions common to Member States;
- Moreover, in December 2000, the European Parliament, the Council and Commission jointly signed and solemnly proclaimed the Charter of Fundamental Rights of the European Union;
- The Presidency Conclusions of the Tampere European Council stated that mutual recognition should become the cornerstone of judicial cooperation, but makes the point that mutual recognition "...and the necessary approximation of legislation would facilitate […] the judicial protection of individual rights".

This proposal achieves the objective of reinforcing the safeguards for the rights of all suspects and defendants in general.

In seeking to improve the rights assuring fair process in general, the proposal in question will also make it possible to assure a reasonable level of protection for foreign suspects and defendants in general, given that various measures are addressed specifically at such persons.

It is the responsibility of the Member States to assure that EU citizens enjoy proper protection if they are involved in criminal proceedings in a member State of which they are not a national.

4. Legal Basis

This proposal is based on Article 31 of the Treaty of European Union (TEU), in its most recent wording as established by the Treaty of Nice, concerning common action in the field of judicial cooperation on criminal matters.

Article 31(1) c) of the Treaty on European Union provides for "ensuring compatibility in rules applicable in the Member States as may be necessary to improve [judicial co-operation in criminal matters]". This compatibility may be assured by a certain approximation in the minimum procedural rules of the Member States, in order to build mutual trust.

5. Subsidiarity Principle

The objectives of the proposal cannot be sufficiently achieved by Member States alone, and they will therefore be more easily achieved through the action of the European Union.

III – Rapporteur's opinion:

Under the terms of Article 137.3 of the Rules of Procedure of the Assembly of the Republic, the rapporteur hereby excuses herself from expressing her opinion in this report.

IV. Conclusions

1. The European Affairs Committee received **COM/2009/338 FIN**, relating to the "**Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings"** and forwarded it to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, as required by the provisions of Article 7 of Law 43/2006, of 25 August, on the "*monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union*".

2. This opinion has involved analysis of the three documents, taken together, and of the opinion drawn up by the Committee for Rights, Freedoms and Guarantees, in view of the subject matter.

3. This proposal envisages the establishment of common minimum standards in relation to certain procedural rights applicable in criminal proceedings in the European Union, and specifically to the right of the suspect to interpretation free of charge, if he does not understand or speak the language used in the proceedings.

4. This initiative is designed to guarantee the rights of persons facing proceedings and who neither understand nor are able to express themselves in the language in which the proceedings are conducted. The existence of common standards and procedures derives from, and indeed facilitates, the application of the principle of mutual recognition.

5. This proposal is in compliance with the principle of subsidiarity.



ASSEMBLEIA DA REPÚBLICA

EUROPEAN AFFAIRS COMMITTEE

Opinion

In view of the above, there being nothing further to add, the Parliamentary Committee for European Affairs considers that the legislative process has been concluded.

Assembly of the Republic, 21 July 2009

The Reporting Member	The Chairman of the Committee
(Ana Catarina Mendonça Mendes)	(Vitalino Canas)



ASSEMBLEIA DA REPÚBLICA

COMMITTEE FOR CONSTITUTIONAL AFFAIRS, RIGHTS, DUTIES AND GUARANTEES

OPINION

COM/2009/338 FIN – COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings

[SEC (2009) 915 - COMMISSION STAFF WORKING DOCUMENT –Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings – Accompanying the **Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings – IMPACT ASSESSMENT]**

[SEC (2009) 916 - COMMISSION STAFF WORKING DOCUMENT – Accompanying the Proposal for a **COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings – SUMMARY OF THE IMPACT ASSESSMENT]**

I. Introductory Note

The Committee for Constitutional Affairs, Rights, Freedoms and Guarantees received **COM/2009/338 FIN**, concerning the "**Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings"** forwarded by the European Affairs Committee, as required by Law 43/2006, of 25 August, on the "*monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union*".

We should also point out that the proposal in question was forwarded to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees accompanied by two working documents **{SEC (2009) 915 and SEC (2009) 916}** which lay behind and formed the basis for proposal in question, meaning that an understanding of the proposal will necessarily require examination of the working documents from which it originated.

Finally, we should note that, in addition to our having analyzed three separate documents, these documents were only available in English, and consequently one or more inaccuracies may have crept into this *ad hoc* attempt at translation.

II. Recitals

1. Background

Linguistic diversity is a challenge for Europe, but, in our opinion, a rewarding one

(Amin Maalouf, Intellectual Group for Intercultural Dialogue).

The European Union is founded on "unity in diversity": diversity of cultures, customs and creeds – and of languages. In addition to the 20 official languages of the Union, there are approximately 60 other indigenous languages and also numerous languages spoken by migrant communities.

It is diversity that makes the European Union what it is: not a corner where differences fade away, but a common house, where diversity is celebrated and where our many mother tongues constitute a source of wealth and an open road to greater solidarity and mutual understanding.

The European Union adopts legislation which is directly binding on its citizens. It is therefore an essential condition for the democratic legitimacy and transparency of the Union that citizens should have the possibility of communicating with its institutions, of reading EU legislation in their own national language and of taking

part in the European project without encountering any linguistic barriers. Accordingly, the first regulation ever adopted by the Council[9] defines the European Community as a multilingual entity, stipulating that its legislation should be published in the official languages and requiring its institutions to conduct its dealings with citizens in the official languages of their choice.

In its concern for equity and transparency, the Union offers an important public online service, providing access to the legislation and case law of the Union; this is the EUR-Lex service, fully multilingual and encompassing the 20 official languages[10].

2. Rationale

This proposal aims to set common minimum standards as regards certain procedural rights applicable in the course of criminal proceedings in the European Union, specifically **the right of the accused to have the free assistance of an interpreter if he cannot understand or speak the language used in court**.

This initiative seeks to assure the rights of persons facing proceedings and who can neither understand nor express themselves in the language in which the proceedings are conducted. The existence of common standards and procedures derives from, and indeed facilitates, the application of the principle of mutual recognition.

As regards its legal basis, the proposal in question derives from Article 31 of the Treaty on European Union and the need for common action by the European Union in the field of judicial cooperation on criminal matters. This provision establishes that the EU can take "common action" to assure the compatibility of the applicable rules, if necessary, in order to improve cooperation. Judicial cooperation, and mutual recognition in particular, is a situation where compatibility is required in

[9] Regulation no. 1, of 1958, establishing the rules of the European Economic Community on language.
[10] http://europa.eu.int/eur-lex/lex

order to improve cooperation. This is why the parameters of the Programme for mutual recognition include "mechanisms for safeguarding the rights […] of suspects" (parameter 3) and "common minimum standards necessary to facilitate application of the principle of mutual recognition" (parameter 4).

3. Grounds for the Proposal

- Article 6 of the Treaty on European Union (TEU) provides that the Union shall respect fundamental right as guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR) and as they result from the constitutional traditions common to Member States;
- Moreover, in December 2000, the European Commission, the Council and the Parliament jointly signed and proclaimed the Charter of Fundamental Rights of the European Union;
- According to the Presidency Conclusions of the Tampere European Council[11], mutual recognition should become the cornerstone of judicial cooperation, but mutual recognition "… and the necessary approximation of legislation would facilitate […] the judicial protection of individual rights"[12].

This proposal achieves the declared aim of improving the protection of the rights of all suspects and defendants in general.

The offering of an equivalent level of protection to suspects and defendants throughout the European Union by means of these common minimum standards should facilitate application of the principle of mutual recognition, as enunciated in Section 5, entitled "The principle of mutual recognition". In Tampere, the Heads of State and Government recommended this "necessary approximation" of the legislation.

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11 15 and 16 October 1999.

12 Conclusion 33.

By seeking to improve the rights which assure fair process in question, the proposal in question will also make it possible to assure a reasonable level of protection for foreign suspects and defendants in particular, given that several measures are specifically designed for these individuals.

Member States are responsible for assuring that EU citizens enjoy due protection if involved in criminal proceedings in a Member State of which they are not a national.

- **The European Convention on Human Rights (ECHR)**

All Member States have criminal justice systems which meet the requirements imposed by Articles 5 (right to liberty and security) and 6 (right to fair trial) of the ECHR, thanks to a range of procedural guarantees. One way of achieving this would be to reach agreement between Member States on a concept of "fair trial" common to the entire Union.

Although it is normal and fitting for each Member State to define its own criminal justice system, any procedural discrepancies with regard to fundamental guarantees should be kept to a minimum.

Article 5

(Right to liberty and security)

1- Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a) the lawful detention of a person after conviction by a competent court;

b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2- Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3- Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4- Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5- Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6

(Right to a fair trial)

1- In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2- Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3- Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

- **The Charter of Fundamental Rights of the European Union (Charter)**

In December 2000, the European Commission, the Council and the European Parliament jointly signed and solemnly proclaimed the Charter of Fundamental Rights of the European Union (referred to below as "Charter")[13]. The Charter lays down the civil, political, economic and social rights of European citizens and the international obligations common to Member States. One significant aspect of the Charter lies in the fact that it asserts that the European Community is a political community and not only an economic organization. It also declares that respect for fundamental rights will be one of the foundations on which all of European law will be based. The Charter was solemnly proclaimed in Strasbourg, in December 2007.

The chapter entitled "Justice" (Articles 47 to 50) enshrines the right to a fair trial (Article 47) and respect for the defendant's right of defence (Article 48). The Charter provides for the presumption of innocence and the principle of legality and proportionality of criminal offences and penalties.

This proposal respects the spirit of the Charter. It contributes to the definition of "fair process" and to adoption of common standards with regard to "rights of defence", in order to facilitate fair treatment in the course of criminal proceedings throughout the European Union

SUMMARY

Right of the accused to interpretation services free of charge in connection with criminal proceedings

[13] The text of the Charter may be consulted at: http://www.europarl.eu.int/charter/default_pt.htm.

Article 6.3 of the ECHR enshrines the right of the accused to the assistance of an interpreter, free of charge, if he does not understand or speak the language used in the proceedings. The case law of the ECtHR[14] also indicates clearly that this obligation also applies to translation of all documents of importance to the proceedings.

The Commission's investigations revealed that, although Members States were theoretically aware of this obligation, they failed to comply fully with it in practice. During questioning by the police, qualified interpreters were not always present, and use was sometimes made of the services of laymen with some knowledge of the defendant's language. Restrictions were also applied in relation to documents to be translated for defendants. Although Article 6.3 e) clearly states the interpreter's services are to be provided "free", if the defendant does not understand or speak the language used in the proceedings, interpreters sometimes appeared to be present in the interest of the judge and/or the public prosecutor, and not in that of the defendant. In certain cases, the words of the judge or the public prosecutor were not translated for the defendant and the role of interpreter was limited to translation of questions directly posed by the judge to the defendant and the latter's replies to the judge, instead of taking care to assure that the person in question understood the proceedings.

The Commission also noted that Member States have difficulties in recruiting enough translators and interpreters specialized in legal work. In some Member States, the profession of court interpreter or translator has legal status, with training organized at national level and arrangements for registration, licensing and continuing vocational training, but this is not the case in all Member States. The profession suffers from a lack of status: translators and interpreters are badly paid and not entitled to social benefits (such as paid sick leave and pension rights), and

[14] *Kamasinski v. Áustria* (19 December 1989, A Series, no. 168), item 74.

complain of not having been sufficiently consulted by their counterparts in the legal profession.

The initiative *sub judice* will therefore need to tackle these problems and to assure the resources, conditions and standards needed to establish the **right of defendants to the assistance of an interpreter, if they do not understand or speak the language used in the proceedings.**

4. Legal Basis

The legal basis for this proposal is Article 21 of the Treaty on European Union (TEU), as most recently amended by the Treaty of Nice, with regard to common action in the field of judicial cooperation in criminal matters.

Article 31(1) c) of the Treaty on European Union provides for "ensuring compatibility in rules applicable in the Member States as may be necessary to improve [judicial co-operation in criminal matters]". This compatibility may be assured by a certain approximation in the minimum procedural rules of the Member States, in order to build mutual trust.

5. Subsidiarity Principle

The objectives of the proposal could not be sufficiently achieved by Member States alone, and they will therefore be more easily achieved through the action of the European Union.

6.Proportionality Principle

The proposal complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.

III – Rapporteur's Opinion:

Under the terms of Article 137.3 of the Rules of Procedure of the Assembly of the Republic, the rapporteur hereby excuses herself from expressing her opinion in this report.

IV. Conclusions

6. The Committee for Constitutional Affairs, Rights, Freedoms and Guarantees received **COM/2009/338 FIN**, relating to the "**Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings"** forwarded by the European Affairs Committee, as required by the provisions of Article 7 of Law 43/2006, of 25 August, on the "*monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union*"..

7. The proposal in question was forwarded to the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees accompanied by two working documents **{SEC (2009) 915 e SEC (2009) 916}**, meaning that this opinion has involved combined analysis of the three documents, given that they all deal with the same issues.

8. This proposal sets out to establish common minimum standards in relation to certain procedural rights applicable in criminal proceedings in the European Union, and specifically to the right of the suspect to interpretation free of charge, if he does not understand or speak the language used in the proceedings.

9. This initiative is designed to guarantee the rights of persons facing proceedings and who neither understand nor are able to express themselves in the language in which the proceedings are conducted. The existence of common standards and procedures derives from, and indeed facilitates, the application of the principle of mutual recognition.

10. This proposal does not breach the Subsidiarity Principle.

V – Annexes:

- COM/2009/338 FIN – COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings
- [SEC (2009) 915 - COMMISSION STAFF WORKING DOCUMENT –Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings – Accompanying the Proposal for a FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings – IMPACT ASSESSMENT]
- [SEC (2009) 916 - COMMISSION STAFF WORKING DOCUMENT – Accompanying the Proposal for a COUNCIL FRAMEWORK DECISION on the right to interpretation and to translation in criminal proceedings – SUMMARY OF THE IMPACT ASSESSMENT

Opinion

In view of the above, there being nothing further to add, the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees proposes that this report be forwarded to the European Affairs Committee, for their consideration, as required by the provisions of Article 7.3 of Law 43/2006, of 25 August.

Assembly of the Republic, 16 July 2009

The Rapporteur — The Chairman of the Committee

(Ana Catarina Mendonça Mendes) — (Osvaldo Castro)

Parliament of Romania

The European Affairs Committee of the Parliament of Romania

Answers to the Questionnaire
on point 3 Evaluation of the subsidiarity check in the Aide-mémoire for the subsidiarity check under the provisions of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon on the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

   The European Affairs Committee of the Parliament of Romania, the Committee for Legal Matters, Discipline, and Immunities of the Chamber of Deputies and the Committee for Legal Matters, Discipline, and Immunities and Validations of the Senate.
   The Committee for Legal Matters, Discipline, and Immunities and Validations of the Senate has formally adopted a decision stating the compliance of the Framework Decision with the principles of subsidiarity and proportionality.

   The Committee for Legal Matters, Discipline, and Immunities of the Chamber of Deputies has been informally consulted at staff level.

   The European Affairs Committee organized debates in two meetings, on September 16 and 22, and adopted an Opinion, acting in its legal capacity to adopt decisions on behalf of the Parliament.

2. Was the plenary involved?

   No.

3. At which level the final decision was taken and who signed it?

   The decision was taken at the level of the European Affairs Committee and was signed by the chairman.

4. Which administrative services of your parliament were involved and how? Please specify.

   Representatives from the Secretariat of the Committee for Legal Matters, Discipline, and Immunities of the Chamber of Deputies, the Directorate for EU Law of the Chamber of Deputies and the Directorate for European Affairs of the Senate attended, gave evidence

and forwarded proposals in the informal meeting organized by the Secretariat of the European Affairs Committee.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

   Yes. The European Affairs Committee is a joint committee of both Chambers.
   The coordination took place at staff level as well.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

   Yes. The European Affairs Committee requested and received documentation and positions from the Ministry of Justice, the Ministry of Foreign Affairs and the European Affairs Department.

7. Did you consult your regional parliaments with legislative powers?

   Not applicable.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

   No.

9. What was the chronology of events? Please specify the dates.

   On July 21 the European Affairs Committee Secretariat sent an e-mail message to the committee's members' consideration.
   On July 21 the European Affairs Committee asked the Ministry of Justice, the Ministry of Foreign Affairs, the European Affairs Department, the Directorate for European Affairs of the Senate and the Directorate for EU Law of the Chamber of Deputies to submit evidence and to forward proposals.
   On July 22 the Directorate for European Affairs of the Senate asked the Committee for Legal Matters, Discipline, and Immunities and Validations of the Senate to give an opinion. The opinion was formally adopted in the committee's meeting of September 8, 2009.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

    Not directly. We watched the IPEX page and informed the European Affairs Committee on the positions of the national parliaments which posted their decisions.

11. Did you publicise your findings? If so, by what means?

    On the web page of both Chambers of the Parliament of Romania and IPEX.

Findings:

The Proposal for a Council Framework Decision on the right of interpretation and translation in criminal proceedings, COM (2009) 338, fulfills, in essence, the conditions provided at art. 4, paragraph (2), art. 5 paragraphs (1), (3) and (4), and in the Protocol nr. 2 of the Lisbon Treaty on the application of the principles of subsidiarity and proportionality, thus being in accordance with the principles of subsidiarity and proportionality.

The fact that the Proposal contributes indeed to the consolidation of judicial cooperation in criminal affairs and further to the development of the area of freedom, security and justice was emphasized as a certitude, by all the involved parties in its examination.

For the benefit of the present exercise proposed by COSAC we emphasize a series of aspects that need further explanations.

First of all, we mention, as we did last year, 2008, at the request of the COSAC Working Group for the analysis of the ways to implement the Protocol nr.2 of the Lisbon Treaty, the difficulty to analyze the compliance with these two principles, in the absence of a definition and even more of a detailed description, including guidelines concerning the application of the principles of subsidiarity and proportionality. Under the circumstances, the demarcation between the request for respecting the principles of subsidiarity and proportionality and the request for good regulation, mainly concerning the quality of the proposal substantiation through statistic data and arguments could not be established with precision.

As concerns the proposal's impact, on 27 may 2009, the Impact Assessment Board analyzed the draft decision requesting a more elaborate argumentation of the European Commission concerning, among others : better estimates of the implementation costs and the economic outcomes; a clearer analysis of why Member States apply differently ECHR requirements regarding fair trial rights; more elaborated and transparent comparison of options; to show why mutual trust is so important, what factors affect it and how to enhance it, more information about consultation of stakeholders.

The Commission Staff Working Document SEC (2009) 915 - admits in points 70, 71, 92, 94, the impossibility of estimating the costs "with precision", and the statistic data from the tables 5 and 6 are, as a result of lack of official data, just approximates.

The extension of the rights offered by the draft decision induces considerable costs.

The interpretation of the discussions between the attorney and the suspected person on the State's expense is excessive in those cases where the accused person has a freely chosen defender. The lack of a clear analysis of the costs that are implied for the Member States can be considered a weakness of the proposal, especially because it does not allow evaluating the compliance of the proportionality principle by way of assessing the necessity and the utility of dispositions from the costs' perspective. In case of minimal standards at UE level one should take into consideration the option of partially financing from the EU budget (under the title: citizenship, freedom, security and justice), eligible states being those for which the costs of implementation are higher relative to their national budgets (the principle of solidarity).

It must be also taken into account the prospect of the exaggerated time frame of legal procedures caused by the compulsory file translation: (the incrimination act, gathering of evidences, statements, expert appraisement etc), thus acting contrary to the principle of speed administration of justice acts. Greater effects would be produced especially in the case of criminal proceedings, with the accused person(s) judged while in pretrial imprisonment. The extension, in some cases, of the period of preventive custody would be substantial.

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

    No.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

    No.

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

    Generally yes but with some reservations as stated above.

15. Did you encounter any specific difficulties during this subsidiarity check?

    Yes.

    The summer recess of the Parliament and the summer leave of public servants in Parliament and Government prevented us from a better consultation with the stakeholders.

    The difficulty to determine the meaning of subsidiarity in the absence of a detailed and widely accepted description, including guidelines concerning the application of the principles of subsidiarity and proportionality.

16. Any other comments?

    No comment.

PARLIAMENT OF ROMANIA

EUROPEAN AFFAIRS COMMITTEE

Bucharest, September 23, 2009

N°. 40 / 333

OPINION
of the European Affairs Committee of the Romanian Parliament on the compliance of the Proposal for a Council Framework Decision on the right of interpretation and translation in criminal proceedings with the principles of subsidiarity and proportionality, COM(2009) 338

The European Affairs Committee of the Romanian Parliament examined, in the meetings of 16 and 22 September 2009, the compliance of Council's draft Decision Proposal on the right of interpretation and translation in criminal proceedings with the principles of subsidiarity and proportionality, COM(2009) 338.

Acting in respect of Article 4 from Decision no. 52/2006 of the Romanian Parliament, empowering the European Affairs Committee to express the point of view of the Romanian Parliament, the Committee adopts the following:

OPINION

The Proposal for a Council Framework Decision on the right of interpretation and translation in criminal proceedings, COM (2009) 338, fulfills, in essence, the conditions provided at art. 4, paragraph (2), art. 5 paragraphs (1), (3) and (4), and in the Protocol nr. 2 of the Lisbon Treaty on the application of the principles of subsidiarity and proportionality, thus being in accordance with the principles of subsidiarity and proportionality.

The fact that the Proposal contributes indeed to the consolidation of judicial cooperation in criminal affairs and further to the development of the area of freedom, security and justice was emphasized as a certitude, by all the involved parties in its examination.

For the benefit of the present exercise proposed by COSAC we emphasize a series of aspects that need further explanations.

First of all, we mention, as we did last year, 2008, at the request of the COSAC Working Group for the analysis of the ways to implement the Protocol nr.2 of the Lisbon Treaty, the difficulty to analyze the compliance with these two principles, in the absence of a definition and even more of a detailed description, including guidelines concerning the application of the principles of subsidiarity and proportionality. Under the circumstances, the demarcation between the request for respecting the principles of subsidiarity and proportionality and the

request for good regulation, mainly concerning the quality of the proposal substantiation through statistic data and arguments, it could not be established with precision.

As concerns the proposal's impact, on 27 may 2009, the Impact Assessment Board analyzed the draft decision requesting a more elaborate argumentation of the European Commission concerning, among others : better estimates of the implementation costs and the economic outcomes; a clearer analysis of why Member States apply differently ECHR requirements regarding fair trial rights; more elaborated and transparent comparison of options; to show why mutual trust is so important, what factors affect it and how to enhance it, more information about consultation of stakeholders.

The Commission Staff Working Document SEC (2009) 915 - admits in points 70, 71, 92, 94, the impossibility of estimating the costs "with precision", and the statistic data from the tables 5 and 6 are, as a result of lack of official data, just approximates.

The extension of the rights offered by the draft decision induces considerable costs.

The interpretation of the discussions between the attorney and the suspected person on the State's expense is excessive in those cases where the accused person has a freely chosen defender. The lack of a clear analysis of the costs that are implied for the Member States can be considered a weakness of the proposal, especially because it does not allow evaluating the compliance of the proportionality principle by way of assessing the necessity and the utility of dispositions from the costs' perspective. In case of minimal standards at UE level one should take into consideration the option of partially financing from the EU budget (under the title: citizenship, freedom, security and justice), eligible states being those for which the costs of implementation are higher relative to their national budgets (the principle of solidarity).

It must be also taken into account the prospect of the exaggerated time frame of legal procedures caused by the compulsory file translation: (the incrimination act, gathering of evidences, statements, expert appraisement etc), thus acting contrary to the principle of speed administration of justice acts. Greater effects would be produced especially in the case of criminal proceedings, with the accused person(s) judged while in pretrial imprisonment. The extension, in some cases, of the period of preventive custody would be substantial.

Viorel HREBENCIUC
Chairman

Evaluation of the subsidiarity check on the Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings – SLOVAK REPUBLIC

Procedures:
1. Which parliamentary committees were involved in the subsidiarity check and how?

- <u>September 3, 2009</u> - Committee on European Affairs discussed the proposal. It did not find breach of subsidiarity and proportionality principle. Due to a lack of time it did not ask for opinion specialized committee.

2. Was the plenary involved?
No

3. At which level the final decision was taken and who signed it?
Resolution of the Committee on European Affairs signed by the Chairman and verifier.

4. Which administrative services of your parliament were involved and how (please specify)?
Department for European Affairs (which is at the same time extended secretariat of the Committee on European Affairs) elaborated the analysis, which was provided to MPs of the committee.

5. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
The Ministry of Justice of the Slovak Republic provided preliminary opinion on the draft, which contained also analysis on the compliance with the principles of subsidiarity and proportionality.

6. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
-

7. Did you consult your regional parliaments with legislative powers?
-

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
no

9. What was the chronology of events?
See answer to question No. 1

10. Did you cooperate with other national parliaments in the process? If so, by what means?
no

11. Did you publicise your findings? If so, by what means?
Yes, through the press conference regularly held after each committee session and standard publication of the committee resolution on the parliamentary web site.

12. Has your parliament introduced any procedural changes with regard to subsidiarity check mechanism since September 2008? If so, please specify how.
no

Findings:
13. Did you find any breach of the principle of subsidiarity?
no
14. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy)
no
15. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
yes
16. Did you encounter any specific difficulties during this subsidiarity check?
Parliamentary recess due to summer holidays

17. Any other comments?
-

REPUBLIC OF SLOVENIA
NATIONAL ASSEMBLY
Committee on EU Affairs

Response to COSAC Subsidiarity Check on the Commission Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

1. Which parliamentary committees were involved in the subsidiarity check and how?

The Committee on Domestic Policy, Public Administration and Justice conducted the check and adopted an opinion on the issue at its meeting held on 9 September 2009. Taking this opinion into account, the Committee on EU Affairs took a position thereon at its meeting on 11 September 2009.

2. Was the plenary involved?

No.

3. At which level the final decision was taken and who signed it?

The decision was taken by the Committee on EU Affairs and signed by its chairperson.

4. Which administrative services of your parliament were involved and how? Please specify.

The Legislative and Legal Service issued the opinion (legal aspects) and the staff of the Committee on Domestic Policy, Public Administration and Justice (issuing the opinion -expertise and general information) .

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

No. The National Council conducted the subsidiarity check in its own procedure.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

Yes, the verbal communication was provided by the State Secretary of the Ministry of Justice at the meeting of the Committee on Domestic Policy, Public Administration and Justice held on 9 September 2009. The Government also provided an explanatory memorandum on the proposal which include comments on compliance with the principle.

7. Did you consult your regional parliaments with legislative powers?

No.

8. Did you consult any non-governmental organisations, interest groups, external

experts or other stakeholders?

No.

9. What was the chronology of events? Please specify the dates.

20 July 2009: The Committee on EU Affairs sends the Commission Proposal for a Council Framework Decision to the Legislative and Legal Service to issue the opinion. The request is also communicated for information to the chairman of the Committee on Domestic Policy, Public Administration and Justice.

4 September 2009: The Legislative and Legal Service delivers the opinion on the Commission Proposal for a Council Framework Decision.

- Papers, together with the opinion issued by the Legislative and Legal Service, are submitted on the same day to the Committee for Domestic Policy, Public Administration and Justice.

9 September 2009: The Committee for Domestic Policy, Public Administration and Justice delivers its opinion: it found that the proposal was consistent with the principle of subsidiarity.

11 September 2009: The Committee on EU Affairs takes a position: the proposal complies with the principle of subsidiarity.

14 September 2009: final submission to COSAC

10. Did you cooperate with other national parliaments in the process? If so, by what means?

No.

11. Did you publicise your findings? If so, by what means?

No. The report will be available via IPEX.

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

The Legislative and Legal Service of the National Assembly is seeking to draw attention to the EU competence in criminal proceedings. It evaluates that the EU does not have the competence to adopt the proposal. According to its analysis, it is first necessary to establish whether the EU competence exists or not and only then the principle of subsidiarity may be applied. However, the analysis made by the Legislative and Legal Service does not dispute the rights of the suspects. Moreover, it is estimated that the adoption on non - adoption of the proposal will probably have no practical impact on Slovenia; the rights to translation and to interpretation are already regulated by the national Criminal Procedure Act.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

No.

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

No.

15. Did you encounter any specific difficulties during this subsidiarity check?

No.

16. Any other comments?

No.

14 September 2009

REPUBLIC OF SLOVENIA
NATIONAL ASSEMBLY
Committee on EU Affairs

No.: 713-01/09-31/
Date: 11 September 2009

To members of the Committee on EU Affairs

At its 27th meeting of 11 September 2009, upon discussing the "Outcomes of the conduct of the procedure of supervision of the compliance with the principle of subsidiarity in the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings", the Committee on EU Affairs adopted the following

DECISION:

The Committee on EU Affairs establishes that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings complies with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

Darja Lavtižar Bebler
Chair

Cc:
- Council of the President of the National Assembly
- Committee on Domestic Policy, Public Administration and Justice
- Legislative and Legal Service

REPUBLIC OF SLOVENIA
NATIONAL ASSEMBLY

Committee on Domestic Policy, Public Administration and Justice

Date: 10. 9. 2009
No.: 713-01/09-31

To the Committee on EU Affairs

Based on mutatis mutandis application of Article 154h(2) of the Rules of Procedure of the National Assembly, the Committee on Domestic Policy, Public Administration and Justice as **the working body responsible** hereby presents the following

REPORT

on the conduct of the procedure of supervision of the compliance with the principle of subsidiarity in the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

At its 8th meeting of 9 September 2009, the Committee on Domestic Policy, Public Administration and Justice conducted the procedure of supervision of the compliance with the principle of subsidiarity in accordance with the procedure provided by the Protocol on the application of the principles of subsidiarity and proportionality (hereinafter: the Protocol), annexed to the Treaty on European Union (hereinafter: TEU) and the Treaty on the Functioning of the European Union (hereinafter: TFEU) in relation to the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (hereinafter: the proposal).

Ms Darja Lavtižar Bebler, Chair of the Committee on EU Affairs and initiator of the case, explained that pursuant to Article 5 of TEU, in accordance with the principle of subsidiarity in areas which do not fall within its exclusive competence, the European Union takes action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States at the national, regional or local levels and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union. The aim of the procedure of supervision of the compliance with the above principle is therefore to prevent the Union from interfering in areas that are beyond its exclusive competence and remain within the competence of the Member States. She added that the Conference of Community and European Affairs Committees of Parliaments of the European Union (hereinafter: COSAC) each year decides that the national parliaments of all Member

States shall carry out annually at least two procedures of supervision of the compliance with the principle of subsidiarity in relation to jointly selected draft legislative acts. The COSAC meetings of Paris (7 July 2008) and Prague (10 February 2009) agreed that in 2009 the above procedure would be applied to the proposal under consideration. The draft act was published in all EU languages on 20 July 2009, which also marked the beginning of the eight-week period to conduct the procedure envisaged by the Protocol. The conduct of the procedure of supervision is one of the pilot projects aimed at anticipating the actual functioning and cooperation of the parliaments once the Lisbon Treaty has entered into force. Since the purpose of the above procedures is to provide for greater involvement of national parliaments in the preliminary procedure, the Committee on EU Affairs, in accordance with the existing practice in the National Assembly, asked the Legislative and Legal Service to provide by no later than 2 September 2009 a reasoned opinion on the compliance with the principle of subsidiarity and inform the Chair of the Committee on Domestic Policy, Public Administration and Justice accordingly. On 4 September 2009, the Committee on EU Affairs sent all the relevant materials, including the opinion of the Legislative and Legal Service, to the Committee on Domestic Policy, Public Administration and Justice, asking it to deliver by 10 September 2009 its opinion on the compliance with the principle of subsidiarity.

Once the Committee on EU Affairs has considered such opinion, the expert service thereof will prepare the relevant report to be sent to the COSAC Secretariat. Based on all reports received by national parliaments of the Member States, the COSAC meeting of October 2009 will hold a debate on the conduct of the procedure and any established violations of the principle of subsidiarity. The Committee on EU Affairs will inform the Presidents of the European Parliament, the Council of the European Union and the European Commission of any, if established, violations of the principle of subsidiarity.

Mag. Samo Kutoš, representative of the Legislative and Legal Service, presented the Reasoned Opinion of the Legislative and Legal Service in which the Service concludes that the European Union does not have the competence to adopt the proposal. The opinion is based on the assumption that the proposal can be checked against compliance with the principle of subsidiarity only after it has been established that the European Union i.e. Community has in fact the competence to regulate the matter. The opinion presents the difference between existence of compliance in principle and the assessment of subsidiarity in the specific action, stressing that after the entry into force of the Lisbon Treaty, the situation will change. The Treaty currently in force does not provide the Union with explicit competence to regulate criminal proceedings; Article 31(1)(c) does not imply - according to the Legislative and Legal Service - explicit competence but rather authorises the Union to regulate or adopt regulations governing judicial cooperation in technical terms. Another question is whether it would be possible to derive competences in relation to criminal proceedings from the objectives of the Treaty, the objectives of individual articles, or from the objectives of judicial cooperation in criminal law. According to the European Commission, such competence could be derived therefrom, in connection with the notion of "mutual trust" which should lead to "mutual recognition"; here, the Legislative and Legal Service stresses that the principle of mutual recognition among judicial bodies is at the moment merely a political

objective not specifically enshrined in the Treaty. After the entry into force of the Lisbon Treaty, it will enhance mutual trust among judicial bodies, enabling the latter to easily and more willingly recognise the judgements. Mr Kutoš believes that this logical chain is too weak to confer on the Union the competence to regulate the rights of suspects in criminal proceedings. The Legislative and Legal Service therefore concludes that there is no legal basis, neither in Article 31(1)(c) nor in the *chapeau* of Article 31(1). He added that even if the proposal was submitted on a different legal basis, e.g. human rights of the suspects in criminal proceedings, human rights can not be considered adequate legal basis since a specific competence would be necessary for such. He underlined that the European Court of Justice (hereinafter: the Court) had not yet explicitly stated that the Union had competence to regulate criminal proceedings, which had also been noted by the Advocate General in two cases. Therefore, it can not be said that the Court has taken an explicit position regarding the existence of competence. He added that even if the Framework Decision was adopted at this point, it would have a rather poor life expectancy once the Lisbon Treaty has entered into force, given that in accordance with the transitional protocol, all acts related to criminal law would cease to apply five years following the entry into force of the Lisbon Treaty. This means that a new decision would need to be adopted as the provisions of the Lisbon Treaty do not allow the Framework Decision as proposed since they explicitly restrict such regulations only to cases with cross-border elements, while the proposal under consideration does not have such. Finally, he explained that the adoption or non-adoption of the proposal would have no practical impact on Slovenia (and probably on most Member States) since the rights proposed by the Framework Decision (right to interpretation, right to translation of essential documents at the expense of the state) were already regulated by the existing Criminal Procedure Act. Moreover, Slovenia is bound by the European Convention on Human Rights (hereinafter: ECHR). All in all, it is a question of existence of Union competence, which is probably the reason why COSAC decided to assess the proposal. He concluded that, strictly speaking, the Union did not have competence to adopt the proposal, which means that the subsidiarity check in the strict sense of the word can not be conducted since the logical assumption necessary to conduct the procedure has not yet been fulfilled. The opinion of the Legislative and legal Service was negative and Mr Kutoš suggested that the responsible and the competent working bodies adopt a negative opinion on the proposal.

Mr Boštjan Škrlec, State Secretary at the Ministry of Justice, presented the position of the Ministry stressing that the latter had a different opinion regarding the legal basis and compliance with the principle of subsidiarity than the Legislative and Legal Service. He believed that the proposal was very important for Slovenia as a Member State, since it has the reputation of a country with high human rights standards, always striving for the protection and respect of human rights. During the Slovenian Presidency of the EU Council, Slovenia focused its priorities on procedural rights, resulting in the adoption of the Framework Decision on trials in absentia in cooperation with certain other Member States (UK, Germany, France). The adoption of the above Decision was a great success for Slovenia, and the Commission and Member States agreed that it was a good start from which we needed to proceed with a small-step tactics. The proposal is a logical continuation of that process and the first initiative by the Commission of such kind. He stressed that the proposal

continued the establishment of uniform criminal procedural standards that would increase mutual trust, the basis for improved judicial cooperation in criminal matters. The proposal provides minimum standards concerning the right to interpretation and translation in criminal procedures in all Member States. Although the ECHR guarantees certain rights (including the right to interpretation and translation) to every individual in criminal proceedings, the enforcement and exercise of such rights is left to the discretion of the Member State. Thus, each country decides how it shall integrate such rights in its national legislation and how it will provide for their implementation; consequently, there may be less standards achieved in terms of quality than originally intended. However, the above fact does not increase mutual trust among the countries, quite the contrary. Slovenia, too, could find it difficult extraditing a Slovenian citizen to another Member State if there were serious concerns about whether our citizen would be guaranteed procedural rights (including the right to interpretation and translation) in that country. Providing uniform minimum standards, the proposal will contribute to greater protection of individual rights in criminal proceedings and to the inclusion of such standards in the national legislation. The relation between determining uniform procedural standards in criminal proceedings is obvious, making such instrument necessary at the level of the EU. Finally, he was confident that the above justified compliance with the principle of subsidiarity, as uniform standards of procedural rights can not be achieved only by regulation at the national level - Community involvement is necessary and, consequently, national legislation needs to be amended It would be therefore useful if Slovenia assessed that the proposal complies with the principle of subsidiarity.

Ms. Katja Rejec-Longar, Director General of the Directorate for International Cooperation and International Legal Assistance at the Ministry of Justice, presented the legal basis of the proposal. She explained that the legal basis in general was Article 29 of TEU whereby the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters. A more specific legal basis was Article 31 of TEU, which in paragraph 1 provides that common action on judicial cooperation in criminal matters also includes ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation. According to the Government, such legal basis is sufficient. During the German Presidency, a similar legal act was discussed to horizontally regulate all procedural rights but failed because of certain countries that then believed there was no legal basis; such doubts were later eliminated by the Council's legal service, stating that legal basis existed. As regards mutual recognition, she said that such existed and that the Justice and Home Affairs Council had recently discussed mainly draft acts of mutual recognition (e.g. transfer of convicted persons, recognising sentence in pre-trial proceedings, conditional sentences). The aim is that judgements issued in a Member State be recognised in other Member States as well. Here, mutual trust plays a very important role. She underlined that Slovenia had always strived for the respect of human rights and it was therefore important to support the proposal. In relation to the statement of the Legislative and Legal Service that following the entry into force of the Lisbon Treaty procedural rights would be limited to cross-border matters, she explained that "cross-border implication" referred only to criminal

matters and not to the type of acts to be adopted; thus, in criminal matters with "cross-border implications" also procedural rights in national legislations could be standardised. With regard to the Legislative and Legal Service's opinion that the procedural rights considered in the proposal were already regulated in Slovenia, she replied that the proposal indeed provided value added since the matter would have to be regulated also in those Member States where no such regulation hitherto existed; moreover, the proposal would specify which documents needed translation (not specified by the current Slovenian law) and determine that interpretation between the lawyer and the suspect must be provided, which was also not specified by Slovenian law. The Government therefore believed that the proposal needed to be supported.

During the debate, the members of the Committee agreed that the proposal needed to be supported in the event that the objectives of the measure could not be achieved only by regulation at the level of the Member States.

After the debate, the Committee voted on the following draft

O p i n i o n:

The Committee on Domestic Policy, Public Administration and Justice is of the opinion that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings does not comply with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

The draft was not adopted (2 FOR, 10 AGAINST).

Then, the Committee adopted (10 FOR, 2 AGAINST) the following

O p i n i o n:

The Committee on Domestic Policy, Public Administration and Justice is of the opinion that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings complies with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

*** * ***

The Committee decided that the rapporteur at the meeting of the competent working body would be Ms Darja Lavtižar Bebler, member of the Committee.

Mag. Maja Briški
Undersecretary

Chair
Dr. Vinko Gorenak

Sent to:
- the Government
- the National Assembly
- the leaders of deputy groups
- the Legislative and Legal Service

OPINION

on compliance with the principle of subsidiarity under the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, in the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings:

The Committee on Domestic Policy, Public Administration and Justice is of the opinion that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings complies with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

Slovenia: *Državni svet*



Evaluation of the subsidiarity check on the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

Procedures:

1. **Which parliamentary committees were involved in the subsidiarity check and how?**

Commission for International Relations and European Affairs

2. **Was the plenary involved?**

No

3. **At which level the final decision was taken and who signed it?**

The decision was adopted by the Commission for International Relations and European Affairs and it was signed by the Chairman of the Commission.

4. **Which administrative services of your parliament were involved and how? Please specify.**

Secretariat of the above mentioned Commission, Legal department.

5. **In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?**

Not in these particular case.

6. **Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?**

Yes. The Ministry of Justice was invited to the session to present their assessment of the compliance of the proposal with the principles of subsidiarity.

7. Did you consult your regional parliaments with legislative powers?

No.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No external actors were involved in examination.

9. What was the chronology of events? Please specify the dates.

The proposal was received on 8 July 2009 just before the parliamentary recess. The Chairmen of the before mentioned commission decided to call a Commission Meeting which was held on 9 September. Ministry of Justice was asked to attend the commission meeting and present their assessment of the compliance of the proposal with the principles of subsidiarity. Commission adopted the opinion that respective proposal is in compliance with the principle of subsidiarity. In their opinion they expressed that in the Republic of Slovenia the standards are already higher than foreseen in the respective proposals and expressed their expectation that Slovenian Government shall strive after higher standards in the EU as well. The opinion was sent to the EU Affairs Committee of the National Assembly.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

No.

11. Did you publicise your findings? If so, by what means?

No.

Findings:

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

No.

13. **Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy**.

No.

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

Yes

15. Did you encounter any specific difficulties during this subsidiarity check?

Eight weeks period coincided with summer parliamentary recess.

16. Any other comments?

No.

SVERIGES RIKSDAG

PM 1 September 2009

Evaluation of the subsidiarity check under the provisions of the Treaty of Lisbon on the Commission proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

To facilitate the evaluation of the subsidiarity check, on behalf of the Swedish Presidency, national parliaments or chambers are kindly asked to reply to the following questions and send their answers to the COSAC Secretariat (secretariat@cosac.eu).

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
   The Committee on Justice examined the proposal.

2. Was the plenary involved?
   No.

3. At which level the final decision was taken and who signed it?
   The decision was taken on committee level. The Chair of the Committee on Justice signed the record of the meeting.

4. Which administrative services of your parliament were involved and how? Please specify.
   The Secretariat of the Chamber (coordination of measures) and the Secretariat of the Committee.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
   (Not applicable)

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
   No. However, on two earlier occasions, 8 May and 4 December 2008, some members of the Committee were informed by the Ministry of Justice about the future Proposal.

7. Did you consult your regional parliaments with legislative powers?
   (Not applicable)

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
   No.

9. What was the chronology of events? Please specify the dates.
   20 August: The Committee decided to participate in the subsidiarity check. A preliminary decision regarding subsidiarity was also taken.

   1 September: The Committee arrived at a decision on subsidiarity. The decision was noted in the Committee record. The record was immediately checked and sent for translation. The Secretariat of the Committee published the record on the IPEX website.

10. Did you cooperate with other national parliaments in the process? If so, by what means?
    The Secretariat of the Committee consulted IPEX for available information. No personal contacts (e-mail etc.) were taken with other national parliaments.

11. Did you publicise your findings? If so, by what means?
    The findings were noted in the record of the Committee meeting and published on the IPEX website.

Findings:

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

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
    No. However a short text on the findings of the scrutiny was approved by the Committee. (Please see enclosed record)

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

15. Did you encounter any specific difficulties during this subsidiarity check?
    No.

16. Any other comments?
    No.

ANNEX

Excerpt from the record of the meeting of the Committee on Justice, 1 September 2009

§ 5 Subsidiarity check
The Committee has participated in the subsidiarity check, initiated by COSAC, of the Commission's proposal for a Council framework decision on the right to interpretation and to translation in criminal proceedings (COM (2009)338 final). The proposal aims to improve the rights of suspects and involves the right to interpretation and translation in criminal proceedings and in connection with the issue of European arrest warrants for persons who do not understand and speak the language of the proceedings.

The Committee considered that the regulation of the issue of interpretation and translation in criminal proceedings at EU level provides added value and noted that the proposal is compliant with the principle of subsidiarity.

This paragraph was immediately declared to have been approved.

Spain: *Cortes Generales*

Evaluation of the subsidiarity check

The answers from the Spanish *Cortes Generales* to the questionnaire on the evaluation of the subsidiarity check regarding the proposal for a Council Framework Decision regarding the right to interpretation and translation in criminal proceedings are forwarded herewith:

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

The Joint EU Committee was the Parliamentary Committee in both Chambers of the Cortes Generales which dealt with the subsidiarity check, in compliance with the ad hoc rules established by the Bureau of the Joint Committee.

2. Was the plenary involved?

Neither the Plenary of the Congress of Deputies nor of the Senate were involved in the proceedings.

3. At which level the final decision was taken and who signed it?

The final decision was taken by the Joint Committee.

4. Which administrative services of your parliament were involved and how? Please specify.

The Secretariat of the Joint Committee provided the personal and material means for the subsidiarity check.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

No further coordination is needed, as the Joint Committee is made up of parliamentarians of both Chambers.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

The Government, through the Secretary of State for Constitutional and Parliamentary Affairs forwarded a report on the Commission's Proposal.

7. Did you consult your regional parliaments with legislative powers?

The Chair of the Joint Committee for the European Union invited the Regional Legislative Assemblies to take part on the test. A number of them (namely, Galicia, Murcia, Aragon, Catalonia and the Basque Country) forwarded their opinions, which were taken into consideration by the Committee.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

The proceedings did not envisage such consultation.

9. What was the chronology of events? Please specify the dates.

*The Chair of the Joint Committee for the European Union invited the Government and the Regional Parliaments to take part in the test on **July 21st**, so that they could submit their opinions on the matter before September 8th.*

*On **September 8th**, the Bureau and spokespersons of the Joint Committee adopted a draft proposal which was submitted to the Joint Committee.*

*The Joint Committee debated the draft proposal on **September 15th**. The proposal was adopted by assent of the Committee.*

10. Did you cooperate with other national parliaments in the process? If so, by what means?

The proceedings did not envisage such cooperation.

11. Did you publicise your findings? If so, by what means?

The debate was broadcasted and webstreamed and a full transcript will be published in the Parliamentary Journal. The Resolution will be published in the Parliamentary Official Journal.

Findings:

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

No breach of the principle of subsidiarity was found.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

A reasoned opinion on the Proposal was adopted.

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

No objections were tabled regarding the Commission's justification.

15. Did you encounter any specific difficulties during this subsidiarity check?

During the months of July and August, the Cortes are in recess, in compliance with the Constitutional provisions. The decision, taken at the beginning of July, to carry out the subsidiarity check during these months has therefore encountered with this major difficulty. The eight weeks period has been in effect shortened to the first two weeks of September.

16. Any other comments?

RESOLUTION BY THE JOINT COMMITTEE FOR THE EUROPEAN UNION ON COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY AS APPLIED TO THE PROPOSAL FOR A COUNCIL FRAMEWORK DECISION REGARDING THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS, TABLED BY THE EUROPEAN COMMISSION ON 8 JULY 2009.

BACKGROUND

A. The Conference of Community and European Affairs Committees (COSAC) –acting under the provisions of the Protocol on the Role of National Parliaments annexed to the Amsterdam Treaty of 1997- initiated as from 2004 a number of pilot exercises on the implementation of an Early Warning System allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle, as described in the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the Lisbon Treaty of 2007. Since the Treaty has not entered into force, these trials are not legally binding, but rather intend to provide national parliaments with a degree of prior experience when they do come into effect.

B. The XLI COSAC, held at Prague on 12 May 2009, agreed to carry out a trial subsidiarity test on the proposal for a Council Framework Decision regarding rights applicable in the course of criminal proceedings carried out in European Union Member States. The COSAC Chairs' meeting held in Stockholm on 6 July 2009 took note of the European Commission's forthcoming submission of a proposal for a Council Framework Decision regarding the right to interpretation and translation in criminal proceedings and agreed to carry out the corresponding subsidiarity test. The decision was adopted despite reservations voiced by some delegations, including Spain, who noted that some Member States faced constitutional constraints in carrying out the exercise, since their chambers were in constitutionally established parliamentary recess.

C. The Joint Committee for the European Union, on the unanimous proposal of its Bureau and Party Spokespersons, resolved on 24 March 2009 to initiate a pilot test for the early warning system on the Framework Decision on rights applicable to criminal proceedings under the criteria established by the Committee in its sitting of that day.

D. The proposal for a Council Framework Decision regarding the right to interpretation and translation in criminal proceedings was approved by the European Commission (EC) on 8 July 2009, with official translations circulated to national parliaments on 20 July 2009. The eight-week deadline for the test was therefore understood to lapse on 14 September 2009.

Given the exceptional dates in which the procedure was to take place –outside the session periods established under Section 73.1 of the Spanish Constitution– on 21 July 2009 the Chair of the Joint Committee for the European Union invited the Government and the Regional Legislative Assemblies to take part in the test, if they so desired, by submitting their opinions on the matter to the Joint Committee before 8 September 2009, when the Joint Committee's Bureau and Spokespersons would proceed to adopt the relevant decision.

E. A report was received from the Secretary of State for Constitutional and Parliamentary Affairs, in addition to opinions from the Regional Parliaments of Galicia, Murcia, Aragon, Catalonia and the Basque Country. They all considered the draft European provision to be in compliance with the subsidiarity principle, though they expressed a number of additional considerations.
The Regional Parliaments of Asturias and Madrid stated they were not in a position to take part in the test.

RESOLUTION

1. Article 2 of the Treaty on European Union states that the Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties and respecting the principle of subsidiarity as defined under Article 5 of the current Treaty on European Union, which states the following: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level".

The parliamentary test applicable in this case must therefore be limited to verifying that the European legislative initiative complies with the above principle. To this effect, the Protocol on the application of the subsidiarity principle provides a set of criteria that may be taken into account, such as the cross-border nature of the matter, possible conflicts that may arise from the actions of Member States in the absence of Community regulations or the achievement of clear comparative advantages in light of the scale or effects of the proposed action.

2. The proposal for a Council Framework Decision considered aims to set common minimum standards as regards the right to translation and interpretation in criminal proceedings held in EU Member States. The proposal is envisaged as a first step in a series of measures in relation with procedural rights in criminal proceedings, once the Commission decided to withdraw the legislative proposal initially submitted, after three years of fruitless debate in the Council's working Group, thus replacing the original proposal to adopt a global package with a gradual approach, starting with those rights on which Member States have reached a greater agreement.

The goal of this measure is to have a minimum set of common procedural rights concerning the right to translation and interpretation in criminal proceedings, as well as in those proceedings related to the execution of an European arrest warrant, from the moment the concerned individual is notified by competent authorities of the suspicion of his/her having committed a criminal offence until the completion of the process. Having common minimum standards should facilitate the application of the right to mutual recognition applicable to judicial decisions in Member States.

3. As regards the legal basis, the proposal is based on Article 31.1.c) of the Treaty on European Union in force, which provides that "common action on judicial cooperation in criminal matters shall include an ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation".

In its grounding, the EC states that the proposed measures comply with the subsidiarity principle, since "the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally and can only be achieved at Union level".

On the other hand, the EC admits that the basic substance of the proposed measures is the development of Article 5.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which states that "everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him". Moreover, this is also based on the broad case law of the European Court for Human Rights.

4. After considering the initiative, we can confirm that, indeed, the goal is to establish a small number of criteria constituting a minimum set of common rules for Member States, which should later be developed by each Member State in accordance with its legal framework. On the other hand, these criteria are enshrined both in Article 5.2 of the ECHR and in its broad case law. In fact, in our national legal framework these rights are explicitly provided for in articles 143 y 144 of the Civil Procedure Rules, namely a complementary rule applicable to all processes, as well as, in specific terms, for criminal proceedings, in articles 398, 440, 441, 520.2.d), 762.8 and 785 of the Civil Procedure Rules.

The set of minimum common rules for all Member States enshrined in the Proposal for a Framework Decision considered facilitate judicial cooperation since they eliminate eventual obstacles to the basic goal concerning European judicial cooperation, namely, mutual recognition of judicial decisions taken by each Member State. The common nature of this minimum set of rules cannot be effectively guaranteed through unilateral action of each Member State, which implies that they should entail an improvement and therefore, comply with the subsidiarity principle.

For these reasons, the Joint Committee for the European Union considers that **the Proposal for a Council Framework Decision as regards the right to translation and interpretation in criminal proceedings, submitted by the European Commission on July 8, 2009, complies with the subsidiarity principle established in the Treaties on European Union in force.**

COSAC subsidiarity check on Commission proposal for a Council Framework Decision on the rights to interpretation and to translation in criminal proceedings (document no. 11917/09; COM(2009) 338)

Evaluation questionnaire

Procedure

1. Which parliamentary committees were involved in the subsidiarity check and how?

The House of Commons European Scrutiny Committee.

2. Was the plenary involved?

No.

3. At which level the final decision was taken and who signed it?

The decision was taken by the House of Commons European Scrutiny Committee on 10 September 2009. It was not necessary for it to be signed.

4. Which administrative services of your parliament were involved and how?

The Department of Chamber and Committee Services of the House of Commons provided policy and legal advice, as well as administrative support.

5. In the case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

No.

6. Did your government provide any information on the compliance of the proposal with the principle of subsidiarity?

Yes. The Ministry of Justice submitted an Explanatory Memorandum, which set out its views of the proposal. This included an analysis of whether it complied with the principle of subsidiarity.

7. Did you consult your regional parliaments with legislative powers?

No. However the UK Government consulted the Scottish Government when producing its Explanatory Memorandum.

8. Did you consult any non-government organisations, interest groups, external experts or other stakeholders?
No.

9. What was the chronology of events?

8 July 2009: publication of the Commission's proposal in English
20 July 2009: publication of the proposal in all EU official languages
22 July 2009: beginning of the Parliamentary summer recess
23 July 2009: receipt of the Government's Explanatory Memorandum
10 September 2009: consideration of draft proposal by the European Scrutiny Committee

10. Did you cooperate with other national parliaments in the process?

At official level the Committee was consulted by Ireland's Oireachtas Joint Committee on European Scrutiny.

11. Did you publicise your findings?

Yes. In a published Report to the House of Commons (attached). The Report, as with all reports of the European Scrutiny Committee, will be uploaded onto the IPEX website.

Findings

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

The Committee concluded that the draft Framework Decision complies with the principle of subsidiarity. See in particular paragraphs .17 to .21 of the attached Report.

13. Did you adopt a reasoned opinion on the proposal?
No.

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

Not in the Commission's explanatory memorandum, paragraph 24 of which was a statement that the proposal complied with the principle of subsidiarity, rather than an analysis. The analysis in the Commission's Impact Assessment was more helpful, and should have been reprised in greater detail its explanatory memorandum.

15. Did you encounter any specific difficulties during this subsidiarity check?

Parliamentary summer recess began on 22 July and ends on 9 October. But for the fact that the House of Commons European Scrutiny Committee has decided to meet in September, it would not have been able to respect the eight-week deadline for submission of a reasoned opinion.

16. Other Comments
None.

Interpretation and translation rights in criminal proceedings

(30783) 11917/09 COM(09) 338	Draft Council Framework Decision on the right to interpretation and to translation in criminal proceedings
+ ADD 1	Commission staff working document: Impact Assessment accompanying the proposal for a Framework Decision
+ ADD 2	Commission staff working document: Summary of the Impact Assessment

Legal base	Article 31(1)(c) EU
Document originated	8 July 2009
Deposited in Parliament	16 July 2009
Department	Justice
Basis of consideration	EM of 22 July 2009
Previous Committee Report	None; but see HC 41-xxii (2006-07), chapter 6 (16 May 2007); HC 41-xii (2006-07), chapter 7 (7 March 2007); and see HC 34–xl (2005-06), chapter 7 (1 November 2006); (27268) 15432/06 HC 34-xxxiv (2005-06) chapter 15 (5 July 2006); HC 34-xxvi (2005-06) chapter 14 (26 April 2006); HC 34–xxi (2005-06), chapter 18 (8 March 2006)
To be discussed in Council	23 October 2009
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

BACKGROUND

0.1 This proposal for a Council Framework Decision aims to set common minimum standards with respect to the right to interpretation and translation in criminal proceedings throughout the European Union. The proposal is envisaged as a first step in a series of measures designed to replace the Commission's 2004 proposal for a Council Framework Decision on certain procedural rights in criminal proceedings[15], which was withdrawn in June 2007 after Member States failed to reach agreement. The Commission hopes that a step-by-step approach to procedural rights will be viewed as a more acceptable way to proceed; such an approach (according to the Commission) will also gradually contribute to enhancing mutual trust.

[15] COM(2004) 328, 28 April 2004

0.2 This proposal should therefore be considered as part of a comprehensive package of legislation which will seek to provide a minimum set of procedural rights in criminal proceedings in the European Union. Rights covered in the 2004 proposal were, besides the right to free interpretation and translation, the right to legal advice, the right to information about rights (Letter of Rights), the right to specific attention for vulnerable defendants, the right to communicate with consular authorities and the right to communicate with the family. For the first proposal, the Commission has decided to concentrate on the right to interpretation and translation as it was the least controversial right in the discussions of the 2004 proposal. The proposal is accompanied by a non-legislative measure in the form of a draft Council Resolution of the Presidency. This aims to improve standards in EU Member States of interpretation and translation in the course of criminal proceedings. This proposal should also be considered together with a Presidency proposal for a "Roadmap on procedural rights", which is reported in a further Chapter in this week's Report.

0.3 The proposal is also subject to a COSAC (Conference of Community and European Affairs Committees of Parliaments of the European Union) subsidiarity check under the provisions of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon (see Conclusions adopted by the XLI COSAC on 12 May 2009 in Prague) [16].

PREVIOUS SCRUTINY

0.4 We reported on the Commission's previous proposal for a Framework Decision on procedural rights throughout the negotiations[17]. In our final Report[18] before the proposal was abandoned, we reported that the Council of Europe, which is responsible for ensuring the application of the European Convention of Human Rights (ECHR) in its signatory states, had concluded that the draft proposal did not contain "sufficient safeguards to ensure coherence and consistency with the ECHR". We also reported the views of the Government in the form of an Explanatory Memorandum from the then Attorney General (Lord Goldsmith). Among other concerns the Attorney General had concluded that the legal base of Article 31(1)(c) EU was only appropriate for cross-border, as opposed to domestic, criminal cases and therefore could not be used for this proposal which covered both; and that certain provisions of the

[16] see Conclusions adopted by the XLI COSAC on 12 May 2009 in Prague (www.cosac.eu).
[17] See headnote.
[18] HC 41-xxii (2006-07), chapter 6 (16 May 2007).

proposal were likely to create inconsistencies with the ECHR as interpreted by the European Court of Human Rights (ECtHR) and therefore legal uncertainty. We drew a similar conclusion, commenting that "[g]iven the pre-existing duty of Member States to comply with the ECHR, adoption of a conflicting Framework Decision will serve no purpose other than to create confusion". Instead of a Framework Decision we recommended the Council adopt a non-binding Resolution on procedural safeguards.

CURRENT PROPOSAL

Recitals

0.5 The first two recitals of this Framework Decision recall the establishment (following the Tampere Conclusions) of mutual recognition as the cornerstone for judicial cooperation in the EU and the adoption of that principle in the Hague Programme. The third and fourth recitals make the link between implementation of the principle of mutual recognition and the need for mutual trust of each other's criminal justice systems. The fifth recital states that accession to the ECHR has not always provided a sufficient degree of trust in the criminal justice systems of EU Member States. Recitals 6 and 7 state that the application of common standards within the EU "should lead to increased confidence in the criminal justice systems of all Member States which in turn should lead to more efficient judicial cooperation in a climate of mutual trust". Subsequent recitals set out the importance of interpretation and translation rights "as enshrined in Articles 5 and 6 of the ECHR" and the Framework Decision's intention to facilitate the application of those rights in practice. Addressing the subsidiarity threshold, recital 14 states "[s]ince the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally and can only be achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity".

Articles

0.6 Article 1 sets out the scope of the Framework Decision: to lay down rules concerning the rights to interpretation and translation in criminal proceedings and in proceedings for the execution of a European Arrest Warrant (EAW). The rights apply from the time that a person is informed by the Member State's competent authorities that he is suspected of having committed a criminal offence until the conclusion of the proceedings.

0.7 Article 2 sets out the ambit of the right to interpretation. Article 2(1) sets out when in criminal proceedings interpretation must be provided. Article 2(2) makes clear that legal advice must be interpreted for a suspect and Article 2(3) requires a procedure to be put in place to ascertain whether the suspect understands and speaks the language of the criminal proceedings. Article 2(4) states that there must be a right of appeal against a decision that there is no need for interpretation. Article 2(5) provides that the right to interpretation includes assistance to persons with hearing and speech impediments. Article 2(6) provides that subjects of EAW proceedings who do not understand and speak the language of the proceedings shall be provided with interpretation during those proceedings.

0.8 Article 3 sets out the right to translation of essential documents. Article 3(1) provides that Member States shall ensure that a suspect who does not understand the language of the criminal proceedings is provided with translations "of all essential documents in order to safeguard the fairness of the criminal proceedings", and that these shall include (Art3(2)) "the detention order depriving the person of his liberty, the charge / indictment, essential documentary evidence and the judgment". It also provides that a "reasoned request" may be submitted for further documents (Art 3(3)), and that there is a right of appeal against a decision to refuse translation of any of the documents referred to in Article 3(2). Finally Article 3(5) states that those who are the subject of proceedings for the execution of an EAW shall be provided with a translation of it.

Article 4 provides that Member States shall cover the costs of interpretation and translation.

0.9 Article 5 provides that interpretation and translation shall be provided in a way that "ensures that the suspect is fully able to exercise his rights" (Article 5(1)). It also states that Member States shall offer training to judges, lawyers and other relevant court personnel to ensure the suspect's ability to understanding the proceedings (Article 5(2)).

0.10 Article 6 is a non-regression clause, which makes clear that nothing in the Framework Decision is to be construed as limiting or derogating from the rights and procedural safeguards that are ensured under the ECHR.

0.11 Articles 7, 8, and 9 are standard and concern implementation, reporting on compliance and entry into force.

The Government's view

0.12 In his Explanatory Memorandum of 22 July, the Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) informs us of the Government's initial views of this proposal (at the time of writing the Government was still assessing whether the proposal would have an impact on national legislation).

0.13 In relation to subsidiarity, the Minister agrees with the Commission's analysis that the objectives of the proposal are best achieved at EU level.

> "Whilst acknowledging, of course, the impact of the ECHR, the Government understands there are differences of application and approach across Member States in respect of interpretation and translation. Mutual recognition is a cornerstone of judicial cooperation and depends on trust and confidence as between the Member States. Nationals of one Member State may routinely find themselves subject to the criminal proceedings of another and invariably will require interpretation for proper understanding of the proceedings. The Government considers it important to ensure there are accepted common minimum standards across the states of the EU in this field for the protection of those suspected of committing criminal acts and believes that this proposal will indeed further that objective. Common action by Member States under the auspices of Title VI is the best way in the Government's view to promote these standards across the whole of the Union and is not something that can be expected simply to be left to Member States acting alone, particularly given the wide use of free movement rights by nationals of EU Member States."

0.14 The Minister then reviews each Article in turn. The Government is content with Article 1. The Government welcomes the clarity that Article 2(1) brings to the right set out in the ECHR; it also supports the thrust of Articles 2(2) and 2(3). It has concern over the term "right of appeal" in Article 2(4) since this carries connotations of judicial oversight, which is not always appropriate (for example for questioning in a police station); it is also reflecting on the extension of the right to interpretation to persons with hearing or speech impediments. In Article 2(5) it welcomes the extension of these rights to EAW hearings.

0.15 In relation to Article 3, which concerns the translation of documents, the Government is not convinced that the current text fits well with the common law system. For example, there is usually no "judgment" to be translated. Also, the oral tradition of domestic criminal proceedings means that there is less emphasis on written documents. The Government is also concerned that the term "essential documents" is too broad, and the Minister comments further that "[a]lthough not expressly specified in the ECHR, the right to translation has been touched upon in ECHR case-law. We will want to make sure that there is consistency between that jurisprudence and the wording of the provision".

0.16 Article 4 provides that Member States will cover the costs of interpretation and translation. The Government is concerned that the obligation to pay for the costs of translation in the way proposed "goes considerably further than necessary". The Government is "broadly content" with Article 5, which concerns the quality of interpretation and translation, although it thinks it should be for Member States to decide how best to ensure that there is a proper understanding of the role of interpreters and it will reflect on how this provision could be refined. Finally, the Minister informs us that the Government welcomes the non-regression clause in Article 6, which ensures that the rights protected under the ECHR are not diluted by this framework Decision.

Assessment

0.17 There is, in our view, a need to strengthen the right of suspects to have documents translated and proceedings interpreted in criminal cases throughout the EU. The preliminary results of the *Study on Procedural Rights: Existing Level of Safeguards in Member States in Member States 2008 – Update,* which is currently being carried out by Maastricht University after being commissioned by the Commission, show that the provisions for translation and interpretation vary greatly across the Member States of the EU. Only eight Member States have an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings. In the majority of the Member States there is no scheme for emergency linguistic assistance when suspects are held for questioning at the police station. In five Member States there is no provision to have an interpreter present during consultations with counsel. In five Member States the right to translation of documents is not provided for. In six of the nineteen Member States where such a right does exist there is no legal obligation to inform the suspect of this right, and in fourteen of the nineteen Member States there is no established procedure to ascertain whether there is a need for translation of documents. In the nineteen Member States where there is a right to translation of documents, there is considerable variation as to the documents to which this applies[19].

0.18 The Commission's Impact Assessment further highlights the wide discrepancy in compliance with the right to translation and interpretation in the EU. Its analysis is thorough. From a review of the case law of the ECtHR it reports that violations of Articles 5 and 6 of the ECHR tend to occur because States either do not have sufficient mechanisms in place to

[19] The analysis of these findings is provided in a Briefing on this proposal by Justice, dated July 2009.

ensure that these rights are observed in practice, or because States do not always comply with ECtHR judgments by adjusting their legal systems. In addition, the ECtHR is burdened with a backlog of cases meaning that a judgment can take six years to be delivered, and many applications based on grounds of insufficient translation or interpretation are declared inadmissible by the ECtHR if on balance the overall proceedings were not unfair. The Commission's Impact Assessment also gives illuminating examples of miscarriages of justice caused by a suspect's inability to understand the proceedings against him, as reported by the Council of Europe's Committee for the Prevention of Torture and Fair Trials International.

0.19 From the above analyses, it is in our view appropriate to conclude that adhesion by EU Member States to the ECHR has not always resulted in a suspect's right to interpretation and translation being uniformly respected. There is therefore a need for these rights to be reinforced in order to avoid miscarriages of justice, particularly in the EU, characterised as it is by the free movement of persons.

0.20 It is also our view that this need is better met at EU than Member State level – for the following two reasons. The discrepancies in the current assurance of these rights within the EU are more effectively overcome by common standards being applied and overseen centrally than through unilateral reviews of legislation or procedure in individual Member States, which is less likely to lead to a common standard across the EU. And there is force in the argument that mutual trust, which is undoubtedly a pre-requisite to mutual recognition, will be enhanced by adopting common standards which are known to be respected in each Member State and which thereby build confidence among Member States in each other's legal systems.

0.21 We conclude therefore that the proposal complies with the principle of subsidiarity.

Conclusion

0.22 For the reasons above, we consider that there are good arguments for EU action to reinforce the right of criminal suspects to be able to understand the nature of the case against them so as to be able to defend themselves. To do as much is a fundamental component of a fair trial. However, the proposal is not without some of the difficulties which were raised by Member States and us during negotiations on the Commission's 2004 proposal on procedural rights. These are set out below.

0.23 The view of the Council of Europe on this proposal is important. The EU should be vigilant not to create an alternative hierarchy of human rights standards which are lower than, or conflict in other ways with, those developed under the ECHR as interpreted by the ECtHR. This would negate the good intentions of this Framework Decision and lead to considerable legal uncertainty. The rights established under this proposal must, therefore, be consistent with the ECHR. Consequently we would be grateful for information on both the consultation procedure that has been put in place with the Council of Europe on this draft proposal and the views expressed so far by the Council of Europe.

0.24 In order to ensure consistency with ECHR rights we make the following recommendations, upon which we would be grateful for the Government's response:

- **Article 2(1): Article 6(3)(e) ECHR states that everyone charged with a criminal offence has the right to "have the free assistance of an interpreter if he cannot understand or speak the language used in court". Article 2(1) talks of a "suspect who does not understand and speak the language of the court". We recommend it be amended to reflect the wording in the ECHR.**

- **Article 2(1) and 3(1): There is a requirement in Articles 5(2) and 6(3)(a) of the ECHR that anyone arrested shall be informed "promptly, in a language which he understands/ and in detail…" "…of the reasons for his arrest and any charges against him/nature and cause of the accusation against him". We strongly recommend that a similarly worded obligation to inform a suspect promptly of the nature and cause of the accusation in an understandable language be inserted into Article 2(1) and 3(1).**

- **Article 2(1) and 2(2): The requirement for legal advice to be interpreted is duplicated in paragraphs (1) and (2) of Article 2. Paragraph (1) talks of "all necessary meetings" whereas (2) talks of "where necessary". This could lead to uncertainty if left unchanged.**

- **Article 2(1) and 3(1): The expression "in order to safeguard the fairness of the proceedings" seems to us to be too unspecific, removing the emphasis from the perspective of the suspect. A clearer formulation in Article 3(1), for example, along**

the lines of ECHR case law, would be "which it is necessary for him to understand in order to have the benefit of a fair trial".

- **Article 3(2): We note that the Government is considering a revision of this paragraph. The ECtHR has stated that not all documents have to be translated: the test applied is whether the accused is able to follow and form an opinion on the evidence. But if this paragraph is to retain a non-exhaustive list of essential documents, we recommend that "witness statements" be mentioned, as they are not necessarily covered by "essential documentary evidence", which in a common law setting would imply exhibits.**

0.25 Article 4: The Government states that the obligation to pay for the costs of interpretation and translation goes "considerably further than necessary". However, we note that Article 6(3)(e) of the ECHR talks of a suspect's right "to have the free assistance of an interpreter" and that, under the relevant case law, this right to free assistance has been confirmed by the ECtHR. We would be grateful to the Government for an explanation of when it will be appropriate for the State to pay for these costs.

0.26 The Government objected to the legal base of the previous proposal on the grounds that Article 31(1)(c) could not be used for purely domestic criminal cases because no "common action on judicial cooperation" was required. We would be grateful for clarification of whether the Government still contends that Article 31(1)(c) limits the EU to legislating on cross-border crime only and note that this proposal does not distinguish between domestic and cross-border cases.

0.27 We would be grateful to be informed of the Government's assessment of the legislative impact of this proposal.

0.28 In terms of non-legislative measures, we would be grateful for an Explanatory Memorandum from the Government on the draft Council Resolution accompanying this proposal. This aims to improve standards in EU Member States of interpretation and translation in the course of criminal proceedings.

0.29 We would also be grateful for updates on the progress of negotiations.

0.30 Pending responses to the above we keep the proposal under scrutiny.

EUROPEAN UNION COMMITTEE

Response to the COSAC Subsidiarity Check on the Commission proposal for a Council Framework Decision on the rights to interpretation and to translation in criminal proceedings (document no. 11917/09; COM(2009) 338)

Procedure

Which parliamentary committees were involved in the subsidiarity check and how?

The Sub-Committee on Law and Institutions (Sub-Committee E) of the House of Lords European Union Committee.

Was the plenary involved?

No.

At which level the final decision was taken and who signed it?

The decision was taken by the Sub-Committee. This Response was approved by the Chairman of Sub-Committee E and by the Chairman of the European Union Committee who has signed it.

Which administrative services of your parliament were involved and how?

The Committee Office of the House of Lords provided administrative support and legal advice for the Sub-Committee.

In the case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

No.

Did your government provide any information on the compliance of the proposal with the principle of subsidiarity?

The Government provided an Explanatory Memorandum on the proposal which included comments on compliance with the principle.

Did you consult your regional parliaments with legislative powers?

Yes. The Scottish Parliament and the Northern Ireland Assembly were unable to consider the matter within the timetable set by COSAC owing to their summer recesses. The European and External Affairs Committee of the National Assembly for Wales provided a response.

Did you consult any non-government organisations, interest groups, external experts or other stakeholders?

No.

What was the chronology of events?

8 July 2009: publication of the Commission's proposal in English
10 July 2009: contact made with the regional assemblies for Scotland, Wales and Northern Ireland
20 July 2009: publication of the proposal in all EU official languages
22 July 2009: beginning of the Parliamentary summer recess
23 July 2009: receipt of the Government's Explanatory Memorandum
20 – 29 July 2009: analysis of the proposal by the Committee Office
30 July 2009: submission of papers to Sub-Committee E
13 August 2009: receipt of response from the National Assembly for Wales
30 July – 14 August 2009: consideration of papers by Sub-Committee E
25 August 2009: approval of this Response by the Chairman of Sub-Committee E
27 August 2009: approval of this Response by the Chairman of the European Union Committee

Did you cooperate with other national parliaments in the process?

No.

Did you publicise your findings?

Updates on progress will be available on the website of the European Union Committee and via IPEX

Findings

Did you find any breach of the principle of subsidiarity?
The Committee concluded that the draft Framework Decision complies with the principle of subsidiarity.

Did you adopt a reasoned opinion on the proposal?

No.

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

The justification given under the heading "Subsidiarity" in the Commission's explanatory memorandum is inadequate. That memorandum does not satisfactorily indicate or summarise the problems which are identified in the Impact Assessment. The preamble to the draft Framework Decision (in particular, recitals (5) to (8)) is also in very general language and does not give a clear idea why the proposal is necessary when all Member States are party to the ECHR. It is only through reading the Impact Assessment that it becomes clear why EU action is justified in this area.

Did you encounter any specific difficulties during this subsidiarity check?

The proposal was published two days before the House of Lords began its summer recess when the committees of the House do not usually meet. In order to provide this Response in accordance with the timetable set by COSAC, special arrangements had to be made to enable the European Union Committee to consider the issue of subsidiarity.

The intervention of parliamentary summer recesses also made coordination with the House of Commons and the three regional legislatures difficult.

Other Comments

We note that in setting the timetable for this subsidiarity check, COSAC calculated strictly the 8-week period specified in the Protocol on the application of the principles of subsidiarity and Proportionality. We understand that the Commission is prepared to concede that it would discount August were that Protocol in force. Such a concession would assist the House of Lords to manage the procedure for reasoned opinions under the Protocol if proposals are published during the summer period.

LORD ROPER

27 August 2009

Chairman of the Committee

Mrs Anna Kinberg BATRA
Chairwoman of the Committee on European Union Affairs
Sveriges Riksdag
SE–100 12 Stockholm
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27 August 2009

Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (document no. 11917/09; COM(2009) 338)

As you know, this proposal was chosen for a COSAC-coordinated subsidiarity check. The check on behalf of the House of Lords has been undertaken for the European Union Committee, which I chair, by its Sub-Committee on Law and Institutions. I am pleased to enclose a note summarising the procedure involved in our check and our findings, following the list of questions set out in the aide-memoire prepared by the COSAC Secretariat.

Although we concluded that the proposal complies with the principle of subsidiarity and that, therefore, no Reasoned Opinion should be submitted, I am sending a copy of this letter and the accompanying note to the Commission, the European Parliament, and the Council, for their information. A copy also goes to the COSAC Secretariat, and we will be placing a copy on IPEX.

I am also copying this letter to Michael Connarty MP, Chairman of the House of Commons European Scrutiny Committee.

The Rt Hon the Lord Roper
Chairman of the Select Committee on the European Union