

CONFERENCE OF SPEAKERS OF EUROPEAN UNION PARLIAMENTS

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BACKGROUND NOTE

Session II – Five Years after the Coming into Force of the Treaty of Lisbon: Lessons of Subsidiarity Checks in Parliaments

The principle of subsidiarity in the European Union

The principle of subsidiarity governs the exercise of the EU's competences. It is applied only in areas where competences are shared between the Union and the Member States¹. It rules out a Union intervention when an issue can be dealt with effectively by Member States at national, regional or local level. This means that the Union is justified in exercising its powers when Member States are unable to achieve the objectives of a proposed action satisfactorily. The purpose of including a reference to the principle in the EU Treaties is therefore to ensure that powers are exercised as close to the citizen as possible.

The principle of subsidiarity in the EU Treaties first appeared in the Treaty of Maastricht back in 1992 but the Treaty of Lisbon (2009) gave it a more precise definition. Under Article 5.3 of the Treaty, there are three preconditions for intervention by Union institutions in accordance with the principle of subsidiarity: (a) the area concerned does not fall within the Union's exclusive competence; (b) the objectives of the proposed action cannot be sufficiently achieved by the Member States; (c) the action can therefore, by reason of its scale or effects, be implemented more successfully by the Union².

Subsidiarity checks by national Parliaments

Under Article 5.3 and Article 12 of the Treaty on European Union, the national Parliaments of the EU Member States monitor compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol No 2. Under this procedure, any national Parliament or any chamber of a national Parliament has eight weeks from the date of forwarding of a draft legislative act in all EU official languages to send to the Presidents of the European Parliament, the Council of the EU and the European Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. If such reasoned opinions represent at least one third (one vote per chamber for a bicameral parliamentary system and two votes for a unicameral system) of the votes allocated to the national Parliaments, the draft must be reviewed ('yellow card'). The institution which

¹ As defined in Article 4 of the Treaty on the Functioning of the European Union

² A more detailed overview of the principle of subsidiarity can be found at:

http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf

produced the draft legislative act may decide to maintain, amend or withdraw it. This threshold is reduced to one quarter for legislation relating to the area of freedom security and justice.

If, in the context of the ordinary legislative procedure, at least a simple majority of the votes allocated to national Parliaments challenge the compliance of a proposal for a legislative act with the principle of subsidiarity and the Commission decides to maintain its proposal, the matter is referred to the EU co-legislators (the European Parliament and the Council). If either of the co-legislators consider that the legislative proposal is not compatible with the principle of subsidiarity, they may reject it subject to a majority of 55% of the members of the Council or a majority of the votes cast in the European Parliament ('orange card').

In May 2012, for the first time, a 'yellow card' was issued with regard to the Commission proposal for a regulation concerning the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services ('Monti II' proposal). Twelve out of 40 national Parliaments or chambers thereof (representing 19 out of 54 — or more than one third — of votes allocated) considered that the proposal did not comply with the principle of subsidiarity. The Commission eventually withdrew its proposal. Although in doing so, it stated that this was not because it did not comply with the principle of subsidiarity, but because of wider political opposition to the proposal.

The second 'yellow card' was issued in October 2013 when 14 chambers from 11 national Parliaments (representing 19 out of 56 votes) expressed their opinion that the setting up of the European Public Prosecutor's Office (EPPO) breached the principle of subsidiarity. The Commission, this time, decided to maintain the EPPO proposal³. The initiative is also supported by the European Parliament and by a number of national Parliaments. The idea of creating the EPPO through enhanced cooperation is being seriously considered in the Council.

In total, in the period from the entry into force of the Treaty of Lisbon until 10 March 2014, national Parliaments have issued 278 reasoned opinions. The table below indicates the increasing activeness of national Parliaments to use their right of issuing reasoned opinions. The most active in this regard has been the Swedish *Riksdag* (49 reasoned opinions), followed by the French *Sénat* (18) and Luxembourg's *Chambre des députés* (17).

Table 1. Reasoned opinions issued by national Parliaments

Member State	Parliament/Chamber	2010	2011	2012	2013	2014*	Total
Austria	<i>Nationalrat</i>	1	0	1	0	0	2
	<i>Bundesrat</i>	2	1	3	6	0	12
Belgium	<i>Chambre des représentants</i>	0	1	3	1	0	5
	<i>Sénat</i>	0	1	0	1	0	2
Bulgaria	<i>Narodno sabranie</i>	0	2	0	0	0	2
Croatia	<i>Hrvatski sabor</i>	-	-	-	0	0	0
Cyprus	<i>Vouli ton Antiprosopon</i>	0	1	1	1	0	3
Czech Republic	<i>Poslanecká sněmovna</i>	1	0	1	0	0	2

³ http://ec.europa.eu/justice/newsroom/criminal/news/131127_eppo_en.htm

	<i>Senát</i>	1	0	0	2	0	3
Denmark	<i>Folketing</i>	2	1	3	1	0	7
Estonia	<i>Riigikogu</i>	0	0	0	1	0	1
Finland	<i>Eduskunta</i>	0	1	1	1	0	3
France	<i>Assemblée nationale</i>	0	1	0	1	1	3
	<i>Sénat</i>	3	1	10	4	0	18
Germany	<i>Bundestag</i>	1	1	1	0	0	3
	<i>Bundesrat</i>	2	1	5	3	0	11
Greece	<i>Vouli ton Ellinon</i>	0	0	0	3	0	3
Hungary	<i>Országgyűlés</i>	0	0	0	1	0	1
Ireland	<i>Oireachtas (Dáil Éireann & Seanad)</i>	0	1	0	3	0	4
Italy	<i>Camera dei deputati</i>	0	2	1	1	0	4
	<i>Senato</i>	1	3	1	2	0	7
Latvia	<i>Saeima</i>	0	0	1	1	0	2
Lithuania	<i>Seimas</i>	2	0	1	6	0	9
Luxembourg	<i>Chambre des députés</i>	3	7	4	3	0	17
Malta	<i>Kamra tad-Deputati</i>	0	2	1	5	0	8
The Netherlands	<i>Tweede Kamer</i>	2	4	4	5	0	15
	<i>Eerste Kamer</i>	2	3	2	3	0	10
Poland	<i>Sejm</i>	2	5	3	2	0	12
	<i>Senat</i>	4	4	2	2	0	12
Portugal	<i>Assembleia da República</i>	0	1	1	1	0	3
Romania	<i>Camera Deputaţilor</i>	0	2	0	3	0	5
	<i>Senat</i>	0	2	0	3	0	5
Slovak Republic	<i>Národná rada</i>	0	2	1	0	0	3
Slovenia	<i>Državni zbor</i>	0	0	0	1	0	1
	<i>Državni svet</i>	0	0	0	0	0	0
Spain	<i>Cortes Generales (Congreso de los Diputados & Senado)</i>	0	3	2	5	1	11
Sweden	<i>Riksdag</i>	3	10	21	14	1	49
United Kingdom	<i>House of Commons</i>	1	3	3	5	2	14
	<i>House of Lords</i>	2	1	1	3		7
Total		35	65	78	94	5	278

Sources: Data taken from the 2012 and 2013 Written reports on the work of IPEX and the 2010 and 2011 Annual Reports from the Commission on relations between the European Commission and national Parliaments. The figures have also been reviewed by the permanent representatives of national Parliaments in the European Union.

Note*: As of 10 March 2014

How can the current system be improved?

During the five years that the system of subsidiarity checks has been in place, different ideas have been raised on how to improve the system. One of the most pertinent issues is that currently the system of subsidiarity checks gives the power to national Parliaments only to 'block' legislation. The question is therefore open and relevant on how to make the engagement of national Parliaments in the legislative process of the Union more constructive in order to empower national Parliaments to positively shape EU legislation.

One possibility is offered by the *political dialogue*, initiated by the President of the European Commission Mr José Manuel BARROSO back in 2006. Under the political dialogue, the Commission sends its legislative proposals and consultation documents to national Parliaments inviting them to submit *opinions*, otherwise known as contributions, on such documents without a time limit. The Commission has committed itself to providing replies to the contributions. Despite the constructive nature of the political dialogue, national Parliaments have consistently argued that the replies of the Commission could be more timely and nuanced. The same complaint by national Parliaments has been made with regard to *reasoned opinions*. In its Contribution the L COSAC called on the Commission to 'ensure better quality and more timely responses to reasoned opinions and political dialogue contributions made by national Parliaments'⁴.

Another idea on how to increase the constructive engagement of national Parliaments in the EU decision-making process is the so-called 'green card' proposal. The green-card would allow national Parliaments to *propose* new policies or legislation to the Commission, including amending or repealing existing EU laws. Along similar lines, the XLIX COSAC in its Contribution called on the Commission 'to give special attention and consideration to opinions on a specific legislative proposal' when issued by 'at least one third of national Parliaments'⁵.

In its official reply to the Contribution of the XLVII COSAC, the Commission has also committed itself to develop an enhanced political dialogue with national Parliaments within the framework of the European Semester, which would take place twice a year⁶. This is another possibility to engage national Parliaments in a more constructive way in a very important area of economic and financial governance of the Union.

On the other hand, some national Parliaments have expressed their concern about the brevity of the eight week period to submit a reasoned opinion. In its Contribution, the XLIX COSAC noted that 'the eight week period given for subsidiarity scrutiny is in most cases sufficient'. It emphasised, however, that in the context of the debate on the future of the EU, 'a future Treaty revision should take account of the opinion of national Parliaments that a longer period would make the process easier and mitigate the impact of periods of holidays and parliamentary recess' and that 'an extension would not mean a significant slowing down of the European legislative procedure'.

⁴ http://www.lrs.lt/intl/presidency.show?theme=285&lang=2&p_eventguid=de53a15a-3bc7-4ca9-890a-0b32af294418

⁵ http://www.parleu2013.ie/meetings/plenary-meeting-of-the-xlix-cosac-23-25-june-2013/#.UxmHj9_sdV

Questions for debate

1. Have Parliaments been able to effectively use the opportunities provided by the Treaty of Lisbon in terms of subsidiarity checks?
2. Is the eight week period to issue a reasoned opinion sufficient?
3. Are Parliaments satisfied with the Commission's replies to their reasoned opinions and contributions submitted in the framework of the *political dialogue*? How can the replies be improved?
4. What are the ways to make the contribution of national Parliaments to the EU legislative process more constructive?
5. Are Parliaments in favour of extending the political dialogue between the Commission and national Parliaments by the new Commission following the 2014 elections to the European Parliament?