

Annex 1:

Reports from national parliaments on Pilot project

1.1 AUSTRIA:

The National Council and the Federal Council

1.1.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The EU affairs committee of each chamber were involved. According to our provisions each committee may act on behalf of the whole chamber.

Was your plenary involved?

No

Were any other administrative services of your parliament involved in the process?

The services in charge of the preparation of committee meetings as well as the division for EU-coordination and the division for EU-relations were involved. The process of drafting adaptations of new rules of procedure is also dealt with by the legal service.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

Nationalrat:

The Conference of Presidents dealt with the subsidiarity test on February 24. The procedure of convening a sitting of the Permanent Subcommittee on EU-affairs was decided on in principle. In particular it was stated that – although the present legal provisions could not serve as the base of such a subsidiarity test – a statement of the committee might be passed at the end of the deliberations.

However due to the budget debate during these weeks no date of session could be fixed within the proposed period of time.

Bundesrat:

The Conference of Presidents dealt with the subsidiarity test on March 15. The President of the Bundesrat asked the Federal Ministry on Transport, Innovation and Technology for an explanatory memorandum. The sitting itself took place on April 12.

Did your government provide any information as part of the scrutiny process?

An explanatory memorandum was provided for 4 of the 5 dossiers (no memorandum for the communication).

Did your national parliament consult regional parliaments with legislative powers?

No.

Were any other external actors involved in the examination?

No.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

As MPs of both chambers form political groups at parliament coordination is undertaken on an informal basis.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Not really, as the rules of procedure for this subsidiarity test still need to be defined.

1.1.2 Findings:

Did you find any breach on the subsidiarity principle?

The debate on subsidiarity did not come to a final conclusion.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

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

From the administration's point of view the Commission's justification did not go much beyond formal arguments.

Did you encounter any specific difficulties during the examination?

MPs were hesitant to simulate a procedure in an ordinary meeting that was not foreseen by the present rules of procedure. However, the subsidiarity test was considered as an awareness-building measure for this future competence of national parliaments and thus very valuable.

1.2 BELGIUM:

Sénat

1.2.1 Procédure:

Quelles Commissions ont été impliquées au processus de contrôle de la subsidiarité du troisième paquet ferroviaire et quel rôle chaque commission a-t-elle joué ?

La délégation du Sénat (10 membres effectifs) auprès du Comité d'avis fédéral chargé des questions européennes ainsi que la Commission des Finances et des Affaires économiques du Sénat (qui compte 17 membres) ont été impliquées. Ce sont les membres de ces deux organes qui ont examinés le paquet ferroviaire et adopté l'avis.

Est-ce que la plénière de votre parlement a été impliquée au contrôle de la subsidiarité ?

Non (étant donné que dans le cas présent, les membres des deux organes susmentionnés ont estimé que le principe de subsidiarité a été respecté, la procédure n'a pas été continuée).

Quels autres services administratifs de votre parlement ont été impliqués au processus ?

Le service de l'évaluation de la législation, qui a rédigé un projet d'avis sur la compétence du Sénat et le respect de la subsidiarité, et le service linguistique, qui a traduit les documents internes du Sénat (dans ce cas, le projet d'avis a été traduit du néerlandais en français).

Pouvez-vous décrire la procédure utilisée pour le contrôle du début à la fin en citant les Commissions saisies, les différents acteurs ainsi que la chronologie de leur saisine?

calendrier	événement	responsable
02-03-2005	communication du paquet ferroviaire aux membres de la Délégation du Sénat auprès du Comité d'avis fédéral chargé des questions européennes et au service de l'évaluation de la législation	secrétariat de la Délégation du Sénat auprès du Comité d'avis fédéral
08-03-2005	rédaction, traduction et envoi de la proposition d'avis au secrétariat de la Délégation	service de l'évaluation de la législation et service linguistique
08-03-2005	communication de la proposition d'avis aux membres de la Délégation du Sénat auprès du Comité d'avis fédéral communication du paquet ferroviaire et de la proposition d'avis au président de la Commission des Finances et des Affaires économiques	président et secrétariat de la Délégation du Sénat auprès du Comité d'avis fédéral
09-03-2005	communication du paquet ferroviaire et de la proposition d'avis aux membres de la Commission des Finances et des Affaires économiques	président et secrétariat de la Commission
15-03-2005	aucune objection écrite n'ayant été soulevée contre la proposition d'avis, celui-ci est considéré comme étant adopté (au cas contraire, les deux organes se réunissent pour adopter un avis commun. Au cas où l'avis constate une non conformité de la proposition législative européenne avec le principe de subsidiarité, l'avis est communiqué au Président du Sénat. Ensuite, le Sénat se prononce en séance plénière sur l'avis motivé)	

Est-ce que le gouvernement a livré des informations quelconques faisant partie du processus de contrôle de subsidiarité ?

Non.

Les parlements régionaux possédant des pouvoirs législatifs ont-ils été consultés durant le processus de contrôle de subsidiarité?

Non (cette matière relève de la compétence de l'État fédéral).

Des acteurs externes ont-ils été impliqués au processus de contrôle de subsidiarité ?

Non.

En cas de système bicaméral, y a-t-il eu une coordination avec l'autre chambre du parlement?

Non.

La procédure utilisée ressemble-t-elle à la procédure que votre parlement utilisera lorsque le Traité constitutionnel entrera en force ?

La procédure définitive n'a pas encore été fixée. Dans le projet de loi portant assentiment au Traité établissant une Constitution pour l'Europe, le Gouvernement belge affirme que sur le plan interne, un accord de coopération devra être conclu entre le Parlement fédéral (Chambre des représentants et Sénat) et les parlements régionaux et communautaires. A ce sujet, un groupe de travail de fonctionnaires de toutes les assemblées législatives belges a entamé ses travaux en vue de rédiger une proposition aux autorités politiques.

1.2.2 Résultats :

Est-ce que vous avez trouvé un manquement au principe de subsidiarité ?

Non. La seule réserve qu'on pourrait émettre concerne la certification des conducteurs et du personnel de bord qui roulent exclusivement sur le réseau local. À strictement parler, on pourrait soutenir qu'il n'est pas nécessaire de les soumettre à un règlement prévoyant des exigences de qualité, indispensables pour pouvoir rouler sur tout le territoire de l'Union. L'on peut toutefois se demander s'il serait bien réaliste de créer deux catégories de conducteurs de train et de personnel de bord et si les usagers des lignes régionales ou intérieures n'ont pas droit à un personnel aussi qualifié que les usagers des liaisons internationales. En outre, on peut légitimement s'attendre à une augmentation de la circulation internationale des conducteurs de train au sein d'un espace ferroviaire européen intégré.

Est-ce que votre parlement a adopté un avis motivé pour cause de non-respect du principe de subsidiarité ? (Si oui, voulez-vous joindre une copie de l'avis motivé au rapport s.v.p.)

Non.

Est-ce que vous avez trouvé la note explicative de la Commission quant au principe de subsidiarité suffisante?

Voir la réponse à la question suivante.

Avez-vous rencontré des difficultés spécifiques durant le processus de contrôle?

Etant donné que le nouveau traité n'a pas encore été ratifié, les fiches prévues par l'article 5 du protocole n° 2 n'étaient pas disponibles. Dès lors, les explications concernant la subsidiarité dans les documents examinés n'avaient pas un format standardisé et se trouvaient dans chaque document à un endroit différent.

Le simple renvoi aux objectifs que la Commission veut atteindre et la justification plutôt brève, ne permettaient pas d'apprécier le respect du principe de subsidiarité.

Mais plus fondamentalement, le principe de subsidiarité comporte une marge d'appréciation importante tenant notamment aux éléments qualitatifs de sa définition, et apparaît de ce fait comme un principe autant politique que juridique. Qu'est-ce que la " réalisation suffisante " d'un objectif ? Qu'est-ce qu'une " meilleure réalisation " ? On voit mal sur quels critères objectifs s'appuyer pour déterminer où se situe la " réalisation suffisante " des objectifs de l'Union, et qui, de l'Union ou des Etats membres, est le mieux à même d'agir avec le plus d'efficacité. La subsidiarité est donc aussi une orientation politique qui, dans un système d'attribution de

compétence, doit donner la compétence d'intervention par préférence aux Etats membres s'ils sont suffisamment efficaces. Dans ce cadre, pour pouvoir justifier de l'exercice d'une compétence au titre de la subsidiarité, c'est à l'Union européenne en premier lieu (et non aux Etats membres) qu'il appartient de prouver 1) que l'action menée individuellement ou de façon concertée par les Etats membres, est insuffisante et 2) qu'elle est le mieux à même d'intervenir là où l'action des Etats membres est précisément insuffisante. Une justification claire de la Commission est susceptible d'aider les parlements à contrôler que le principe de subsidiarité est correctement mis en œuvre. Tout test de subsidiarité exercé à l'égard de projets de législations européennes devra donc envisager et répondre positivement à ces deux questions pour aboutir à la conclusion que le principe de subsidiarité n'est pas mis à mal.

1.3 CYPRUS

House of Representatives

1.3.1 Procedures

Which committees were involved in examining the 3rd Railway Package? What role did each committee play?

The examination of the Third Railway Package was undertaken exclusively by the Parliamentary Committee on European Affairs. This was attributed to the fact that the Parliamentary Committee on European Affairs, as things stand now, will primarily be monitoring the application of the principle of subsidiarity in the House of Representatives. During the examination of the railway package, the said Parliamentary Committee found that the proposed legislative package does not have an application in Cyprus, taking into consideration the lack of a railway network in Cyprus and thus came to the conclusion that there was no need for the matter to be examined by the sectoral committees. (In this case, the competent sectoral committees would have been the Parliamentary Committee of Communications and Works, and/or the Parliamentary Committee of Commerce, Industry and Tourism.)

Was your plenary involved?

The plenary of the House of Representatives was not involved, due to the fact that the exercise was clearly theoretical and experimental, as well as due to the fact that no breach of the principle of subsidiarity was found with respect to the legislative proposals contained in the package. In this respect, the involvement of the Plenary of the House towards adopting a reasoned but in abstractum opinion that would be transmitted to the institutions of the European Union was not seemed necessary.

Were any other administrative services of your parliament involved in the process?

The European Affairs Service of the House of Representatives was involved at a technocratic level with the exercise.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

On the 2nd March 2005, the whole package of the legislative proposals that comprise the Third Railway Package, 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 Chairman of the Parliamentary Committee on European Affairs, explaining the requirements of the task before the Committee. In parallel, a report of the European Affairs Service (which studied the legislative proposals that comprise the Third Railway Package) with its recommendations concerning the principle of subsidiarity and proportionality on each of the proposals in question, was distributed to all the members of the House of Representatives. In its report, the European Affairs Service, made reference to the opinions of the Economic and Social Committee and the Committee of the Regions, as well as to other relevant information concerning the views of the interested parties that was available on the World Wide Web.

The members of the Committee were allowed sufficient time to study the material distributed to them, and on the 28th March 2005, an examination of the matter was conducted by the Parliamentary Committee on European Affairs. During the course of the meeting, the Committee, taking into account the material provided to it, both by the COSAC Secretariat and the European Affairs Service, examined each of the legislative proposals in question on the basis of the criteria set out under the EU Constitutional Treaty and the Treaty of Maastricht concerning the principle of subsidiarity and proportionality.

The Committee also requested and obtained, during the course of the examination of the railway package, the opinion of the government on the package.

The Parliamentary Committee on European Affairs, having taken into consideration the fact that the legislative proposals under consideration would have no application in Cyprus, where a railway system is non-existent, decided that it was not necessary to invite local or national interested groups to express their views. The Committee, however, took into consideration the views of European organizations that were available on the World Wide Web.

The Committee, at the primary stage of its examination of the railway package, found that the legislative proposals in question fall within the shared competences of the European Union and the Member States.

The Committee then examined whether both basic prerequisites were fulfilled with respect to all of the proposals, in order for the Community action to be justified; that the objectives of the proposed action could not be achieved in a satisfactory way when action is taken by each of the member states at national level and that these objectives are best achieved through action at Community level.

Since the Committee concluded that action at Community level was justified and that the principle of subsidiarity was duly respected, the next step was to examine the compatibility of the legislative proposals with the principle of proportionality. The relevant protocols of the Constitutional Treaty demand that the European Commission's legislative proposals be sufficiently justified with regard to the principle of subsidiarity and proportionality, but also vest a right in the national parliaments of the Member States to request the Commission to review its proposal where they believe that the principle of subsidiarity has been breached, without a reference being made to the principle of proportionality. Notwithstanding the provisions of the abovementioned protocols of the Constitutional Treaty and in order to allow a better understanding of the new system, it was deemed necessary to examine the compatibility of the legislative proposals in question with the principle of proportionality. Concerning the question whether an examination of the adherence of legislative proposals to the principle of proportionality could be conducted, the Parliamentary Committee on European Affairs expects that a clarification will be provided by COSAC.

Having taken into consideration the opinion of the Committee of the Regions and that of the Social and Economic Committee of the European Union, as well as the reasoned opinion of the European Commission, and after careful examination on the basis of the criteria mentioned above, the Parliamentary Committee on European Affairs concluded that the legislative proposals of the package are not in breach of the principle of subsidiarity. However, since the package cannot have an application in Cyprus, and in order to prevent any possible administrative cost from the adoption of any of the proposals in Cyprus, the Parliamentary Committee on European Affairs communicated to the government its position stating that during the course of the discussion of the package at the Council of Ministers, an exemption should be requested for Cyprus.

The Parliamentary Committee on European Affairs, having unanimously reached the above conclusions, prepared a report that was forwarded to the President and the Members of the House of Representatives.

Did your government provide any information as part of the scrutiny process?

The government was informed that the Parliamentary Committee on European Affairs examined the Third Railway Package and agreed with the position of the Committee that a request for the granting of an exemption of Cyprus should be made during the discussion of the matter by the Council of Ministers.

Did your national parliament consult regional parliaments with legislative powers?

There exist no regional parliaments in Cyprus.

Were any other external actors involved in the examination?

No external organizations participated in the examination of the package, since the package will have no application in Cyprus.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

This question has no application in Cyprus.

Was the procedure used for this project in accordance with the procedure your Parliament plans to use following the Constitutional Treaty's entering into force?

The House of Representatives is planning to follow largely the same procedure following the Constitutional Treaty's entry into force. It should be noted, however, that on an exceptional basis and due to the fact that the legislative proposals under examination will have no application in Cyprus, a summary procedure was followed. It should be noted that in future cases, the Parliamentary Committee on European Affairs will, firstly, notify the competent sectoral parliamentary committees and request their views on the matter under examination where this is deemed necessary and, secondly, will invite interested parties to express their views on the matter. Finally, where it is deemed necessary to adopt a reasoned opinion concerning a breach of the subsidiarity principle, the President and the Plenary of the House of Representatives will be notified. The findings of the Committee will also be transmitted to the government.

1.3.2 Findings:

Did you find any breach of the subsidiarity principle?

The Parliamentary Committee on European Affairs found that there was no breach of the principle of subsidiarity. The Committee, having taken into consideration the opinion of the Committee of the Regions and the Social and Economic Committee of the European Union, as well as the reasoned opinion of the European Commission and having conducted a thorough examination of the matter on the basis of the criteria mentioned above, reached the above conclusion.

Did you adopt a reasoned opinion for non-compliance? (If yes, please enclose a copy with your report to the COSAC Secretariat).

No reasoned opinion was adopted concerning a breach of the subsidiarity principle.

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

The Commission's justification concerning the principle of subsidiarity was found to have been satisfactory, but it is expected that when the Constitutional Treaty comes into force and the national parliaments are involved in the real exercise of their role in the decision-making process of the EU, the justification provided by the European Commission will become more analytical and, thus, more helpful.

Did you encounter any specific difficulties during the examination?

The examination of the Railway Package by the Parliamentary Committee on European Affairs did not take a lot of time, since the object of the package has no application in Cyprus. However, the Committee feels that the time available to the national parliaments would not be sufficient if, during the time frame provided, the proper procedure were to be followed, during which interested parties and the competent sectoral parliamentary committees would be invited to express their opinion on the matter.

1.4 CZECH REPUBLIC

Chamber of Deputies:

1.4.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The European Affairs Committee of the Chamber of Deputies

Was your plenary involved?

No

Were any other administrative services of your parliament involved in the process?

The Parliamentary Institute (the research service of the Chamber of Deputies which provides expertise in European affairs).

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and chronology of their involvement?

First the European Affairs Committee voted to deliberate on the 3rd Railway Package provisions and appointed a committee rapporteur.

The Ministry of Transport submitted a “framework position” on behalf of the government to the draft legislative acts creating the 3rd Railway Package. (The government is bound to submit its preliminary position to the European Affairs Committee according to the Rules of Procedure within ten days.)

Consultations of the rapporteur with the appropriate expert from the Parliamentary Institute.

Deliberation on the 3rd Railway Package in the European Affairs Committee in the presence of the Deputy-minister of Transport.

Adoption of the resolution of the European Affairs Committee. (This resolution is deemed to be the opinion of the Chamber of Deputies under conditions stipulated by Section 109a (4) of the Rules of Procedure.)

Did your government provide any information as part of the scrutiny process?

Yes, “the framework position” of the Ministry of Transport on behalf of the government on the draft legislative acts creating the 3rd Railway Package.

Did your national parliament consult regional parliaments with legislative powers?

No

Were any other external actors involved in the examination?

No

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Yes

1.4.2 Findings:

Did you find any breach of the subsidiarity principle?

Yes

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat.)

Yes, the European Affairs Committee voted to adopt the following reasoned opinion in the form of a resolution:

“An infringement of the subsidiarity principle may exist within some particular provisions, as they transfer the decision-making process to a higher level (from the private sector to the state, from the state to the Community) without a sufficient proof of the effectiveness of such a transfer.

The process of deliberation of the above-mentioned draft legislative acts has been itself a breach of the subsidiarity principle. The Parliament of the Czech Republic did not receive these draft acts in the required form, i.e. in the official Czech translation. The absence of the official Czech translation is an infringement of an essential formal requirement, which makes the proper implementation of the scrutiny of the subsidiarity principle impossible”.

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

Not always

Did you encounter any specific difficulties during the examination?

The draft legislative acts creating the 3rd Railway Package represent a complex and extensive issue to deal with, and the unofficial translations of the proposals prepared by the Ministry of Transport meant a serious obstacle during the whole process.

Senate:

Annex to Resolution No. 74 from the 12th meeting of the CEU 6 April 2005

1.4.3 Reasoned Opinion of the Senate Committee on EU Affairs of the Parliament of the Czech Republic regarding the subsidiarity principle test for the so-called third railway package

1) Draft directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways

The draft directive refers to the Community's previously approved legal acts directed to liberalising railway traffic in the EU. There is ample justification for the European Commission's submitting the concerned act inasmuch as the intended aim, i.e. opening the rail carriage market between Member States, cannot be achieved through independent actions of the European Union's Member States. The Committee on EU Affairs therefore finds no discrepancy with the subsidiarity principle in this draft directive.

2) Draft directive on the certification of train engineers and train crews on the Community's railways network

In the text of the draft directive on certification of train engineers and train crews of the Community's railways network, several provisions can be identified to be in conflict with the subsidiarity principle:

Certification of all train engineers in all Member States regardless of whether a specific train engineer operates only on domestic railways or on international routes is completely unnecessary. It would be possible to achieve the aims of the directive by certifying only those train engineers operating on international routes (approximately 10% of the train engineers), or, as the case may be, those expressing interest in such certification.

It is not necessary to establish an additional authority for issuing licences to train engineers. The directive's objectives can be achieved more simply. Member States ought to have the option to create their own authority or to use the presently existing organisational structures.

Accreditation of medical doctors who should examine the physical and psychic health of train engineers is very costly and complicated, and it is not necessary in order to achieve the objectives of the directive. Recognition of the doctors would be sufficient.

Harmonisation of the professional examinations for train engineers with regard to the existing certification is appropriate. However, any attempt towards harmonising the professional training as such is not necessary for achieving the objectives of the directive. This is an excessive measure that would bring with it considerable administrative burdens and high costs.

For these reasons, the Committee considers it necessary for the European Commission to review the draft directive and to amend the relevant provisions with regard to the aforementioned suggestions.

3) Draft regulation regarding the rights and responsibilities of passengers in international rail passenger service

The justification for approving the draft regulation regarding the rights and responsibilities of passengers in international rail passenger service seems to be problematic in respect of the presently existing international and legal obligations of the EU Member States. That is to say that the proposed draft regulation in substantial measure includes regulation of matters presently regulated by international law – the Convention concerning International Carriage by Rail

(COTIF), which is binding for all Member States of the European Union having railroads (thus excluding Malta and Cyprus) except for Estonia. The fundamental problem in relation to the subsidiarity principle lies in duplication, which, in the present absence of any modification of the relationship between the Convention and the proposed regulation, could lead to a reduction in legal safeguards and to inconsistencies in the legal order.

The answers to those questions whether “the objectives of the intended activity cannot be achieved by Member States satisfactorily“ and whether „due to its scope and effects“ a legal act needs to be adopted by the Community do not in the present instance definitively support adoption of the new legal regulation on the level of the European Community. On the one hand, the rights of passengers have been strengthened above the existing level, however, on the other hand, the risk of clash between legal orders increases – a transnational regulation already exists, even though it has been negotiated by the Member States independently within COTIF. An adequate solution (instead of adopting the proposed regulation) could be to adopt a directive referring to the need for implementing the COTIF conditions into the legal orders of the Member States. Nevertheless, that does not exclude the extension of rights based on this Convention through an independent act of European law. Another feasible variant could be to strengthen passengers’ rights within the COTIF Convention, because the EU Member States have a voting majority within COTIF.

For the above-stated reasons, the Committee on EU Affairs maintains the position that adoption of a separate legal regulation on the Community level is not sufficiently justified from the viewpoint of conformity with the subsidiarity principle, and therefore the Committee recommends that the European Commission withdraw the draft regulation entirely in its present form.

4) Draft regulation on the responsibility of a carrier in case of non-fulfilment of contractual obligations in rail freight services

Questions about conformity with the subsidiarity principle are clearly identifiable also in the case of the regulation on the responsibility of a carrier in case of non-fulfilment of contractual obligations in rail freight services. This regulation relates to all freight carriage within the Community at both the international and national level. In the case that such regulation would be adopted, the area of carriage law even in domestic freight transport also would be newly regulated within the European Union legal order. At the same time, with respect to the expediency of adopting such standard, we must consider that in a number of cases the proposed European Union regulation exceeds requirements arising from the existing international contractual obligations of the Member States stipulated within COTIF. This might cause ambiguity in determining the governing law for any contract of carriage and, accordingly, the relationship between the individual legal orders would not be clear.

Thus in the given case it could be more useful to give up any separate regulation of the issue concerned through a European Union act and to focus on strengthening the existing mechanisms based on COTIF. On account of this, the Committee on EU Affairs is of the opinion that adoption of a separate legal regulation on the Community level is not sufficiently justified from the viewpoint of conformity with the subsidiarity principle, and it recommends that the European Commission withdraw the draft regulation entirely in its present form.

1.5 DENMARK

The Folketinget

1.5.1 Procedures

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The Transport Committee and the European Affairs Committee of the Parliament both were involved. The Transport Committee considered the third rail way package in relation to the principle of subsidiarity, whereas the European Affairs Committee had the overall responsibility for the procedure as well as for the contact to COSAC.

Was your plenary involved?

No, the plenary has not been involved.

Were any other administrative services of your parliament involved in the process?

No – but the Transport Committee and the European Affairs Committee were – as usual – assisted by the clerk of the Transport Committee and the staff of the EU-Secretariat.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

Firstly, the EAC forwarded the third railway package to the relevant sector committee – in this case the Transport Committee – asking for their opinion.

The Transport Committee then conducted the subsidiarity test. The Committee considered the railway package's relationship to the principle of subsidiarity at two meetings. The Minister of Transportation took part in one of these. The Transport Committee also posed a written question to the Minister of Transportation. Finally the committee agreed on a reasoned opinion.

The majority of the Transport Committee did not find any breach of subsidiarity. This majority consisted of the Liberal Party, the Social Democrats, the Conservative Party, the Social Liberal Party, and the Socialist Peoples Party.

A minority of the Transport Committee (consisting of the Danish Peoples Party) stated, that they were worried about the workload related to the subsidiarity test, and that they therefore thought it impossible for the sector committees to conduct an independent subsidiarity test on all new legislative proposals from the EU-Commission.

Another minority (the Unity List) stated that they neither supported the wording nor the interpretation of the principle of subsidiarity in the Treaty since they do not think the principle of subsidiarity will be able to secure real subsidiarity.

The reasoned opinion from the Transport Committee was submitted to the European Affairs Committee. At a following meeting the European Affairs Committee endorsed the reasoned opinion from the Transport Committee.

Did your government provide any information as part of the scrutiny process?

Yes, the Minister of Transportation appeared for the Transport Committee and gave an oral briefing of the government's attitude towards the third railway package's relation to the principle of subsidiarity. The minister also submitted a written answer to a question put by the committee.

Did your national parliament consult regional parliaments with legislative powers?

No

Were any other external actors involved in the examination?

No

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Not relevant since unicameral

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Yes

1.5.2 Findings

Did you find any breach on the subsidiarity principle?

No – see also answer no. 4

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No

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

Not considered

Did you encounter any specific difficulties during the examination?

It was not possible to keep strictly to the time schedule.

One party stated that they are worried about the workload related to the subsidiarity test

1.6 ESTONIA:

Riigikogu

Following the decision by the COSAC in Luxembourg and having regard to the present state of the ratification process of the Constitutional Treaty, the EU Affairs Committee of the Riigikogu carried out the pilot project on subsidiarity in respect of the Third Railway Package.

As a preliminary point the EU Affairs Committee discussed the subsidiarity issue and possibilities for the subsidiarity control mechanism in Estonia on March 18, 2005. The EU Affairs Committee had materials prepared by independent legal experts as well as the committee Secretariat. The EU Affairs Committee decided to ask the Chancellery of the Riigikogu to give its opinion and proposals for the possible changes in Estonian legislation in relation to the subsidiarity control mechanism after the Constitutional Treaty comes into force.

Subsequently, the EU Affairs Committee forwarded the documents regarding the Third Railway Package to the Economic Affairs Committee for an opinion. The Economic Affairs Committee discussed the project on March 7. The committee found it difficult to give an opinion without the texts being in Estonian. Hence the committee ordered a part of the documentation to be translated. The Economic Affairs Committee discussed the matter again on April 4, where the representatives of the Ministry of Economics and Communication gave an overview of the possible impact of the proposed acts on Estonia.

Next, the EU Affairs Committee discussed the package on April 4 with the presence of the representatives of the Ministry of Economics and Communication. It was decided to give the final decision on April 11.

Finally, having regard to the opinion of the Economic Affairs Committee, the EU Affairs Committee decided:

- To agree with the positions of the Economic Affairs Committee;
- The Committee is of the opinion that the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways and the Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network are in conformity with the principle of subsidiarity;

The Committee is of the opinion that aims of the Proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers' Rights and Obligations and the Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services are better achieved by the Member States through the existing international agreements that take better account of the circumstances in the Member States.

According to the view of the EU Affairs Committee, the proposals for regulations on the quality of freight and passenger transport services involve some over-regulation by the European Union. Therefore the emphasis should rather be on amending the existing international agreements where necessary, as well as providing prior assessment of the possible impacts arising from the implementation of the regulations.

Additionally, having regard to the Estonia's primarily eastward-oriented rail transport, the abovementioned regulations should clearly regulate how to organise international rail transport with third countries in such a manner as to ensure its compatibility with the legal area of the member states of the Organisation for Railway Co-operation (OSJD). Namely, while Estonia has no direct railway connection with the Member States of the European Union, the interoperability and safety issues set out in the Strategy do not directly concern Estonia. More than 90% of the freight volume and passenger transport takes place in the direction of Russia. Therefore, within the framework of the Third Railway Package, it is important for Estonia to ensure interoperability in the legal area of the member states of the OSJD, which have the same gauge as Estonia. Within the OSJD framework, the carriage of passengers is also regulated and freight standards have been established.

In conclusion, the implementation of the EU railway legislation is at the moment a comparatively theoretical issue for Estonia, at least until the passenger railway service has not started between Estonia and Latvia as well as Estonia and Lithuania.

Yours sincerely

Olev Aarma

Head of the Secretariat

1.7 FINLAND

The Eduskunta

1.7.1 Procedure

The third railway package has been subject to the usual national scrutiny procedures (file reference: U 27/2004 vp). The basic document was a communication by the government (+ one supplementary communication). It has so far been the subject of seven hearings in the Transport and Communication Committee and seven hearings in the Grand Committee. The Transport and Communication Committee, after hearing six experts, adopted a written opinion (LiVL 10/2004 vp), which was subsequently approved by the Grand Committee. The scrutiny will continue until the proposal has been finally resolved in the European institutions.

The Grand Committee's working sub-committee noted that this proposal has been thoroughly scrutinized. It was also noted that there has been some progress on the railway package since March 2004, which has been reported to the Eduskunta. A full-scale mock procedure on the basis of outdated paper might cause unnecessary confusion. It would hence not be justified for the Eduskunta to carry out a mock subsidiarity assessment. Instead, the sub-committee chose to analyse afresh the information accumulated during the early stages of the national scrutiny procedure in terms of subsidiarity.

The future Finnish subsidiarity procedure

The procedure for subsidiarity assessment will be finally approved through amendments of the Eduskunta's Rules of Procedure to be made in conjunction with the ratification of the Constitutional Treaty. These amendments were presented in draft form by the *ad hoc* Committee to Assess EU Scrutiny Procedures in February 2005. This committee's report is available in English on the Eduskunta's website.

If the draft is approved, the following procedure will be applied to Commission proposals such as the 3d railway package: On receipt, the Eduskunta's EU Secretariat will forward the proposal, by electronic means, to the Grand Committee and the concerned sector committee, in this case the Transport and Communications Committee. The sector committee and the members of the Grand Committee may propose that the matter be examined in terms of subsidiarity. (In principle, a simple majority in either committee would be needed. If no proposal is made, there is no subsidiarity assessment.) Also, the EU Secretariat would examine the proposal *ex officio* and notify the Grand Committee if it finds a breach of the subsidiarity principle.

Any subsidiarity assessment would be carried out directly by the Grand Committee, drawing on the advice of sector committees and outside experts as it deems fit. If the Grand Committee finds a breach of the subsidiarity principle, it will draft a reasoned opinion that is submitted to the plenary session for final approval.

The Åland regional parliament is involved in the subsidiarity assessment with the right to initiate a subsidiarity assessment in the Grand Committee. As there is no railway in the Åland Islands, consultation was dispensed with in this case.

National scrutiny procedures will continue to apply as before. A proposal like the 3d railway package would be submitted by the government for policy formulation. The Grand Committee, on the advice of the appropriate sector committee, would define Finland's national negotiating position on the substance of the proposal.

Chronology

03.03.2004	Commission proposal in English (rec'd by Finnish govt 05.03.2004)
31.03.2004	Commission proposal available in Finnish

23.04.2004	Government Communication U 27/2004 vp received and forwarded to Transport and Communications Committee for opinion
19.05.2004	Supplementary government communication received and forwarded to Transport and Communications Committee for opinion
09.06.2004	Opinion of the Transport and Communications Committee received and approved by Grand Committee
01.10.2004; 03.12.2004	Renewed statements of the Grand Committee (prior to Council meetings)
26.01.2005	Supplementary government communication
18.02.2005	Transport and Communications Committee report: "No action necessary".

In this case, the following rough time spans were of relevance:

4 weeks	From formal date of Commission proposal until it became available in Finnish. (The exact date of the Swedish version could not be determined <i>ex post</i> , but it was later than the Finnish.)
3 weeks	From availability of Finnish documents until government submission
6 weeks	<u>Substantive</u> procedure in Eduskunta

It should be noted that the Eduskunta's scrutiny procedure had to deal with the full breadth of the four proposals contained in the railway package. It may be taken for granted that the much more limited issue of subsidiarity could have been assessed well within the six-week limit.

Findings on subsidiarity

The Eduskunta's understanding of the subsidiarity early-warning mechanism

The protocols on national parliaments and on subsidiarity and proportionality define the scope of the early warning system narrowly: national parliaments may present a reasoned statement to the effect that a particular legislative proposal is in breach of the subsidiarity principle if the following requirements are met: (1) the proposal will be adopted within the legislative procedure; (2) the proposal is not within the exclusive competence of the European Union; and (3) the objectives of the proposal can be achieved as or more efficiently by national, regional or local measures.

The wording of the protocols make subsidiarity control an efficiency test: can the objectives be met as or more efficiently by national or sub-national measures? The protocols do not give national parliaments a say on any other grounds. If a national parliament believes that a legislative proposal contravenes the proportionality principle, or if it has reservations about the substance of the proposal, it does not have recourse to the protocols, but should resort to domestic remedies.

Findings in the national scrutiny procedure

Subsidiarity has been European law since the Maastricht treaty and it is one of the elements routinely examined in the Finnish national scrutiny procedure.

No breach of the subsidiarity principle was identified in the national procedure.

1.7.2 Findings in the COSAC exercise

Document COM(2004) 139: The objective of the proposal is to open to competition the international transport of passengers by rail. The directive requires that rail infrastructure be made available to all qualified rail companies for international passenger trains. These trains may also carry passengers between stations in the same country (*cabotage*).

The commission document lacks the assessment of subsidiarity and proportionality that is required since the Seville Council and by the subsidiarity protocol.

Whether or not the objective, to open international rail transport of passengers to competition, is appropriate, is not a question to be assessed in the early warning procedure. The subsidiarity protocol only permits an assessment of whether the objectives (that have been defined at the EU level) could be met as or more effectively by national or sub-national decisions. Nonetheless, the Grand Committee finds the objective acceptable.

The Grand Committee considers that the material provision of the draft directive, that rail infrastructure be made available to all qualified rail companies for international passenger trains, is appropriate for the objective and is not unduly intrusive. *The draft directive does thus not contravene the proportionality principle.*

Neither the objective nor the means could conceivably be achieved by national, regional or local regulation. *The draft directive does thus not contravene the subsidiarity principle.*

Document COM(2004) 142: The proposal is corollary to the rail safety directive (part of the 2d railway package). The rail safety directive requires that rail operators establish safety systems and objectives that conform to joint European norms. The current proposal aims at establishing commensurate certification of rail personnel in safety-sensitive tasks. This is necessary for interoperability, i.e. trans-border trains. The operative element of the draft directive is that all locomotive staff shall have a standard level of competence that is certified through standard documents. The directive will initially apply only to trans-border traffic, but will later be extended to all locomotive staff. The directive further provides for mutual recognition by national authorities of such certification.

The underlying objective is the same as for the three railway packages generally: to promote trans-border train traffic. The means, universally recognized certification of a commonly agreed standard of locomotive staff, seem to be appropriate to the objective, at least when applied to personnel actually engaged in cross-border traffic. In the case of other personnel, the issue is less clear. The case can be made, however, that rail personnel working on the same network should have similar qualifications, irrespective of whether they themselves will cross borders.

National rail authorities have maintained serviceable safety regimes for almost 150 years. In some areas, e.g. the Benelux countries and between Belgium and France, international through-trains have operated for many years, even though this has been an exception in Europe. The rule has been for locomotive staff to be changed at national frontiers. The long history of successful safety management by national organisations could be advanced as proof that the directive's objectives could be attained by national measures.

Chapter 7 of the directive's justifications contains a comprehensive and convincing cost-benefit assessment. The Commission demonstrates that the objectives can be more effectively achieved by Union than by national legislation. The Commission further makes a plausible case for making rail traffic subject to a similar regime as other modes of international transport, thus creating a more level playing-field.

In the Finnish context, the directive would in practice be inordinately burdensome in relation to its usefulness. Finland is separated by the sea from the rest of the EU except Sweden. Finland has a different rail gauge than Sweden. Hence there is no cross-border train traffic between Finland and other EU countries. The skills, notably language skills, to be required of locomotive staff under the directive would thus seem an imposition. However, this is not a violation of the subsidiarity principle as defined in the treaty. One could argue that, in Finland's case, proportionality is at issue. On a more practical level, we believe that Finland has a good case for demanding a national derogation.

The draft directive does not contravene the subsidiarity principle.

Document COM(2004) 143: The directive's objective is corollary to that of the three railway packages: to promote international rail travel, specifically by codifying the rights of passengers in international rail traffic. The means are broadly similar to the rules already in force for air travel: terms of carriage, quality standards and the liability of carriers are to be made transparent and minimum standards are introduced to protect travellers.

The draft directive's means are appropriate to its objective. The parallel case of air travel is noted in this context.

Conditions of carriage in international rail travel have been regulated for many years by treaties (currently the COTIF treaty) and by the organizations of rail carriers (currently CER). The role of CER, in particular, has become less self-evident as (public sector) national rail monopolies are replaced by competitive enterprises.

The alternative to regulation by the European Union would be regulation by some public or private sector international organization. The objective, to protect the rights of passengers in international rail traffic, can not conceivably be achieved by national measures.

There is a feeling in the Grand Committee that the level of protection that is offered to travellers by the draft directive may be insufficient. However, the substance of the directive manifestly cannot be addressed in the subsidiarity procedure as defined in the treaty.

The draft directive thus does not contravene the subsidiarity principle.

Document COM(2004) 144: The objectives of the draft directive are ancillary to those of the first railway package, to promote competition in freight transport by rail, in this instance to raise the quality (punctuality, responsibility for loss) of rail freight services. The means of the directive involve codifying rail carriers' liability for delays, loss and similar faults in service.

The means of the directive are appropriate to the objective. Like the draft directive on the rights of rail passengers, this draft directive would replace regulation by international treaty and self-regulation by the rail industry with European standards.

The directive would apply to transport within a single member state and to transport between member states and third countries, as well as to international transport within the European Union.

The Grand Committee recognizes that the draft directive is part of the overall European transport strategy. It is also recognized that international transport within the European Union is a legitimate subject of EU regulation.

It could be argued that applying the directive also to transport within a single member state is in excess of the objective. On the other hand, the very idea of the European transport strategy is that national rail systems are part of a network. Applying similar rules to national as to intra-EU transport is a logical extension of the network approach. In any case, if it is unduly intrusive to apply EU rules to national transport, that would be a breach of the proportionality principle, not of subsidiarity. Proportionality is beyond the reach of the early-warning system.

In sum, the objectives of the directive cannot be better achieved by national or sub-national means. *The draft directive thus does not contravene the subsidiarity principle.*

Obiter dictum

The purpose of the COSAC exercise is to test how national parliaments carry out the subsidiarity early-warning mechanism. In retrospect, one might question whether the 3d railway package was a representative example. Of the four draft directives, three are concerned with cross-border activities of a kind that do not allow effective national regulation. The fourth also had a strong linkage to an established EU policy and EU legislation in force. The remaining two documents, COM(2004) 140 and SEC(2004) 236, are not legislative proposals in the sense of the protocols. We assume that they were to be studied as background information to the draft directives.

In the case of the 3d railway package, a violation of the subsidiarity principle was from the outset difficult to imagine.

On the other hand, the reservations on the substance of the proposal that have been indicated by some parliaments may be a useful reminder that many of the issues that national parliaments need to deal with are beyond the scope of the early-warning procedure.

The COSAC exercise assumes that all language versions were available on the date of the Commission's proposal. As the protocols' six-week limit begins when all language versions are available, this is reasonable. However, and for future reference, it might be useful to look into the mechanics: How quickly do language versions usually become available? What mechanism is there to record the date of the last language version to be delivered, i.e. the operational starting date of the six-week period?

1.8 FRANCE:

Assemblée Nationale

1.8.1 Procédure

La procédure expérimentale suivie à l'Assemblée nationale a été la suivante :

1 – Calendrier d'examen

Etape n°1 : 1^{er} au 23 mars (3 semaines)

Phase d'instruction par la Délégation, qui s'est achevée par l'adoption, par la Délégation pour l'Union européenne, de sa position sur chacun des quatre textes du « troisième paquet ferroviaire ».

Etape n°2 : 23 mars au 6 avril (2 semaines)

Transmission, à la commission sectorielle compétente au fond (en l'espèce, la Commission des Affaires économiques), de la position adoptée par la Délégation pour l'Union européenne.

Examen, tacite ou express, de la position de la Délégation, par la Commission des Affaires économiques.

Etape n°3 : 6 avril au 12 avril (1 semaine)

Si la Délégation et la Commission des affaires économiques ne sont pas du même avis, la position de la commission devient celle de l'Assemblée nationale, sauf recours d'un président de groupe, d'un président de commission ou du président de la Délégation devant la Conférence des Présidents.

2 – Informations complémentaires

- La plénière n'a pas été impliquée dans le cadre de ce test de subsidiarité
- Au niveau administratif, seul le secrétariat de la Délégation pour l'Union européenne a été impliqué dans la mise en œuvre du test de subsidiarité. Néanmoins, les secrétariats des commissions sectorielles compétentes au fond peuvent être impliqués dès lors qu'une commission sectorielle se saisit du contrôle du principe de subsidiarité
- Le Gouvernement n'a pas transmis d'informations spécifiques relatives à sa position sur la conformité du « troisième paquet ferroviaire » au principe de subsidiarité
- Aucun acteur externe n'a été associé au test de subsidiarité
- Une coordination informelle (échange d'informations) a été opérée entre l'Assemblée nationale et le Sénat, notamment au niveau administratif entre les secrétariats des deux Délégations pour l'Union européenne

- La procédure utilisée pour le test de subsidiarité ne préjuge en rien de la procédure qui sera décidée le moment venu, si le Traité constitutionnel est ratifié (*cf.* pièce jointe n°2). La mise en œuvre du test de subsidiarité a révélé sans surprise la brièveté du délai de six semaines qui rend difficile la saisine successive de plusieurs organes parlementaires (voir à ce sujet la remarque formulée par le Président de la Commission des Affaires économiques dans son courrier adressé au Président de la Délégation pour l'Union européenne, *cf.* pièce jointe n°4).

1.8.2 Resultats

Au cours de sa réunion du 23 mars 2005 (*cf.* pièce jointe n°5), la Délégation de l'Assemblée nationale a suivi la recommandation du rapporteur, considérant que trois des quatre propositions de la Commission européenne étaient conformes au principe de subsidiarité.

En revanche, la Délégation a adopté un projet d'avis motivé sur la proposition de règlement du Parlement et du Conseil concernant les compensations en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaire [COM (2004) 144 final]. (*cf.* pièce jointe n°1).

La motivation de la Commission européenne quant à la conformité de ce texte au respect du principe de subsidiarité n'est pas apparue de façon suffisamment claire.

Le projet d'avis motivé adopté par la Délégation pour l'Union européenne sur le texte COM(2004) 144 final a été transmis à la Commission des Affaires économiques qui a disposé d'un délai de deux semaines pour se prononcer (*cf.* pièce jointe n°3).

Au terme de ce délai, le Président de la Commission des Affaires économiques a adressé le 5 avril 2005, un courrier au Président de la Délégation pour l'Union européenne (*cf.* pièce jointe n°4) pour l'informer de l'acceptation tacite (c'est-à-dire en l'absence de réunion de la Commission des Affaires économiques) de la position adoptée par la Délégation pour l'Union européenne, à savoir :

- confirmation du projet d'avis motivé adopté par la Délégation pour l'Union européenne sur le COM(2004) 144 final. En conséquence, cet avis motivé devient définitif et peut être envoyé à la Commission européenne.
- Conformité au principe de subsidiarité des trois autres textes du « troisième paquet ferroviaire ».

L'expérience a mis en évidence quatre difficultés majeures :

- la difficulté de distinguer le contrôle du principe de subsidiarité de l'examen au fond. Le risque existe que l'atteinte supposée au principe de subsidiarité soit en réalité un prétexte pour s'opposer à des dispositions de fond ;
- la difficulté de distinguer les principes de subsidiarité et de proportionnalité ;
- la quasi-impossibilité de connaître les positions adoptées par les autres parlements de l'Union au jour de l'examen par la Délégation pour l'Union européenne. Chaque chambre aurait donc un intérêt à procéder le plus tardivement possible (à la fin du délai de six semaines) au contrôle de la

subsidiarité, afin de pouvoir connaître les positions adoptées par les autres chambres. D'où la nécessité d'une mise en réseau informelle entre les parlements nationaux, avant le commencement du délai de six semaines.

- la difficulté de réunir la commission sectorielle compétente au fond dans le délai de six semaines.

Pièces jointes :

- P.J n°1 : Avis motivé adopté par l'Assemblée nationale relatif au COM(2004) 144 final
- P.J n°2 : Courrier de M. Jean-Louis Debré, Président de l'Assemblée nationale, sur la mise en œuvre du test de subsidiarité
- P.J. n°3 : Courrier de M. Pierre Lequiller, Président de la Délégation pour l'Union européenne, à M. Patrick Ollier, Président de la Commission des Affaires économiques ;
- P.J. n°4 : Courrier de M. Patrick Ollier, Président de la Commission des Affaires économiques, à M. Pierre Lequiller, Président de la Délégation pour l'Union européenne.
- P.J. n°5 : Compte rendu de la réunion de la Délégation pour l'Union européenne du 23 mars 2005.

Senat

1.8.3 PROCEDURE

Quelles commissions ont été impliquées dans le processus de contrôle de la subsidiarité du troisième paquet ferroviaire et quel rôle chaque commission a-t-elle joué ?

La Constitution française a dû être révisée avant la ratification du traité établissant une Constitution pour l'Europe. Le « mécanisme d'alerte précoce » a alors été introduit dans la Constitution. Le nouvel article de la Constitution concernant le contrôle de subsidiarité est rédigé comme suite :

- « L'Assemblée nationale ou le Sénat peuvent émettre un avis motivé sur la conformité d'un projet d'acte législatif européen au principe de subsidiarité. L'avis est adressé par le président de l'assemblée concernée aux présidents du Parlement européen, du Conseil et de la Commission de l'Union européenne. Le Gouvernement en est informé.
- « Chaque assemblée peut former un recours devant la Cour de justice de l'Union européenne contre un acte législatif européen pour violation du principe de subsidiarité. Ce recours est transmis à la Cour de justice de l'Union européenne par le Gouvernement.
- « A ces fins, des résolutions peuvent être adoptées, le cas échéant en dehors des sessions, selon des modalités d'initiative et de discussion fixées par le règlement de chaque assemblée ».

La réforme du règlement du Sénat prévue par cet article n'est pas encore intervenue. Aujourd'hui, le rôle respectif des différentes commissions est en discussion et n'a pas fait l'objet d'un accord.

Dans ce contexte, pour l'expérience-pilote, le troisième paquet ferroviaire a été seulement examiné par la délégation pour l'Union européenne.

Cet examen s'est déroulé en deux étapes :

Une première réunion a eu lieu le 17 mars 2005. Pour cette réunion, chaque sénateur membre de la délégation pour l'Union européenne a reçu un dossier contenant : une présentation du contenu de chacun des quatre textes, un rappel des justifications fournies par la Commission européenne sur le respect du principe de subsidiarité, un rappel des dispositions du traité constitutionnel concernant le principe de subsidiarité et le mécanisme d'alerte précoce. Lors de cette réunion, les membres de la délégation ont estimé :

- que les documents COM (2004) 142 et COM (2004) 143 étaient conformes au principe de subsidiarité ;
- que les documents COM (2004) 139 et COM (2004) 144 méritaient un examen plus approfondi. Des rapporteurs ont été désignés pour préparer cet examen.

Une seconde réunion a eu lieu le 30 mars 2005. Sur la base des travaux des rapporteurs, les membres de la délégation ont conclu :

- que le document COM (2004) 139 était conforme au principe de subsidiarité ;
- que le document COM (2004) 144 ne respectait pas le principe de subsidiarité, parce qu'il ne faisait pas de distinction entre les services internationaux et les services purement nationaux de fret ferroviaire. Cette décision n'a pas pris la forme d'un projet d'avis motivé, la procédure s'arrêtant à ce stade pour les raisons indiquées ci-dessus.

-

Est-ce que la plénière de votre parlement a été impliquée dans le contrôle de la subsidiarité ?

Non.

Quels autres services administratifs de votre Parlement ont été impliqués au processus ?

Aucun.

Pouvez-vous décrire la procédure utilisée pour le contrôle du début à la fin en citant les Commissions saisies, les différents acteurs ainsi que la chronologie de leur saisine ?

Voir la réponse à la question 1.

Est-ce que le Gouvernement a livré des informations quelconques faisant partie du processus de contrôle de subsidiarité ?

Le représentant permanent adjoint de la France auprès de l'Union européenne a été consulté.

Les parlements régionaux possédant des pouvoirs législatifs ont-ils été consultés durant le processus de contrôle de subsidiarité ?

Il n'existe pas en France de « parlements régionaux » disposant de pouvoirs « législatifs ».

Des acteurs externes ont-ils été impliqués dans le processus de contrôle de subsidiarité ?

Non.

En cas de système bicaméral, y a-t-il eu une coordination avec l'autre chambre du parlement ?

Non.

La procédure utilisée ressemble-t-elle à la procédure que votre parlement utilisera lorsque le Traité constitutionnel entrera en force ?

Il n'est pas possible aujourd'hui de répondre à cette question.

1.8.4 Résultats

Est-ce que vous avez trouvé un manquement au principe de subsidiarité ?

Oui. Selon la délégation pour l'Union européenne, la proposition de règlement COM (2004) 144 relative à la qualité des services de fret ferroviaire est contraire au principe de subsidiarité parce que son champ d'application n'est pas limité aux transports internationaux de marchandises.

Est-ce que votre parlement a adopté un avis motivé pour cause de non-respect du principe de subsidiarité ? (Si oui, voulez-vous joindre une copie de l'avis motivé au rapport s.v.p.)

La conclusion des travaux de la délégation n'a pas pris la forme d'un projet d'avis motivé, compte tenu du fait que la procédure d'adoption de ces avis n'a pas encore été définie.

Est-ce que vous avez trouvé la note explicative de la Commission quant au principe de subsidiarité suffisante ?

Les membres de la délégation ont exprimé une déception sur ce point. Ils ont constaté que les considérations figurant dans les exposés des motifs des propositions ne traduisaient un véritable effort de justification que dans un seul cas : le document COM (2004) 142 qui mentionne une étude ainsi qu'une évaluation d'impact économique.

Les considérants sur la subsidiarité figurant dans le texte même des propositions sont apparus stéréotypés et se bornant à des affirmations très générales.

Selon les membres de la délégation, lorsque le traité constitutionnel sera en application, il sera nécessaire que la Commission fournisse une justification plus circonstanciée de ses propositions au regard du principe de subsidiarité car, en pratique, la fiche qu'elle fournira sera la base de départ de l'examen par les parlements nationaux.

Avez-vous rencontré des difficultés spécifiques durant le processus de contrôle ?

La première leçon que les membres de la délégation ont tiré de l'expérience-pilote a été que le contrôle de subsidiarité sera difficile à mettre en œuvre dans le délai de six semaines.

Comme il a été indiqué plus haut, il n'y a pas aujourd'hui d'accord sur la procédure qui sera suivie au Sénat. Néanmoins, il est admis qu'il faudra rendre possible un double examen : un examen par l'organe d'instruction (par exemple la délégation pour l'Union européenne) puis un examen en séance plénière. Or, cette première expérience a montré que, dans le cas des textes posant problème, un délai de quatre semaines pouvait être nécessaire pour le premier examen.

Effectuer un double examen dans un délai de six semaines sera donc difficile, compte tenu des contraintes pesant sur l'ordre du jour du Sénat (les textes présentés par le Gouvernement sont prioritaires). Il sera nécessaire de définir des délais rigoureux pour chaque étape, et prévoir des solutions pour les périodes où le Parlement ne siège pas.

Il faut ajouter que, pour cette expérience-pilote, les quatre textes retenus pour servir de test étaient déjà bien connus, et qu'il était facile de se procurer des informations. Par exemple, la délégation pour l'Union européenne a pu utiliser la décision rendue par le Bundesrat le 14 mai 2005 au sujet du document COM (2004) 144, qui abordait la question de la subsidiarité. En temps normal, il sera plus difficile d'obtenir en temps utile des informations de ce type.

Pour limiter les problèmes que posera le délai serré de six semaines, il sera nécessaire que la Commission européenne fasse un effort supplémentaire de clarté dans la présentation de ses textes, et que la fiche sur la subsidiarité prévue par le protocole n° 2 soit aussi complète que possible.

La deuxième leçon est qu'il est parfois malaisé, dans des débats parlementaires, de séparer la question de la subsidiarité des autres questions. En particulier, il paraît très difficile de dissocier complètement les questions de subsidiarité et de proportionnalité. Or, selon le protocole n° 2 annexé au traité constitutionnel, les avis motivés doivent porter uniquement sur le respect du principe de subsidiarité. Cette restriction risque d'être difficile à appliquer.

1.9 GERMANY

Bundesrat:

1.9.1 General Information

The new methods and rights laid down in the Treaty establishing a Constitution for Europe for the first time justify direct legal relations between the national parliaments and the organs of the EU. They can be applied besides the previous methods and other rules like EUZBLG (which regulates the cooperation of the Bundesrat and the Länder in European affairs) on the national level. In principle, the new procedures can be handled with the existing instruments and methods in the Bundesrat.

Referring to the inquiry it has to be stated that the Bundesrat had already finished the examination of the Third Railway Package in May 2004. Now, we did intend to reconstruct our previous procedure now from the point of the view of the subsidiarity test with consideration to the aide-mémoire submitted by the COSAC-Secretariat.

The Bundesrat did check the four pieces of draft legislation, however the Communication of the Third Railway Package was not checked, because communications do not belong to the papers being checked under the point of view of a violation of subsidiarity according to the relevant protocol.

1.9.2 Procedure in the Bundesrat

Having received the four proposals the Secretary General of the Bundesrat allocated them to the various committees submitted with a reference to the deadline (April 12th, 2005). This allocation was prepared by the Parliamentary Service in the secretariat of the Bundesrat. By starting on March the 1st, 2005 it would have been too late to reach the regular committee meetings (in the first week of March). Therefore either special meetings would have been summoned by the relevant expert committees and the Committee on questions of the European Union, or the four proposals would have had to be deliberated in a written procedure by a circulation method.

As regards the Third Railway Package the following expert committees were involved and asked for their opinion: 1. The proposal for a directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways (COM(2004) 139) was checked by the Committee on Transport (expert committee) and the Committee on questions of the European Union (committee responsible), 2. the Proposal for a directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network (COM(2004) 142) was checked by the Committee on Health, the Committee on Internal Affairs, the Committee on Cultural Affairs and the Committee on Transport (expert committees) and the Committee on questions of the European Union (committee responsible), 3. the proposal for a Regulation of the European Parliament and of the Council in International Rail Passengers' Rights and Obligations (COM(2004) 143) was checked by the Committee on Labour and Social Policy, the Committee on Family and Senior Citizen Affairs, the Committee on Legal Affairs and the Committee on Transport (expert committees) and the Committee on questions of the European Union (committee responsible), 4. the proposal for a regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail-services (COM(2004) 144) was checked by the Committee on Legal Affairs and the Committee on Transport (expert committees) and the Committee on questions of the European Union (committee responsible). The expert committees did (do) play only just a before-coordinating role. The Committee on Questions of the European Union coordinates and examines as responsible committee the documents on the basis of

recommendations from the expert committees' votes; this examination is guided primarily by considerations deriving from policy on the European Union and European integration, furthermore the committee also considers whether there is a sufficient legal basis in European law for the draft legislation and especially whether the principles of subsidiarity and proportionality have been respected.

The final recommendations of the committees involved to the Bundesrat plenary were as follows:

- regarding proposal (COM(2004) 139) it was recommended in accordance with §§ 3 and 5 EUZBLG (Act on Cooperation between the Federation and the Federal States in European Union Affairs)* to take knowledge (which means not to formulate a view of it) and
- regarding proposals (COM(2004) 142), (COM(2004) 143) and (COM(2004) 144) it was recommended in accordance with §§ 3 and 5 EUZBLG to formulate a statement. Furthermore regarding proposals (COM(2004) 144), it was recommended to formulate doubts on compatibility with the principles of subsidiarity and proportionality.

When discussing these proposals the Bundesrat did not involve any organisations or associations concerned by the regulation subject. However, the Federal Government did so when developing a final statement for the European Commission.

All proposals could be discussed in the regular meeting of the Bundesrat on March 18th, 2005.

As a result the Bundesrat expressed substantial doubts regarding the principle of subsidiarity and the principle of proportionality concerning the proposal on compensation in cases of non-compliance with contractual quality requirements for rail services (KOM (2004)144) as far as the regulation regulates not only the cross-border rail traffic, but also domestic traffic.

The Bundesrat would have been able to submit its opinion to the European Commission, to the European Parliament and to the Council of Ministers already on March 18th, 2005.

1.9.3 III. Involvement of the Federal Government

The Bundesrat's view regarding proposal COM (2004) 144 was shared by the Federal Government, too. Furthermore the Federal Government expressed doubts concerning the proposal in International Rail Passengers' Rights and Obligations (KOM 2004)143) because the regulation regulates not only liability for loss or damage of goods of transnational circumstances, but also purely domestic traffic. The Federal Government also informed the Bundesrat by submitting written papers about its opinion and doubts concerning the proposal in International Rail Passengers' Rights and Obligations (KOM 2004)143). According to the proposed law the Federal Government will be obliged in future to submit its view in a detailed form (written paper) on a proposal at the beginning of the six-week-period.

1.9.4 Coordination with other institutions

It will be foreseen in future that German Bundestag will receive relevant information concerning the view to be adopted by the Bundesrat beforehand.

Following the decision making within the Bundesrat the coordination with the other national parliaments could have been made via the COSAC and IPEX until April 12th, 2005.

1.9.5 Experiences and specific difficulties

Due to the extremely tight schedule it would be helpful for the parliaments, if the European Commission could make available regularly updated information, e.g. updated schedules. This applies particularly to the parliamentary recesses. So the parliaments could better adjust to the planned delivery appointments. A solution with specific dates of delivery being fixed in advance could be likewise considered.

Regarding the tight time schedule the Bundesrat plans an electronic forwarding of the early warning documents to the members. Therefore, it would be helpful, if the European Commission informs about the intended way to submit the early warning documents, e.g. electronic transmission, type of document.

In this context the language regime would be also of interest. From the Bundesrat's point of view it would be preferred, if the European Commission sent the documents exclusively in the respective national language, thus related to the Bundesrat only in German.

A further question is, whether the European Commission intends to let periods run off also during the vacation period in August.

1.10 GREECE

Hellenic Parliament

1.10.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The Committee for European Affairs.

Was your plenary involved?

No

Were any other administrative services of your parliament involved in the process?

The involvement of our administrative services (Division for European Affairs) was not of an advisory nature.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

We started the procedure after the 1st of March, as it had been agreed, by asking the Ministry of Transportation and Communications, the Organization of Greek Railways and our Representation in the EU to provide memoranda on the proposed directives and regulations. When we gathered all the written evidence, (around the 20th of March) we asked the political groups to appoint rapporteurs and the Chairman convened a meeting of the Committee for European Affairs. Apart from the introductions from the rapporteurs the Committee heard the opinion of Greek MEPs and one special representative of the Standing Committee for Social Affairs (which is responsible for Transportation issues).

Did your government provide any information as part of the scrutiny process?

Yes as mentioned before, very detailed information.

Did your national parliament consult regional parliaments with legislative powers?

There are not regional parliaments in Greece.

Were any other external actors involved in the examination?

No

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Greece has uni-cameral system.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

No decision has been reached yet.

1.10.2 Findings:

Did you find any breach on the subsidiarity principle?

No

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No

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

We would prefer a more extensive justification

Did you encounter any specific difficulties during the examination?

There was a large amount of texts that should have been examined, compared to the six week deadline.

1.11 HUNGARY:

National Assembly

1.11.1 Procedure

According to the pilot project of the COSAC, the Hungarian National Assembly examined the 3rd Railway Package from the point of view of the subsidiarity principle.

The Committee on European Affairs played the main role in the examination of the proposals. The plenary was not involved, because by virtue of the Standing Orders of the National Assembly, the plenary should be involved in the procedure only if there is a need of drawing up a reasoned opinion. Thus if the Committee on European Affairs examines a proposal, and it does not consider that a given proposal infringes the subsidiarity principle, the procedure comes to an end.

The secretariat of the Committee on European Affairs started working in the beginning of March in compliance with the agenda drawn up by the COSAC. The lawyers of the secretariat prepared the analysis of every proposal. This was essentially a professional work, but it was necessary for the political examination of the committee. Furthermore, we should not forget the fact that the railway package is not available in the languages of the ten new EU member states, so these analyses helped basically the MPs. Detailed analysis was prepared about the proposals by the Parliamentary Permanent Office in Brussels, which contributed significantly to the consideration.

At the same time the committee members and the fraction experts also looked into the matter thoroughly. The Committee on European Affairs discussed the railway package on 4 April 2005. After a broad and profound debate, the committee agreed that no breach of the subsidiarity could be determined.

It was nevertheless decided that the opinion of government and of the Committee on Economic Affairs should be asked. The committee invited these bodies to give their position, but these positions will arrive after the 12th of April.

Apart from the above mentioned organs, no other bodies were involved in the process, since there is not any regional parliament in Hungary, and the parliamentary system is unicameral.

As for the external actors, in this pilot project they were not invited in the process. Nevertheless it is imaginable that after the entry into force of the Constitutional Treaty the professional or corporative organisations will be involved, if it will be reasonable regarding the importance or the nature of the case.

From the point of view of the findings, as it is already mentioned above, the committee did not find any breach of the subsidiarity principle, consequently it did not initiate the adoption of a reasoned opinion by the plenary. Thus, it was concluded that the legal drafts in question are in a sufficiently close relationship with Community objectives, especially in transport policy, and the actual proposals provide “added value” to actions limited to national legislation. Doubts were raised regarding the sphere of application in connection to two proposals: (1) the applicability of Community certification to railway staff operating exclusively on national lines; (2) the applicability of Community rules on compensation in exclusively national railway freight services. It was, however, agreed that these concerns do not merit a formal subsidiarity complaint, although they may be raised in the future (e.g. in the ambit of a scrutiny procedure).

The main difficulty during the examination was that there are very few legal criteria for appreciate a text regarding the subsidiarity principle. The elements of the protocol attached to the Treaty of Amsterdam are largely general too. It is also hard to distinguish between the examination of the subsidiarity principle alone and the detailed analysis of the proposals, which is rather the part of the scrutiny process. The line between a subsidiarity and a proportionality

analysis is also hard to draw. Dealing with the lack of a Hungarian-language of the proposals proved to be a significant practical challenge for certain actors.

In connection with the Commission's justification, we have to differentiate between the four proposals. In the two directives, although the justification with regard to the subsidiarity principle was quite short, but together with the other parts of the justification (detailed impact assessment and policy scenarios) the Commission gave satisfactory information.

As to the proposal on International Rail Passengers' Rights and Obligations, the Commission's arguments appeared in a fragmented way and did not form a logical line of thought. Neither the explanatory memorandum, nor the proposal as a whole was fully sufficient in itself to serve as a basis of subsidiarity analysis.

As to the proposal on compensation in rail freight services, the explanatory memorandum did not feature a unified and complete line of argumentation on the subsidiarity principle. However, together with the Impact Assessment Form for SMEs, the proposal as a whole provided the necessary information. A full and separate subsidiarity analysis would have nevertheless been an improvement.

1.12 IRELAND

Houses of the Oireachtas

1.12.1 Background

A number of exchanges have taken place within COSAC and other fora on the question of respect for the principle of subsidiarity when advancing EU legislative proposals. The scrutiny process currently in place within the Houses of the Oireachtas (Parliament) also examines proposals from the perspective of their compatibility with the principle of subsidiarity.

The Third Railway Package follows from earlier measures proposed by the Commission and was initially considered by the scrutiny committee, a sub-committee of the Joint Committee on European Affairs, on 1st July 2004 and referred for further scrutiny to the Joint Committee on Transport.

At the Chairpersons' meeting in Luxembourg on 9th February 2005, it was agreed that a test would take place and that the results of this exercise would be examined during the plenary session of COSAC in May.

The test was seen by the Sub-Committee on European Scrutiny as a useful exercise in its own right with respect to the scrutiny of legislative proposals from the Commission under the current legal and political framework and as a foretaste of how the aspects of the Constitutional Treaty relating to subsidiarity and the national parliaments might operate. The Sub-Committee referred the matter to the Joint Committee on European Affairs for its attention.

The Test

To undertake a subsidiarity test, it was considered essential to first outline the current context in which the application of the subsidiarity principle might be considered to operate. The Parliamentary Legal Adviser provided some guidance on the legal aspects of the principle. In addition, the Department of Transport was requested to provide a note on its understanding of the position of scrutiny in relation to the Package. Finally, the proposed measures were examined in the policy context and with respect to the reasoning put forward by the Commission in its memoranda.

COM (2004) 139

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on developments

The proposal has intrinsic international dimensions and is proportionate, allowing certain exceptions to the general principle of open competition. It was concluded that this proposal does not breach the principle.

COM (2004) 142

Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network.

The movement within the Council on the issue of the certification of drivers operating within the Member States would strongly support the view that there are subsidiarity issues relating to the original draft of the proposal that would need to be conclusively tackled through the legislative process.

COM (2004) 143

Proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers' Rights and Obligations.

It was concluded that the proposal, which deals with international travel only, is consistent with the principle of subsidiarity. This was also the reasoning put forward by the Commission. However, given that the Commission was advancing the proposed measure there would be an expectation that the Commission would give more depth to the argument it presents in the memorandum in this regard.

COM (2004) 144

Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual requirements for rail freight services.

Cross-border services may on occasion be “intertwined” in the EU. This is not the predominate case in relation to a number of Member States, including Ireland. It is this, in particular, that has drawn the Joint Committee on European Affairs to have determined that there are genuine doubts about the conformity of this measure with the principle of subsidiarity.

Conclusion

The Joint Committee on European Affairs has therefore determined that the background reasoning and conclusions advanced by the Commission that the Package is in conformity with the principle of subsidiarity are **less than fully persuasive**.

The course of action that the Joint Committee on European Affairs agreed to advance is the following:

- The Commission, through COSAC, be requested to include more detailed background to their conclusions that a proposal is in conformity with the principles of subsidiarity and proportionality.
- Encouragement be given to the development of a practical and efficient means of communicating between the national parliaments of the EU.
- The Department of Transport be requested to keep the scrutiny committee informed of developments in relation to subsidiarity and this proposal and that related documentation be forwarded to the Joint Committee on Transport to assist it in considering this matter.
- The Secretariat of the Joint Committee on European Affairs to report back to the Joint Committee following the next meeting of COSAC, with a view to the drafting of a possible framework for the operation of the “yellow-card” system under the Constitutional Treaty.

1.13 ITALY

Senat

1.13.1 Procédure:

Quelles Commissions ont été impliquées au processus de contrôle de la subsidiarité du troisième paquet ferroviaire et quel rôle chaque Commission a-t-elle joué?

La seule Commission impliquée a été la Commission des Politiques de l'Union européenne, selon la procédure prévue par le Règlement du Sénat concernant le processus de formation des actes communautaires.

Est-ce que la plénière de votre Parlement a été impliquée au contrôle de la subsidiarité?

Non.

Quels autres services administratifs de votre Parlement ont été impliqués au processus?

Le Bureau des Affaires européennes du Sénat a été le plus concerné.

Pouvez-vous décrire la procédure utilisée pour le contrôle du début à la fin en citant les Commissions saisies, les différents acteurs ainsi que la chronologie de leur saisie?

On n'a pas suivi une procédure particulière, ad hoc, mais on a plutôt utilisé la procédure prévue par le Règlement du Sénat concernant le processus de formation des actes législatifs communautaires. Elle consiste dans un avis motivé au Gouvernement pour lui indiquer les principes et les lignes directrices qui doivent caractériser la politique italienne au sein du Conseil de l'Union. En général, dans cette procédure sont impliquées les Commissions compétentes pour le fonds du projet, auxquelles la Commission des Politiques de l'Union européenne et la Commission des Affaires étrangères rendent des observations. Le Règlement du Sénat permet à la Commission des Politiques de l'Union européenne de rendre directement son avis au Gouvernement lorsque la Commission compétente pour le fonds ne s'exprime pas dans les délais prévus.

Est-ce que le Gouvernement a livré des informations quelconques faisant partie du processus de contrôle de subsidiarité?

Non.

Les Parlements régionaux possédant des pouvoirs législatifs ont-ils été consultés durant le processus de contrôle de subsidiarité?

Non.

Des acteurs externes ont-ils été impliqués au processus de contrôle de subsidiarité?

Non.

En cas de système bicaméral, y a-t-il eu une coordination avec l'autre chambre du Parlement?

Non.

La procédure utilisée ressemble-t-elle à la procédure que votre Parlement utilisera lorsque le Traité constitutionnel entrera en force?

Le Sénat italien n'a pas encore décidé la procédure pour le contrôle de subsidiarité et donc on a utilisé pour l'examen la normale procédure prévue par le Règlement du Sénat concernant le processus de formation des actes communautaires, avec une attention particulière au principe de subsidiarité.

1.13.2 Résultats:

Est-ce que vous avez trouvé un manquement au principe de subsidiarité?

On a constaté que la proposition de règlement sur la qualité des services (COM (2004) 144 déf.) ne semble pas cohérente avec le principe de subsidiarité puisqu'elle ne se limite pas aux transports internationaux de marchandises, mais elle s'applique également aux transports nationaux, matière qui devrait être laissée à la discipline des États membres, en s'agissant d'une matière de compétence partagée.

Est-ce que votre Parlement a adopté un avis motivé pour cause de non-respect du principe de subsidiarité? (Si oui, voulez-vous joindre une copie de l'avis motivé au rapport s.v.p.)

La Commission des Politiques de l'Union européenne a adopté dans la réunion du 11 mai un avis général à la Commission compétente pour le fonds, comprenant une partie dédiée au fonds des propositions et une partie dédiée au principe de subsidiarité.

Est-ce que vous avez trouvé suffisante la note explicative de la Commission quant au principe de subsidiarité?

Nous remarquons que deux seulement des propositions législatives de la Commission (COM (2004) 142 déf. et COM (2004) 144 déf.) comprennent une motivation. Les autres ne prévoient que de notations synthétiques dans le préambule. À ce propos, il faut souligner l'importance que les propositions législatives de la Commission européenne soient munies d'argumentations complètes sur le respect du principe de subsidiarité.

Avez-vous rencontré des difficultés spécifiques durant le processus de contrôle?

On n'a pas rencontré de difficultés spécifiques. Le Sénat n'a pas de procédure spécifique pour le contrôle de subsidiarité. Les textes en question ont été donc examinés par la Commission des Politiques de l'Union européenne selon le système prévu pour le processus de formation des actes communautaires.

1.14 LATVIA:

The Saeima

1.14.1 Procedure

Further to the decision made by the COSAC in Luxembourg on November 22 – 23, 2004, the European Affairs Committee of the Saeima carried out a pilot project on the subsidiarity principle with respect to the Third Railway package.

The mechanism for controlling the subsidiarity principle is not in place yet in the Saeima, partly owing to the still-developing status of the European Constitutional Treaty. Therefore the Third Railway package has been looked at under the general scrutiny procedure currently in force, which means that this legislation has been looked at within the European Affairs Committee, not yet involving the sector committees, as will be the case in future.

The obstacle, however, to properly testing the operation of the subsidiarity mechanism, was a lack of relevant documents in Latvian. Because the Commission adopted the Third Railway Package before 1 May 2004, these documents only exist in those languages that happened to be the official languages of the European Union before the accession of ten new Member States. It was therefore impossible to officially circulate the package to other sector committees and ask for their opinion.

Consequently, only the European Affairs Committee of the Saeima was involved in the discussions of the subsidiarity issue.

The chronology of scrutiny of the Third Railway package was as follows:

First, on March 14, 2005 the Third Railway package was sent to the relevant Ministry, namely, the Ministry for Transportation. This Ministry was asked to give their opinion on the subsidiarity principle. The opinion of the Ministry stated on March 31, 2005 was that the Third Railway package was in conformity with the principle of subsidiarity. According to the opinion, general safety would be improved and strengthened by setting common standards and criteria at EU level. Therefore, objectives of the Third Railway package cannot be better achieved by national means.

Subsequently, from April 1, 2005 until April 8, 2005 the Secretariat of the European Affairs Committee of the Saeima evaluated the Third Railway package. Therefore, the file has been prepared for review by the European Affairs Committee. This file included the following:

- General overview of the Third Railway package;
- Findings of the Ministry of Transportation on the subsidiarity principle;
- Findings of the Secretariat of the European Affairs Committee on the subsidiarity principle;
- Request for the Members of the European Affairs Committee to give their opinion on the subsidiarity principle of the Third Railway package. The deadline was set for April 15, 2005.

Finally, having regard to the opinion of the Ministry of Transportation and the opinions of the Members of the European Affairs Committee of the Saeima, the European Affairs Committee decided that the Third Railway package is in conformity with the principle of subsidiarity.

Yours sincerely,

Oskars Kastēns

Chairman of the European Affairs Committee

1.15 LITHUANIA

The Seimas

1.15.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

Two parliamentary committees were involved: the Committee on European Affairs and the Committee on Economy. The Committee on Economy submitted its expert conclusion to the Committee on European Affairs, which took the final decision.

Was your plenary involved?

No.

Were any other administrative services of your parliament involved in the process?

Yes. The Law Department of the Office of the Seimas submitted an opinion on the compliance of the Commission's proposals with the principle of subsidiarity.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

- March 2005: the pilot project was presented at the meeting of the Committee on European Affairs. Minister of Transport and Communications Mr. Zigmantas Balčytis introduced the proposals of the Third Railway Package. The Committee decided to ask the opinions of the Committee on Economy and of the Government. Two members of the Committee on European Affairs were nominated as reporters.
- 15 March 2005: the Law Department of the Office of the Seimas issued its opinion. No breach of the principle of subsidiarity was found.
- 16 March 2005: the Committee on Economy held a meeting, heard the opinion of the AB "Lietuvos geležinkeliai" (Stock Company Lithuanian Railways) and issued its conclusion. The Committee on Economy found that certain provisions of the Proposal for a Regulation of the European Parliament and of the Council in International Rail Passengers' Rights and Obligations (COM (2004) 143) and the Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail services (COM (2004) 144) possibly breached the principle of subsidiarity. The remaining proposals were found to be in compliance with the principle of subsidiarity.
- 22 March 2005: the European Law Department under the Ministry of Justice submitted its opinion to the Committee on European Affairs. No breach of the principle of subsidiarity was found.
- 24 March 2005: Ministry of Transport and Communications of the Republic of Lithuania submitted its opinion to the Committee on European Affairs. No breach of the principle of subsidiarity was found.
- 1 April 2005: the Committee on European Affairs debated the issue at its meeting. The Committee heard the conclusion of the Committee on Economy and the opinions of the Ministry of Transport and Communications, the European Law Department under the

Ministry of Justice and prominent European law experts. The Committee decided to return to the issue and take its final decision at its 8 April 2005 meeting.

- 8 April 2005: the meeting of the Committee on European Affairs was cancelled due to the funeral of Pope John Paul II.
- 13 April 2005: the Committee on European Affairs adopted the final conclusion finding no breach of the principle of subsidiarity.
-

NB: if a breach were found the issue would be debated and final decision would be taken by the plenary following the procedure under Article 180⁶ Parts 5, 6, 7, 8 of the Statute of the Seimas of the Republic of Lithuania.

Did your government provide any information as part of the scrutiny process?

Yes. The Ministry of Transport and Communications of the Republic of Lithuania was entrusted with drafting the Governments' opinion. The Committee on European Affairs also received the opinion of the European Law Department under the Ministry of Justice.

Did your national parliament consult regional parliaments with legislative powers?

No.

Were any other external actors involved in the examination?

Yes. The Committee on Economy heard the opinion of the AB "*Lietuvos geležinkeliai*" (Stock Company The Lithuanian Railways). The Committee on European Affairs also heard prominent Lithuanian lawyers, experts on European Law who presented an overview of the Protocol on the Application of the Principles of Subsidiarity and Proportionality of the Treaty Establishing a Constitution for Europe.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No. The Seimas of the Republic of Lithuania is a unicameral parliament.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

On 13 November 2004 the Seimas passed amendments to the Statute of the Seimas of the Republic of Lithuania (i.e. Rules of Procedure) setting forth a procedure for the examination of the proposals to adopt EU legal acts with regard to their compliance with the principle of subsidiarity. The amendments are already in force and they are in full conformity with the provisions governing the application of the principle of subsidiarity under the Treaty Establishing a Constitution for Europe.

1.15.2 Findings:

Did you find any breach on the subsidiarity principle?

No.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

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

Not fully. The Commission's proposals were released in March 2004 before the ten new Member States joined the European Union. The Extended Impact Assessment, therefore, related only to the EU-15 and did not take into account certain specific aspects of the new Member States, e.g. lack of interconnection with the current EU railway network.

Did you encounter any specific difficulties during the examination?

Yes. The main difficulty during the examination was lack of the translation into the Lithuanian language of all the documents including Extended Impact Assessment and the Commission Communication on Further integration of the European rail System: third railway package.

1.16 LUXEMBOURG:

Chambre des Deputes

1.16.1 Procédure

Le projet-pilote sur le contrôle du principe de subsidiarité par les parlements nationaux suite aux décisions de la XXXIIe COSAC porte sur le troisième paquet ferroviaire, se composant de quatre initiatives législatives, à savoir:

- la Proposition de directive du 3 mars 2004 modifiant la directive 91/440/CEE du Conseil relative au développement de chemins de fer communautaires (COM (2004) 139 final),
- la Proposition de directive du 3 mars 2004 relative à la certification du personnel de bord assurant la conduite de locomotives et de trains sur le réseau ferroviaire de la Communauté (COM (2004) 142 final),
- la Proposition de règlement du 3 mars 2004 sur les droits et obligations des voyageurs ferroviaires internationaux (COM (2004) 143 final),
- la Proposition de règlement du 3 mars 2004 concernant les compensations en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaire (COM (2004) 144).

Le projet-pilote a été présenté au cours d'une réunion jointe de la Commission des Affaires étrangères et européennes, de la Défense, de la Coopération et de l'Immigration et de la Commission des Transports du 21 février 2005, convoquées sur initiative du Président de la Commission des Affaires étrangères et européennes, de la Défense, de la Coopération et de l'Immigration. Au cours de cette réunion il a été décidé que les travaux se poursuivront au sein de la Commission des Transports.

La Commission des Transports a organisé, le 15 mars 2005, des entrevues consécutives d'une heure chacune avec le Ministère des Transports, la direction des CFL et les syndicats du secteur du transport ferroviaire (FNCTTFEL-Landesverband et FCPT-Syprolux). Elle a tiré ses conclusions lors d'une réunion qui a eu lieu le 22 mars 2005. Le présent avis a été adopté le 14 avril 2005 par la Commission des Transports et discuté en séance plénière en date du 26 avril 2005.

Ont été impliqués au processus de ce projet-pilote les services administratifs suivants :

Service des Relations Internationales, Service des Commissions, Service Gestion des Connaissances et Secrétariat des Séances Plénières. S'agissant d'une initiative législative réelle dont la procédure est déjà relativement avancée, les documents en question ont pu être repérés sur le site Internet de l'Union européenne. Les documents étaient aussi accessibles sous la nouvelle rubrique « A l'actualité » sur le site web de la COSAC.

Une note résumant les quatre propositions de directive respectivement de règlement a été mise à disposition des membres de la Commission des Transports par le ministère des Transports qui a également fourni des explications afférentes.

Contrairement au cas réel, la commission ne disposait pas de la fiche sur le principe de subsidiarité que la Commission européenne devra joindre à toute proposition législative dès l'entrée en vigueur du traité établissant une Constitution pour l'Europe. La procédure utilisée

ressemble, en grandes lignes, à la procédure que la Chambre des Députés utilisera lorsque le Traité constitutionnel entrera en force.

1.16.2 Avis sur le respect du principe de subsidiarité et de proportionnalité

1. Proposition de directive du 3 mars 2004 modifiant la directive 91/440/CEE du Conseil relative au développement de chemins de fer communautaires (COM (2004) 139 final)

Le point (2) de l'article premier de la proposition de directive introduit à la directive 91/440/CEE la définition suivante de « service international de transport de passagers » : « *service de transport de passagers dans le cadre duquel le train franchit au moins une fois la frontière d'un Etat membre ; le train peut être assemblé et/ou divisé, et les différentes parties le constituant peuvent avoir des provenances et des destinations différentes, à condition que toutes les voitures franchissent au moins une frontière* ». Suivant cette définition, presque l'entièreté du réseau ferroviaire luxembourgeois serait à considérer comme « service international de transport de passagers ». En effet, le réseau ferroviaire luxembourgeois a la particularité de relier la capitale luxembourgeoise aux villes des régions frontalières belges, françaises et allemandes Arlon (B), Athus (B), Gouvy (B), Thionville (F) et Trèves (D), et presque tous les trains du transport de voyageurs franchissent une frontière.

Le point (7) de l'article premier de la proposition ajoute à l'article 10 de la directive 91/440/CEE un paragraphe 3 ter disposant que « *la limitation du droit d'accès défini au paragraphe 3bis sur les relations origine-destination qui font l'objet d'un contrat de service public conforme à la législation communautaire en vigueur (...) ne peut avoir pour effet de restreindre le droit de prendre et de laisser des passagers entre deux gares situées sur le trajet d'un service international, y compris entre deux gares situées dans un même Etat membre, que dans les cas où cela s'avère strictement nécessaire pour le maintien de l'équilibre économique du service défini dans un contrat de service public et après avis favorable de l'Organisme de contrôle visé à l'article 30 de la Directive 2001/14/CE* ». Par cette disposition, introduisant le droit de cabotage, presque la totalité du réseau ferroviaire du Grand-Duché de Luxembourg sera soumise au libre accès.

Contrairement à d'autres Etats membres, où les services de transports internationaux de voyageurs par train ne constituent qu'une part minime des transports ferroviaires de voyageurs, le réseau ferroviaire du Grand-Duché se trouverait donc, au vu de l'importance du transport régional transfrontalier, confronté à partir du 1^{er} janvier 2010 dans son entièreté aux répercussions de cette proposition de directive.

La Chambre des Députés est d'avis que cette situation, qui est sans nul doute à qualifier d'unique au sein de l'Union européenne, peut être susceptible d'accentuer le déséquilibre économique des services de transport de passagers par rail opérés sur la base d'un contrat de service public qui sont généralement des services régionaux effectuant des arrêts fréquents et qui parcourent un trajet court ou de moyenne distance. Partant la Chambre des Députés met-elle en doute que les charges financière et administrative incombant à l'Etat luxembourgeois en vertu de ce projet d'acte législatif européen soient les moins élevées possibles et à la mesure de l'objectif à atteindre. Or, ces conditions constituent en vertu de l'article 5 du protocole sur l'application des principes de subsidiarité et de proportionnalité, annexé au traité établissant une Constitution pour l'Europe, des éléments circonstanciés permettant d'apprécier le respect des principes de subsidiarité sinon de proportionnalité.

2. Proposition de directive du 3 mars 2004 relative à la certification du personnel de bord assurant la conduite de locomotives et de trains sur le réseau ferroviaire de la Communauté (COM (2004) 142 final)

La Chambre des Députés se rallie à l'argumentation développée dans le chapitre « 9. Subsidiarité » (p. 21) de la proposition de directive. Elle est d'avis que l'harmonisation de la

certification du personnel de bord assurant la conduite de locomotives et de trains est importante pour assurer la sécurité des trains sur le réseau ferroviaire de la Communauté et, partant, devrait être une condition préliminaire à la libéralisation des chemins de fer.

3. Proposition de règlement du 3 mars 2004 sur les droits et obligations des voyageurs ferroviaires internationaux (COM (2004) 143 final)

La Chambre des Députés peut, en principe, donner son accord sur l'avis de la Commission européenne que les objectifs à viser peuvent être mieux réalisés au niveau communautaire (cf. le point (19), p. 14 de la proposition de règlement). Toutefois, au vu de la dimension internationale importante de la question, elle se demande si la Convention relative aux transports internationaux ferroviaires du 9 mai 1980 (COTIF) signée par 42 pays (dont les 25 Etats membres de l'Union européenne) et dont l'entrée en vigueur est imminente, ne prime sur une éventuelle législation communautaire.

En outre, la Chambre des Députés est d'avis que le principe énoncé dans le point (13), p. 13 de la proposition de règlement excède ce qui est nécessaire pour atteindre les objectifs visés. Le principe selon lequel le passager ait la faculté de déposer une réclamation à l'encontre d'une quelconque des entreprises ferroviaires ayant pris part au transport limitera sensiblement l'intérêt économique à participer des sociétés n'assurant qu'une courte distance.

4. Proposition de règlement du 3 mars 2004 concernant les compensations en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaire (COM (2004) 144)

La Chambre des Députés est convaincue des effets positifs qui peuvent résulter de la fixation de critères de qualité communs dans le domaine du fret ferroviaire. Elle se demande pourtant si cet objectif ne sera pas déjà atteint avec l'entrée en vigueur de la Convention relative aux transports internationaux ferroviaires du 9 mai 1980 (COTIF/CIV-CIM) signée par 42 pays (dont les 25 Etats membres de l'Union européenne).

La proposition de règlement laisse aux parties contractantes (une entreprise ferroviaire et un client de fret ferroviaire) la liberté de fixer, dans un contrat de transport, les exigences de qualité applicables (article 3 du projet de proposition de règlement).

S'agissant d'introduire des règles communes valables pour toutes les entreprises ferroviaires établies sur le territoire de la Communauté, la Chambre des Députés peut se rallier à l'argumentation concernant le principe de subsidiarité développé sous le point (9), p. 7, du projet de proposition de règlement. En ce qui concerne les actions contre le gestionnaire de l'infrastructure (article 18), la Chambre des Députés est pourtant d'avis que la proposition de règlement excède ce qui est nécessaire pour atteindre les objectifs visés (principe de proportionnalité) car une telle responsabilisation n'existe pas pour les transports routiers.

1.17 NETHERLANDS:

House of Representatives and Senate

1.17.1 Procedures

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

Three committees were involved: the joint committee on the subsidiarity check and the committees on Transport of both Houses of Parliament.

Their tasks were:

- Joint committee: monitoring the procedure; drawing up a preliminary advice on the proposals for the responsible committees, mainly on subsidiarity; combining the advises of the committees on Transport; sending a reasoned opinion to the European Parliament, the Council and the Commission
- (sector) committee responsible in the field:
- assessing the proposals on their specific merits, and drawing up an advice for the joint committee

Was your plenary involved?

In the foreseen Dutch procedure the plenary of both Houses separate vote on the final advice, after which the reasoned opinion will be sent to the above mentioned European institutions. However, since we were practising an experiment, this was not done.

Were any other administrative services of your parliament involved in the process?

The staffs of the joint committee, the committees on European Affairs of both Houses and the committees on Transport of both Houses.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

- March 1: start of pilot
- March 4: pre-advice drafted by the staff of the joint committee and sent to the members of the joint committee. The Pre-advice has a technical character and deals with the questions of attribution of competences and subsidiarity in a strict sense
- March 8: the joint committee endorses the pre-advice
- March 15: Advice of the staff of the committee on Transport of the House of Representatives is put forward to the latter committee
- March 18: Advice of the staff of the European Affairs committee of the Senate is put forward to the committee on Transport of the Senate
- March 23: The committee on Transport of the House of Representatives discusses the advice of its staff and the 3rd Railway Package as a whole in a closed session and decides that the issue should be dealt with in an open session.

- March 24: The committee on Transport of the Senate draws up its advice and sends it to the joint committee and to the committee on Transport of the House of Representatives
- March 31: The committee on Transport of the House of Representatives holds its open session and sends the advice to the joint committee and to the committee on Transport of the House of Representatives
- April 1: Staff of the joint committee draws up a paper holding the various positions of the committees on Transport of both Houses
- April 5: The joint committee decides to hold a meeting with both sectoral committees, in order to discuss the different opinions of both sectoral committees
- April 7: Meeting of the joint committee with the sectoral committees of both Houses takes place
- April 11: The joint committee decides on its advice to the plenary of both Houses: end of pilot

Did your government provide any information as part of the scrutiny process?

No

Did your national parliament consult regional parliaments with legislative powers?

No, The Netherlands do not have regional parliaments with legislative powers

Were any other external actors involved in the examination?

Yes, the involved civil society organisations, particularly companies involved, were signalled on the experiment. Two of them have sent their opinion on the 3rd Railway Package to the joint committee. These opinions have been brought into the procedure.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Yes, in the beginning of the process, by drawing up a preliminary advice to the committees on Transport of both Houses, the committee on transport that held deliberations earlier sent their advice (for information) to the other transport committee and after these, the committees have sent their advises to the joint committee. Coördination also took place at the end of the process of conciliation.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entry into force?

Yes, but, as already stated under question 2, both plenaries were not involved.

1.17.2 Findings

Did you find any breach on the subsidiarity principle?

Yes, it concerns the proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services (COM(2004) 144)

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

Yes, the joint committee has adopted an opinion for non-compliance with arguments why the proposal does not comply. These arguments are: self-regulation (by the rail companies or private law arrangement) is preferred over European regulation and there is a risk of deterioration of the competitiveness of transportation of goods by rail in comparison to transportation of goods over sea and/or land. This risk is especially present in relation to the national policy of giving preference to transport of passengers

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

No, the Commission's justification with regard to the subsidiarity principle was not satisfactory because the States-General believes the proposals should be realised on a national level, while the Commission proposes European legislation.

Did you encounter any specific difficulties during the examination?

Difficulties chiefly resulted from the fact that a new procedure was tested to which both Chambers have to get used to. The tested procedure was already presented last year and during the pilot it has proved to work in gross lines. The pilot was evaluated and has led to adjustments, holding refinements of the original proposed national procedure.

1.18 POLAND

Sejm

1.18.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The European Union Affairs Committee was the only committee in the Sejm of the Republic of Poland which examined the 3rd Railway Package.

See item 4.

Was your plenary involved?

No, the plenary was not involved in the examining the 3rd Railway Package. The European Union Affairs Committee of the Sejm gives the opinion on behalf of the entire chamber.

Were any other administrative services of your parliament involved in the process?

Yes, experts of the Research Bureau of the Chancellery of the Sejm have prepared legal opinions to each draft.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

Before March 1, 2005 the bureau of the Committee named two co-rapporteurs, one representing the coalition party and one from the opposition, who were asked to give their opinions and present them to the Committee. On the day when the test started, the Chairman of the Committee informed members of the European Union Affairs Committee about the experiment, its aim and rules. Draft legislative acts of the 3rd Railway Package were sent to be examined by the experts of the Research Bureau of the Chancellery of the Sejm, as well as to the Committee's independent experts (newly established team of professors of law, who in the future will assist the Committee with a controversial cases). The experts were requested to prepare their opinions in writing before the Committee meeting on the issue.

The Committee was to debate the issue on March 23, 2005 in the presence of the Marshall of the Sejm. Unfortunately, since the Marshall had to change the date of the Committee meeting, it was postponed to April 6, 2005. Due to the death and funeral of the Pope John Paul II all parliamentary activities were cancelled during the week of April 4-8, 2005, so the Committee debated the subsidiarity principle at its first meeting after the week of bereavement, on April 13, 2005.

Finally, the package was examined on April 13, 2005. The Marshall of the Sejm did not participate in the meeting.

Having read the opinions of legal experts and heard the presentation of the opinion of two co-rapporteurs, the Committee acknowledged that without an official translation of the drafts legislative acts and without a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality prepared by the European Commission, required by the art.5 of the Protocol attached to the Constitutional Treaty, three documents:

- the proposal of the legislative act “Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community’s railways COM (2004) 139 final)”
- the proposal of the legislative act “Proposal for a Regulation of the European Parliament and of the Council on International Rail Passangers’ Rights and Obligations (COM (2004) 143 final)”
- the proposal of the legislative act “Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services (COM (2004) 144)”

do not comply with the principle of subsidiarity.

At the same time, though the Committee did not receive the proposal of the legislative act in the Polish version, the Committee acknowledged that the proposal of the legislative act “Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network (COM (2004) 142) does comply with the principle of subsidiarity.

Did your government provide any information as part of the scrutiny process?

No, the Government was not involved in the experiment as the Committee believed that the monitoring of the principle of subsidiarity does not belong to the competence of the government.

Did your national parliament consult regional parliaments with legislative powers?

No, we do not have such regional parliaments.

Were any other external actors involved in the examination?

The Committee established a team of independent experts, professors of law, who in the future will assist the Committee with controversial cases. They were asked to prepare their opinions.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

No, the EU Affairs Committees of the Sejm and of the Senate examined the package separately.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty’s entering into force?

Yes, although for the time being, the parliament has not established the procedure to examine the subsidiarity principle as foreseen in Protocol of application of the principle of subsidiarity and proportionality. We are aware that Standing Orders of the Sejm will require to be changed in order to establish the procedure.

1.18.2 Findings:

Did you find any breach on the subsidiarity principle?

The European Union Affairs Committee acknowledged that:

- lack of the the proposal of the legislative act in the Polish version,
- lack of the The European Commission's detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality, required by the art.5 of the Protocol attached to the Constitutional Treaty

are in contradiction with the principle of subsidiarity and proportionality.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

Yes, the Committee prepared 4 opinions, one to each draft legislative act.

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

See item 10.

Did you encounter any specific difficulties during the examination?

No.

Senate

1.18.3 Introduction

At the XXXIInd meeting in the Hague, in October 2004, the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) agreed to conduct a “pilot project”, on the example of the Third Railway Package, in order to assess, how the early warning mechanism provided for in the *Protocol on the application of the principles of subsidiarity and proportionality*, annexed to the Constitutional Treaty might work in practice.

The Third Railway Package was adopted by the European Commission on 3 March 2004. The package is currently being examined by the European Parliament and the Council.

The COSAC has decided that the Third Railway Package should be examined in such a way, as if the *Protocol on the application of the principles of subsidiarity and proportionality* annexed to the Constitutional Treaty had entered into force.

According to the Protocol, national parliaments have six weeks for the review of EU legislative acts from the date of their submission to them by the Commission, and therefore the COSAC decided that the pilot project should be carried out over the period from 1 March to 12 April 2005.

The present Report constitutes an implementation of the agreement adopted by the COSAC chairpersons at their meeting on 9 February 2005 in Luxembourg, obliging the EU national parliaments to draw up short reports, summarising how they had set about the pilot project and any lessons they learnt.

The structure of the Report takes into account the recommendations of the COSAC Presidency, submitted to the EU national parliaments in the Aide-mémoire of 22 February 2005, prepared by the Secretariat of COSAC.

1.18.4 Procedures

Which committees were involved in examining the Third Railway Package and what role did each committee play?

The process of examining the Third Railway Package in the Polish Senate involved two committees: the European Union Affairs Committee and the State Treasury and Infrastructure Committee.

The European Union Affairs Committee, in the framework of the pilot project, initiated in the Polish Senate an examination of the EU draft legal acts constituting the Third Railway Package in terms of their compliance with the principle of subsidiarity; it also adopted opinions concerning the inconsistency with the above indicated principle of two of the reviewed proposals for regulations.¹

The State Treasury and Infrastructure Committee was asked by the European Union Affairs Committee to express opinions on the EU draft legal acts forming the Third Railway Package².

Was your plenary involved?

The Third Railway Package did not constitute the object of interest for the plenary of the Polish Senate.

¹ Pursuant to Art. 67b of the Rules of Procedure of the Polish Senate: “The European Union Affairs Committee may endorse a position on a draft law of the European Union.”

² Pursuant to Art. 67c of the Rules of Procedure of the Polish Senate: “The European Union Affairs Committee may turn to another committee for an opinion on the matter deliberated at its sitting.”

Were any other administrative services of your parliament involved in the process?

Civil servants of the Chancellery of the Senate of the Republic of Poland from the Senate Proceedings Office, the Legislative Office and the Information and Documentation Office took part in the process of examination of the Third Railway Package.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

At the sitting on **18 March 2005** the European Union Affairs Committee discussed the procedures of implementation of the pilot project - agreed at the forum of COSAC. During the meeting, the Committee:

- decided to hold a joint sitting with the State Treasury and Infrastructure Committee of the Senate devoted to the pilot project;
- decided to possibly hold another sitting of the European Union Affairs Committee, in the case of tabling a motion to recognize any draft EU legal act in the Third Railway Package discrepant with the subsidiarity principle; at the same sitting such a motion would be the subject to a formal vote;
- nominated the senator rapporteur;
- initiated the process of selection of experts and commissioning expert studies concerning the conformity of the Third Railway Package with the principle of subsidiarity.

At a joint sitting on **12 April 2005** of the European Union Affairs Committee and the State Treasury and Infrastructure Committee draft EU legal acts pertaining to the Third Railway Package were assessed in terms of their compliance with the subsidiarity principle; in the course of the meeting hearings were conducted of the opinions of representatives of the government, of experts and of a representative of the joint stock company Polish State Railways (PKP); in the conclusions of the meeting two draft regulations from the Package - COM (2004) 143 and COM (2004) 144, were found to be inconsistent with the principle of subsidiarity.

At a separate meeting on **12 April 2005** of the European Union Affairs Committee the motions concerning the establishment of nonconformity of the two above indicated regulations from the Package with the subsidiarity principle were voted on; both motions were adopted with one abstaining vote in each case.

Did your government provide any information as part of the scrutiny process?

The Government did not prepare any information concerning the compliance of draft legal acts of the European Union contained in the Third Railway Package with the subsidiarity principle.

Did your national parliament consult regional parliaments with legislative powers?

The voivodeship diets existing in Poland do not have the nature of “regional parliaments”, so they were not consulted by the Polish Senate within the framework of the pilot project of scrutinising the Third Railway Package in terms of its compliance with the subsidiarity principle.

Were any other external actors involved in the examination?

Yes. In the joint meeting on **12 April 2005** of the European Union Affairs Committee and the State Treasury and Infrastructure Committee the following actors took part: representatives of the government, experts and a representative of the joint stock company Polish State Railways (PKP). Several expert studies in writing were also received.

In case of a bicameral system, did you co-ordinate your examination with the other parliamentary chamber?

The Sejm and Senate of the Republic of Poland did not cooperate with respect to the pilot project scrutinizing the compliance of the Third Railway Package with the subsidiarity principle.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

It is still too early to answer this question at the present time.

1.18.5 Findings

Did you find any breach on the subsidiarity principle?

The European Union Affairs Committee of the Senate of the Republic of Poland found that two regulations in the Third Railway Package - COM (2004) 143 and COM (2004) 144, are non-compliant with the principle of subsidiarity.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat).

The opinions on the non-compliance of the two above indicated draft regulations of the Third Railway Package - COM (2004) 143 and COM (2004) 144, with the principle of subsidiarity are enclosed as attachments to the present document.

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

The European Union Affairs Committee of the Polish Senate found that the European Commission's justifications with regard to the subsidiarity principle concerning the two above indicated regulations in the Third Railway Pact - COM (2004) 143 and COM (2004) 144, were unsatisfactory.

Did you encounter any specific difficulties during the examination?

We regard as a problem the lack of an official, authoritative translation into the Polish language by the European Commission of the draft legal acts of the Third Railway Package.

Drafted by: St. Puzyna

Approved by:

/ - /

Zygmunt Cybulski

Chairman of the Committee

1.19 SLOVAKIA

The National Council

1.19.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The Committee on European Affairs – asked for opinion the specialised committee and afterwards discussed its report

The Committee on Economy, Privatisation and Undertaking – in the role of specialised committee expressed its opinion.

Was your plenary involved?

No

Were any other administrative services of your parliament involved in the process?

Department for European Affairs and Legislative Department.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

- 7 March 2005 -The Committee on European Affairs decided to participate in the pilot project and discussed three possible options: the scrutiny will be held only in this committee itself, the committee will ask the specialised committee for its opinion or the package will also be scrutinised in the plenary. It has opted for the second alternative and adopted a resolution by which it asked for opinion the Committee on Economy, Privatisation and Undertaking. It has also asked the Ministry of Transport, Posts and Telecommunications to forward its opinion on the compliance with the principle of subsidiarity of the 3rd Railway Package.
- The Department for European Affairs and the Legislative Department of the Chancellery of the National Council delivered their opinion according to which the principle of subsidiarity was not breached.
- 21 March 2005 - the Ministry of Transport, Posts and Telecommunications sent its opinion, according to which the principle of subsidiarity was not breached in the 3rd Railway Package.
- 21 March 2005 - the Committee on Economy, Privatisation and Undertaking discussed the 3rd Railway Package and adopted a resolution, according to which it did not find any breach on the principle of subsidiarity, therefore it is not necessary to adopt a reasoned opinion.
- 11 March 2005 - The Committee on European Affairs discussed the 3rd Railway Package and stated in its resolution - in line with the findings of the Committee on Economy, Privatisation and Undertaking and the Ministry of Transport, Posts and Telecommunications - that there was not any breach on the principle of subsidiarity.

Did your government provide any information as part of the scrutiny process?

Yes (see above).

Did your national parliament consult regional parliaments with legislative powers?

No, in Slovakia there are no regional parliaments.

Were any other external actors involved in the examination?

No.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Not relevant (unicameral system).

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Not yet decided.

1.19.2 Findings:

Did you find any breach on the subsidiarity principle?

No.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

No.

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

COM (2004) 139 - no

COM (2004) 142 - yes

COM (2004) 143 - no

COM (2004) 144 - no

Did you encounter any specific difficulties during the examination?

Yes:

- no official translation of the proposals into the Slovak language;
- absence of Commission's justification of the compliance with the principle of subsidiarity which would regard all proposals in their mutual context;
- absence of a common form of the Commission's justification of the compliance with the principle of subsidiarity, which would enable us to evaluate the legislative proposal from the point of view of its compliance with the principle of subsidiarity more

effectively and which would introduce more clarity, exactness and complexity to such justification;

- not enough time (due to the Easter holidays) and lack of specialised experts in EU law in order to prepare detailed expert opinions.

1.20 SLOVENIA

National Assembly

Following the decision of Luxembourg COSAC, held at the end of November last year the Committee on European affairs of the National Assembly of the Republic of Slovenia has carried out a pilot project on the subsidiarity principle. The object of examination has been decided to be the Third Railway Package.

Since the Constitutional Treaty is still in ratification process and thus not yet in force, the Committee on EU affairs has decided to examine the pilot project in a manner, similar to scrutiny of national Government in EU affairs, provided in the Rules of the procedure of the National Assembly.

Regarding the content of the pilot project, the Chairman of the committee has decided to forward it to the Committee on transport, which examined it as a sector committee. In order to provide a broad as well as substantial discussion and examination, the Chairman has forwarded the 3RP also to:

Slovenian delegation to the Committee of the Regions, institution traditionally focused on the principle of subsidiarity

National Council, which can, in accordance with the constitutional regulation give opinion to any issue tabled in the National Assembly

Government of the Republic of Slovenia; even though under the present legal system the Government is not obliged to enclose the subsidiarity statement on EU legislative proposals, we deemed it necessary to include the government opinion.

The big handicap for 9 member states was, however, translation of the document. Committee on EU affairs, fluctuating whether to participate in the project or not, has decided to exceptionally ensure the Slovenian translation of the Third Railway Package.

In the 9. extraordinary meeting of the Committee on EU affairs on 15.04., the Chairman to the *Committee on transport* presented the conclusion of the committee from 13.04. which stated that NO breach of subsidiarity principle has been found in examining the Third railway package.

Representative of *National Council of the Republic of Slovenia* has presented a similar conclusion, adopted at session on 7.04. adding that entry into force of Constitutional Treaty and related Protocols would ease the subsidiarity scrutiny procedure.

The *Ministry on Transport*, representing the Government of the Republic of Slovenia, found no breach of subsidiarity principle in the examined pilot project.

During the debate the two aspects of the subsidiarity scrutiny mechanism have been exposed. On one hand the political dimension, where the National Parliaments are involved and on the other hand the legal dimension, where Member States (Governments) and, provided in the Constitutional Treaty, Committee of the Regions participate.

Having regard to the opinion of the Ministry on Transport and the opinions of sector Committee on Transport and National Council the Committee on EU Affairs concluded that the Third Railway package is in conformity with the principle of subsidiarity.

1.21 SWEDEN

Riksdagen

1.21.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The Committee on Transport and Communication, the Committee on Civil Law (proposals COM (2004)143 and 144) and the Committee on the Constitution. The sectoral committees (Transport and Civil Law) examined the proposals in their capacity as primarily responsible for the subject matters included in the proposals. The Committee on the Constitution made an overall assessment.

Both sectoral committees had also previously, before the pilot project was announced, examined the relevant COM-documents and explanatory memoranda as a part of the obligation of committees to monitor activities at the EU in the subject area set out for their respective committee.

Was your plenary involved?

No

Were any other administrative services of your parliament involved in the process?

The Secretariat of the Chamber. Furthermore, it should be noticed that for the purpose of the exercise, a working group was set up with civil servants from the above mentioned committees as well as from the Committee on EU Affairs. The latter committee has examined the Third Railway Package when the package has been on the agenda for the Council. Also the Secretariat of the Chamber was represented in the working group and the permanent representative of the Swedish Parliament to the EU institutions participated.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

- The legislative proposals were received by the Secretariat of the Chamber (fictitious time of arrival 21 March, also used as starting point for the 6 weeks period in the Swedish Parliament). The Secretariat distributed the proposals to the relevant sectoral committees.
- The Committee on Transport and Communication and the Committee on Civil Law scrutinised the proposals. To get more information the two committees together with the Committee on the Constitution held a joint seminar 23 March. Representatives from the relevant ministries, government agencies, a trade union as well as organisations with a particular interest in this field, were invited to give their views on the subject.
- The Committee on Transport and Communication found that the proposals to some extent did not comply with the subsidiarity principle and decided at its meeting 5 April to submit an opinion to the Committee on the Constitution. The Committee on Civil Law on the contrary found regarding the part of the package this committee examined that the proposals did comply with the subsidiarity principle. The Committee decided at its meeting 5 April not to submit an opinion to the Committee on the Constitution. See also below under 10.

- The Committee on the Constitution (the co-ordinating body in the Riksdag) made an overall assessment and found that the subsidiarity principle partly had not been followed. The Committee decided at its meeting 28 April to refer the matter to the Chamber. See also below under 10.
- (It would then have been a matter for the Chamber to take the formal decision on whether to submit a reasoned opinion to the Commission or not. This part of the proposed regulation was not applied in the experiment, though.)

Did your government provide any information as part of the scrutiny process?

The government submitted explanatory memoranda on COM (2004)139, 142, 143 and 144). However, this had been done before the project started. Government staff participated and answered questions from Committee members at the seminar mentioned above under 4.II.

Did your national parliament consult regional parliaments with legislative powers?

(not applicable)

-

Were any other external actors involved in the examination?

Yes. External actors participated in the seminar 23 March, see above under 4.II.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

(not applicable)

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

Yes, with a few exceptions: the Chamber was not involved. Furthermore, the proposed procedure according to which an individual MP may ask the co-ordinating body (the Committee on the Constitution) to look into a specific legislative proposal was not applied.

The proposal will be prepared this autumn. A formal decision by the parliament is scheduled for December -05.

1.21.2 Findings:

Did you find any breach on the subsidiarity principle?

Yes, in the case of the certification of train crews operating locomotives and trains on the Community's rail network (COM (2004)142), see enclosed opinions.

The Committee on Transport and Communication examined the complete package and found that the proposals partly (COM (2004)142 partly and 144) did not comply with the principle of subsidiarity. Regarding COM 142 (certification of train crews) [the committee argued that it was not necessary with a regulation at the EU level for crew operating exclusively domestic trains.](#) For the proposal in COM 144 (compensation for rail freight services) the committee found that there might be a risk that the purpose with the railway package, to increase competition, could be jeopardized if the proposal leads to higher costs in this sector.

It could also be mentioned that the Committee on Transport questioned some aspects of the proposals regarding their compliance with the principle on proportionality, even though this was not a part of the subsidiarity check.

The Committee on Civil Law examined COM 143 and 144 from this committees' perspective. The Committee, as distinguished from the Committee on Transport, did not find any breach on the subsidiarity principle regarding COM 144. Both committees arrived at the same conclusion regarding COM 143 (passengers' rights and obligations), though. However, when examining the proposals also the Committee on Civil Law found that there might be a breach on the principle on proportionality. Therefore the Committee declared its intention to bring this to the attention of the government as a part of the committees' general EU scrutiny.

The Committee on the Constitution shared the Committee on Transport's view that COM 142 partly violated the subsidiarity principle and for the same reason. The Committee on the Constitution also noticed that the already existing Swedish regulation comprised conditions proposed by the Commission. The Committee did not comment the other proposals in the package with reference to the subsidiarity principle.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

Yes (or more correct, the co-ordinating body proposed the Riksdag to submit a reasoned opinion but an opinion was never adopted formally since this is a matter for the Chamber). Opinion enclosed

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

No. It was generally agreed that the Commission had not analysed the proposals sufficiently with regard to the principle of subsidiarity. The need for a regulation on EU level was not clearly argued either. In particular the presentation of these aspects was not clear enough.

Did you encounter any specific difficulties during the examination?

- The difficulty to define and separate the scrutiny of subsidiarity from the examination in substance of the proposals was significant. What is subsidiarity, what criterions to use, relevant aspects....? More discussions on this subject and on how to carry out the examination are needed.
- Time! 6 weeks is a short period. Given the already heavy workload it was difficult to find time to examine the proposals properly and for internal as well as external co-ordination. A particular problem could be foreseen when a parliament is not in session, for example during summer recess. The limited time makes it necessary to start following EU matters at an early stage. For instance by using the NP-representatives in Brussels, examining work programmes i.e.
- The lack of proper analysis and argumentation by the Commission with regard to the subsidiarity principle was another difficulty. This was argued both by the Committee on Transport and by the Committee on the Constitution in their respective opinions. If presented in such a way as foreseen in the new Treaty, the Commission's justification would probably have made the work easier and less time consuming for the parliaments.
- The third railway package, comprising several different proposals was maybe a too complex example to start with.
- Several members wanted more information on what other parliaments did. In the future IPEX will facilitate the exchange of information, but also personal contacts/networks will be necessary.
- General comment: both MPs and officials participating in the pilot project found it very valuable. For the committees it was a good exercise to examine a proposal closely, already at an early stage in the EU decision making process. The findings and questions raised will be most useful in the continuing work to develop, not only the subsidiarity check, but also the EU scrutiny in general.

1.22 UNITED KINGDOM

House of Commons

1.22.1 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

The European Scrutiny Committee only.

Was your plenary involved?

No.

Were any other administrative services of your parliament involved in the process?

No.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

The documents were examined in detail several times in 2004. For the subsidiarity experiment, the documents were re-examined by the Committee's staff, and a draft reasoned opinion concerning one aspect of the proposals was put to the Committee on 2 March. It was agreed to consult the European affairs committees in the Scottish Parliament and the National Assembly for Wales and consider the reasoned opinion again on 15 March. On 15 March the Committee agreed to send the reasoned opinion to the COSAC secretariat.

Did your Government provide any information as part of the scrutiny process?

Yes, as part of the examination of the documents in 2004; not as part of the experiment.

Did your national parliament consult regional parliaments with legislative powers?

At official level only.

Were any other external actors involved in the examination?

No.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

Officials exchanged briefing papers and kept in contact, but no attempt was made to coordinate the responses to the experiment.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

No, because the Scrutiny Committee had already examined the documents long before, and it would have been inappropriate to involve the House as a whole in an experiment. The House's procedures have not yet been agreed.

1.22.2 Findings:

Did you find any breach on the subsidiarity principle?

Yes, relating to the application of the draft Directive on the certification of train crews operating locomotives and trains on the Community's rail network (COM(2004)142) to rail drivers who work only on routes within one Member State. This is of particular importance to the United Kingdom, where fewer than 5% of rail drivers drive trains across national borders. The subsidiarity point is not adequately remedied by a ten-year derogation (reported to the Committee in January 2005) covering 98% of UK drivers, since this is only a derogation.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

Yes (already sent).

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

No. The point we have discussed above was not addressed satisfactorily.

Did you encounter any specific difficulties during the examination?

No specific difficulties, but the experiment has highlighted (i) the need for detailed knowledge of the proposal and its impact in order to decide whether the subsidiarity principle has been breached, and (ii) the limited time available for consulting regional and other assemblies with legislative powers.

House of Lords

1.22.3 Procedures:

Which committees were involved in examining the 3rd Railway Package and what role did each committee play?

Sub-Committee B (Internal Market) of the European Union Select Committee examined the Third Railway Package under the usual procedures that exist for scrutinising European proposals for legislation. This was augmented by an inquiry and report by the Sub-Committee B, *Liberalising Rail Freight Movement in the EU*.

Was your plenary involved?

No.

Were any other administrative services of your parliament involved in the process?

No.

Could you describe the procedure used for the examination from start to finish with regard to the committees involved and other actors and the chronology of their involvement?

The documents were sent to the Sub-Committee for examination on 6 April 2004, with an Explanatory Memorandum from the Government. Letters were sent to the Minister as follows:

- 21 April (reply 24 June)
- 9 September (reply 24 September)
- 20 October (replies 8 and 29 November)
- 8 and 16 December (replies 10, 11 and 14 January)

The Sub-Committee issued a Call for Written Evidence for its inquiry into the Package in July 2004 and heard oral evidence in October-December 2004. The report on the liberalisation of rail freight was published on 4 March 2005.

On 7 March the Sub-Committee considered COSAC's aide-memoire about the pilot project and agreed to:

- write to the Minister asking for his view on whether the Package raised any subsidiarity issues; and
- ask the Legal Adviser to the Select Committee to give the Sub-Committee his view.

On 21 March the Sub-Committee considered the Minister's response and the Legal Adviser's paper. It was agreed to send a report to the European Union Select Committee, the parent committee.

Did your Government provide any information as part of the scrutiny process?

Yes. The Government produced an Explanatory Memorandum and replied to the Sub-Committee's queries as part of the normal scrutiny process. In addition, the Minister wrote to the Chairman of the Select Committee in response to the Sub-Committee's request for specific information relating to any subsidiarity issues raised by the Third Railway Package.

Did your national parliament consult regional parliaments with legislative powers?

At official level only.

Were any other external actors involved in the examination?

No.

In case of a bicameral system, did you coordinate your examination with the other parliamentary chamber?

The briefing note prepared for the House of Commons' European Scrutiny Select Committee was made available to Members of Sub-Committee B. Officials kept in contact about the work of their respective committees but no attempt was made to coordinate the responses to this pilot project.

Was the procedure used for this project in accordance with the procedure your parliament plans to use following the Constitutional Treaty's entering into force?

The procedures that will be used following the Constitutional Treaty's entering into force have not yet been decided. Experiences gained during this pilot project will help to inform the formation of these procedures.

1.22.4 Findings:

Did you find any breach on the subsidiarity principle?

Yes. We had had concerns during the course of our Inquiry into the liberalisation of rail freight, about the application of the Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network (COM(2004)142) to rail drivers who work only on routes within one Member State. This is of particular importance to the United Kingdom where less than 5 per cent of rail drivers drive trains over national borders. It appears that the December 2004 Transport Council reached a general approach that included a derogation principle for such drivers. However, this is only a temporary derogation, not an exemption and we therefore remain concerned about subsidiarity in this document.

Did you adopt a reasoned opinion for non-compliance? (If yes please enclose a copy with your report to the COSAC secretariat)

The Committee agreed to support the reasoned opinion adopted by the House of Commons European Scrutiny Committee with the addition that the temporary derogation agreed for certain drivers (see paragraph 10 above) does not remove the Committee's concerns about subsidiarity.

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

No. The point we have discussed above was not addressed satisfactorily.

Did you encounter any specific difficulties during the examination?

The Sub-Committee had already considered the Package in great detail during the course of its inquiry into the liberalisation of rail freight in the EU. This pilot project would have required far more of the Committee's time had the Members not been familiar with the subject. We are of the view that this is therefore not a true test of how this early warning mechanism

Annex 2:

Reasoned opinions

1.23 CZECH REPUBLIC

Chamber of Deputies

“An infringement of the subsidiarity principle may exist within some particular provisions, as they transfer the decision-making process to a higher level (from the private sector to the state, from the state to the Community) without a sufficient proof of the effectiveness of such a transfer.

The process of deliberation of the above-mentioned draft legislative acts has been itself a breach of the subsidiarity principle. The Parliament of the Czech Republic did not receive these draft acts in the required form, i.e. in the official Czech translation. The absence of the official Czech translation is an infringement of an essential formal requirement, which makes the proper implementation of the scrutiny of the subsidiarity principle impossible”.

Senate:

1) Draft directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community’s railways

The draft directive refers to the Community's previously approved legal acts directed to liberalising railway traffic in the EU. There is ample justification for the European Commission’s submitting the concerned act inasmuch as the intended aim, i.e. opening the rail carriage market between Member States, cannot be achieved through independent actions of the European Union’s Member States. The Committee on EU Affairs therefore finds no discrepancy with the subsidiarity principle in this draft directive.

2) Draft directive on the certification of train engineers and train crews on the Community’s railways network

In the text of the draft directive on certification of train engineers and train crews of the Community's railways network, several provisions can be identified to be in conflict with the subsidiarity principle:

Certification of all train engineers in all Member States regardless of whether a specific train engineer operates only on domestic railways or on international routes is completely unnecessary. It would be possible to achieve the aims of the directive by certifying only those train engineers operating on international routes (approximately 10% of the train engineers), or, as the case may be, those expressing interest in such certification.

It is not necessary to establish an additional authority for issuing licences to train engineers. The directive’s objectives can be achieved more simply. Member States ought to have the option to create their own authority or to use the presently existing organisational structures.

Accreditation of medical doctors who should examine the physical and psychic health of train engineers is very costly and complicated, and it is not necessary in order to achieve the objectives of the directive. Recognition of the doctors would be sufficient.

Harmonisation of the professional examinations for train engineers with regard to the existing certification is appropriate. However, any attempt towards harmonising the professional training as such is not necessary for achieving the objectives of the directive. This is an excessive measure that would bring with it considerable administrative burdens and high costs.

For these reasons, the Committee considers it necessary for the European Commission to review the draft directive and to amend the relevant provisions with regard to the aforementioned suggestions.

3) Draft regulation regarding the rights and responsibilities of passengers in international rail passenger service

The justification for approving the draft regulation regarding the rights and responsibilities of passengers in international rail passenger service seems to be problematic in respect of the presently existing international and legal obligations of the EU Member States. That is to say that the proposed draft regulation in substantial measure includes regulation of matters presently regulated by international law – the Convention concerning International Carriage by Rail (COTIF), which is binding for all Member States of the European Union having railroads (thus excluding Malta and Cyprus) except for Estonia. The fundamental problem in relation to the subsidiarity principle lies in duplication, which, in the present absence of any modification of the relationship between the Convention and the proposed regulation, could lead to a reduction in legal safeguards and to inconsistencies in the legal order.

The answers to those questions whether “the objectives of the intended activity cannot be achieved by Member States satisfactorily“ and whether „due to its scope and effects“ a legal act needs to be adopted by the Community do not in the present instance definitively support adoption of the new legal regulation on the level of the European Community. On the one hand, the rights of passengers have been strengthened above the existing level, however, on the other hand, the risk of clash between legal orders increases – a transnational regulation already exists, even though it has been negotiated by the Member States independently within COTIF. An adequate solution (instead of adopting the proposed regulation) could be to adopt a directive referring to the need for implementing the COTIF conditions into the legal orders of the Member States. Nevertheless, that does not exclude the extension of rights based on this Convention through an independent act of European law. Another feasible variant could be to strengthen passengers’ rights within the COTIF Convention, because the EU Member States have a voting majority within COTIF.

For the above-stated reasons, the Committee on EU Affairs maintains the position that adoption of a separate legal regulation on the Community level is not sufficiently justified from the viewpoint of conformity with the subsidiarity principle, and therefore the Committee recommends that the European Commission withdraw the draft regulation entirely in its present form.

4) Draft regulation on the responsibility of a carrier in case of non-fulfilment of contractual obligations in rail freight services

Questions about conformity with the subsidiarity principle are clearly identifiable also in the case of the regulation on the responsibility of a carrier in case of non-fulfilment of contractual obligations in rail freight services. This regulation relates to all freight carriage within the Community at both the international and national level. In the case that such regulation would be adopted, the area of carriage law even in domestic freight transport also would be newly regulated within the European Union legal order. At the same time, with respect to the expediency of adopting such standard, we must consider that in a number of cases the proposed European Union regulation exceeds requirements arising from the existing international contractual obligations of the Member States stipulated within COTIF. This might cause

ambiguity in determining the governing law for any contract of carriage and, accordingly, the relationship between the individual legal orders would not be clear.

Thus in the given case it could be more useful to give up any separate regulation of the issue concerned through a European Union act and to focus on strengthening the existing mechanisms based on COTIF. On account of this, the Committee on EU Affairs is of the opinion that adoption of a separate legal regulation on the Community level is not sufficiently justified from the viewpoint of conformity with the subsidiarity principle, and it recommends that the European Commission withdraw the draft regulation entirely in its present form.

1.24 FRANCE

Assemblée Nationale

RESOLUTION PORTANT AVIS MOTIVE,

adoptée par l'Assemblée nationale

portant avis motivé sur la proposition de règlement du Parlement européen et du Conseil concernant les compensations en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaires [COM (2004) 144 final]

« L'Assemblée nationale,

- Vu l'article 88-5 de la Constitution,

- Vu l'article 6 du Protocole n° 2 sur l'application des principes de subsidiarité et de proportionnalité, annexé au Traité établissant une Constitution pour l'Europe,

a adopté l'avis motivé qui suit, exposant les raisons pour lesquelles la proposition de règlement du Parlement européen et du Conseil concernant les compensations en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaire [COM (2004) 144 final] est non conforme au principe de subsidiarité.

Le 8 mars 2004, la Commission européenne a présenté quatre textes, qui constituent ce qu'il est convenu d'appeler le « troisième paquet ferroviaire ».

Il s'agit :

– d'une proposition de directive ouvrant à la concurrence le transport international de passagers à compter du 1^{er} janvier 2010 et autorisant le cabotage [COM (2004) 139 final] ;

– d'une proposition de directive fixant des règles communautaires pour la certification des conducteurs de trains [COM (2004) 142 final] ;

– d'une proposition de règlement sur les droits et les obligations des passagers, définissant les responsabilités des entreprises ferroviaires en cas d'accident, de retard, d'annulation, ainsi que les montants de compensation [COM (2004) 143 final] ;

– d'une proposition de règlement relative notamment aux compensations dues en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaire [COM (2004) 144 final].

Si les trois premiers textes ne posent pas de problème particulier au regard du principe de subsidiarité – parce qu'ils s'inscrivent clairement dans le cadre de la politique commune des transports, il n'en va pas de même pour le dernier concernant la qualité des services de fret.

Bien que chacun s'accorde sur la nécessité de poursuivre cet objectif, on peut douter que la démarche proposée par la Commission soit conforme au principe de subsidiarité.

– On se trouve ici dans un domaine qui relève non pas de la politique commune des transports, mais du marché et du jeu des relations contractuelles. Il en résulte que la fixation du montant des indemnités en cas de retard dans la livraison des marchandises devrait incomber aux parties au contrat plutôt qu'au législateur communautaire.

– Il existe déjà la directive 2004/51 du 29 avril 2004 qui a procédé à l'ouverture totale des réseaux de fret à la concurrence, afin d'améliorer la qualité des services de fret. Se pose donc la question de l'opportunité de l'initiative de la Commission.

– Le choix de recourir à l'instrument juridique du règlement qui s'applique à tous les Etats membres de manière uniforme les prive de la marge de manœuvre qui leur a été accordée par la directive 2004/51.

En conséquence, l'Assemblée nationale :

1. Estime que les exigences minimales obligatoires que la proposition de règlement susvisée souhaite mettre en place ne sont pas conformes au principe de subsidiarité.
2. Juge, dès lors, préférable que la Commission émette une recommandation, par laquelle serait ouverte la possibilité de conclure des contrats-types de portée supplétive mais aux dispositions desquelles les parties auraient, pour certaines raisons, la faculté de déroger. »

1.25 GERMANY

Bundesrat

Draft European Parliament and Council Regulation on compensation in cases of non-compliance with contractual quality requirements for rail freight services.

COMM (2004) 144 FIN; Council doc. 7150/04

In its 799th meeting on 14th May 2004, pursuant to §§ 3 and 5 EUZBLG (Act on Cooperation between the Federation and the Federal States in European Union Affairs), the Bundesrat adopted the following Opinion:

The Bundesrat has considerable misgivings about the draft Regulation in terms of the subsidiarity and proportionality principles, as its provisions are not restricted to cross-border freight transport but also regulate domestic transport. It is not apparent why improving the performance of international rail freight transport also requires transport services working purely on the domestic market to be included in the provisions. The Commission's justification for this, namely that it is not possible to implement separate provisions for domestic and cross-border transport services, as the two transport types are closely intermeshed (p. 13 of the draft, final subsection), is not convincing. It would certainly be possible to adopt differing provisions for these two types of transport. In addition, in its draft Regulation on international rail passengers' rights and obligations (COMM (2004) 143 FIN; Council Doc. 7149/04 (BR Official Document 212/04)), the Commission does envisage provisions limited solely to cross-border traffic. It is incomprehensible that a provision of this kind should be possible for passenger transport, whilst it is claimed that this is not feasible for freight transport. Finally, the Commission's assumption that to date Member States have not had national legal provisions on compensation for domestic rail freight transport, thus making regulation at the European level (cf.), necessary, is at least partly incorrect.

In Germany for example as a result of the Act on Reform of Transport Law of 25th June 1998 (BGBl (Federal Law Gazette. I, p. 1588), detailed provisions were drawn up in this area and are incorporated inter alia in §§ 425 ff. HGB (German Commercial Code).

The Bundesrat is of the opinion that the provisions on liability in Article 4 ff. of the draft Regulation are entirely unclear. Pursuant to Articles 4 und 5, no-fault liability is introduced for railway undertakings and/or freight customers if they do not comply with quality criteria. The significance for Articles 4 and 5 of the liability waiver stipulated in Article 15 must be stated more precisely.

Pursuant to Article 15 section a, no compensation shall be payable in cases of fault (TRANSLATOR'S NOTE "Fahrlässigkeit" i.e. "negligence" in the German text) of the freight customer or the railway undertaking. This restriction could be taken to mean that railway undertakings and freight customers are only liable in cases of intent. Provisions of this nature would be unacceptable. Liability must continue to apply at least for gross negligence.

The waiver could also be taken to mean that no-fault liability is presumed not to exist if the beneficiary of a claim contributed to the damage through negligence. This would however be contradictory, as intentional actions would be non-prejudicial. Furthermore, in the case of incorrect behaviour by both parties, pro-rata liability should be included in the provisions, corresponding to the respective extent to which behaviour of the parties contributed to the loss or damages (cf. Article 17 subsection 5 Convention on the Contract for the International Carriage of Goods by Road (CMR) or § 425 subsection 2, §§ 426, 427 HGB (German Commercial Code) for freight transactions).

In addition, further consideration should be given to the question of whether a causal relationship between the circumstances giving rise to exclusion of liability and the fact creating liability must be established.

In Article 15 section b the term "Verschulden" (TRANSLATOR'S NOTE referring to tortious liability based on fault), which encompasses negligence and intent, should be used.

The Bundesrat considers that the right of recourse of railway undertakings vis-à-vis infrastructure managers is not clearly structured. Article 15 section b of the draft Regulation envisages exclusion of liability in the case of fault (TRANSLATOR'S NOTE "Fahrlässigkeit oder sonstiges Verschulden" in the German text) of third parties. "Third parties" in the meaning of the transport contract between railway undertakings and clients also includes infrastructure managers. If the fault lies with the infrastructure manager ((TRANSLATOR'S NOTE "Fahrlässigkeit oder sonstiges Verschulden" in the German text), the railway undertaking does not pay compensation. The consequence of this is that there is no recourse to the infrastructure manager, as recourse pursuant to Article 18 of the draft Regulation only applies if the railway undertaking is obliged to pay compensation. Furthermore, the liability of the infrastructure manager under the recourse system should also be limited in a manner analogous to that foreseen in Article 15 of the draft Regulation – exclusion of liability e.g. for the railway undertaking in cases of fault (TRANSLATOR'S NOTE "Fahrlässigkeit" i.e. "negligence" in the German text) or force majeure.

The Bundesrat therefore requests the Federal Government to ensure in the course of negotiations that the text makes clear that the exclusion of liability in Article 15 of the draft Regulation also applies to infrastructure managers and that it is also made clear that third parties in the meaning of Article 15 of the draft Regulation does not mean the infrastructure manager.

The mention of "force majeure" as a ground for exclusion of liability in Article 15 section c already applies as the "force majeure" component of existing commercial clauses; partial overlap between the scope of application of section c and d is probable. It thus seems necessary to either clarify the relationship between the two provisions or to include a more precise form of words in section d. This is all the more important as one of the elements comprised in the definition of force majeure, namely "exercise of the utmost care to be fairly expected in keeping with the circumstances" is not included in d. It seems that the wording "even with the provision of timely information on the occurrence of the circumstances" in section d could be deleted, as this is taken into account anyway in appraising whether there were circumstances which the party in question could not avoid and the consequences of which he was unable to prevent.

The Bundesrat requests examination of whether efforts should be made to add a provision to the Regulation, with a view to clarifying the relationship between the Regulation and the Berne Convention concerning International Carriage by Rail (COTIF) of 9th May 1980 and the 1999 Protocol amending COTIF.

In as much as the draft Regulation comprises provisions that contradict COTIF, the question will arise of whether those Member States bound by COTIF and the Additional Protocol hereto would violate obligations under international law by implementing the Regulation in relationship to other Member States of the European Union or vis-à-vis third countries, as the Regulation is also to apply in certain circumstances to such third countries (cf. Article 1 subsection 2, sentence 2 of the draft Regulation). It may be possible to resolve this question through the primacy of Community law. However, even if this is the case, it may be advisable to make clear that in its sphere of application the Regulation shall take precedence over the provisions of COTIF and the Protocol hereto, and that Member States are thus released from their obligations under international law.

1.26 NETHERLANDS

House of Representatives and Senate

Aan:

De Voorzitter van de Eerste Kamer der Staten-Generaal

De Voorzitter van de Tweede Kamer der Staten-Generaal

Op dinsdag **1 maart 2005** zijn bij beide Kamers der Staten-Generaal vijf voorstellen ontvangen van de Europese Commissie, welke ingevolge het protocol betreffende de toepassing van de beginselen van subsidiariteit en evenredigheid bij de Europese Grondwet onderworpen dienen te worden aan een subsidiariteits- en proportionaliteitstoets binnen zes weken na verzending. Op grond van dit protocol kan ieder nationaal parlement, of iedere kamer daarvan, een **gemotiveerd advies** zenden naar de Europese Commissie, waarin wordt uiteengezet waarom een voorstel niet strookt met het subsidiariteitsbeginsel.

De gemengde commissie toepassing subsidiariteit adviseert uw Kamer, nota nemend van de oordelen en argumenten van de geraadpleegde commissies, te besluiten conform onderstaand voorstellen:

GEMOTIVEERD BEZWAAR KENBAAR MAKEN:

COM(2004)144

Voorstel voor een verordening van het Europees Parlement en de Raad betreffende compensatie bij niet-naleving van contractuele kwaliteitseisen voor diensten op het gebied van goederenvervoer per spoor

Voorstel: bezwaar kenbaar maken

Argumentatie: de gemengde commissie heeft verdeelde adviezen ontvangen, waarbij de commissie Verkeer en Waterstaat van de Tweede Kamer voorstelde bezwaren kenbaar te maken bij de Europese Commissie en de commissie Verkeer en Waterstaat van Eerste Kamer wel (andersluidende) bedenkingen had, doch deze niet doorslaggevend achtte om de Europese Commissie te verzoeken het voorstel te heroverwegen.

De gemengde commissie stelt voor een bezwaar kenbaar te maken ten aanzien van de subsidiariteit en daarbij onderstaande argumenten naar voren te brengen:

-De voorkeur bestaat voor het treffen van een regeling d.m.v. zelfregulering c.q. privaatrechtelijke regeling. Niet-naleving van kwaliteitseisen is een aangelegenheid voor de betrokken marktpartijen zelf en overheidsbemoeienis wordt, zowel op nationaal als op Europees niveau, onwenselijk geacht.

-De verordening zal een verstoring van interne markt bewerkstelligen in de zin van verslechtering van de concurrentiepositie van het goederenvervoer per spoor ten opzichte van het goederenvervoer over de weg of het water. Dit gezien de bestaande congestie op het spoor waarbij het personenvervoer voorrang krijgt en het goederenvervoer vertragingen oploopt en compensatieplichtig zou worden. Zonder een verband te leggen met de (voorrangs-)positie van het personenvervoer is het onwenselijk een verordening zoals voorgesteld in COM(2004)144 vast te stellen

COM(2004)143

Voorstel voor een verordening van het Europees Parlement en de Raad betreffende de rechten en

verplichtingen van reizigers in het internationale treinverkeer
Voorstel: geen bezwaar
<p>Argumentatie: de gemengde commissie heeft verdeelde adviezen ontvangen, waarbij de commissie Verkeer en Waterstaat van de Tweede Kamer geen noodzaak zag bezwaar te maken en de commissie Verkeer en Waterstaat van Eerste Kamer wel bezwaren inbracht.</p> <p>De gemengde commissie stelt voor geen bezwaar kenbaar te maken ten aanzien van de subsidiariteit, maar daarbij wel onderstaande elementen bij de verdere behandeling te betrekken:</p> <p>-Er bestaat niet zozeer bezwaar tegen het treffen van een regeling op Europees niveau en evenmin wordt betwist dat de Europese Commissie op enig moment de bevoegdheid toekomt een voorstel in te dienen zoals gedaan in COM(2004)143, doch er wordt gesignaleerd dat er reeds internationale afspraken zijn vastgelegd in het COTIF-verdrag, waar vrijwel alle lidstaten van de EU bij zijn aangesloten. Het lijkt meer aangewezen om eerst te bezien of de EG en Estland partij kunnen worden bij dit verdrag, dan nu al te onderhandelen over deze verordening.</p> <p>De bezwaren dat de Europese Commissie ook een hoger niveau van rechten en verplichtingen voorstelt hebben niet zozeer betrekking op de subsidiariteit van het voorstel. De gemengde commissie adviseert – indien het voorstel ter onderhandelingstafel blijft - de gesignaleerde bedenkingen kenbaar te maken bij het kabinet en in overleg te treden over de onderhandelingsinzet in de Raad.</p>

GEEN BEZWAAR:

COM(2004)140
Mededeling van de Commissie “Voortzetting van de integratie van het Europese spoorwegsysteem: het derde spoorwegpakket”
Voorstel: geen bezwaar
Argumentatie: het betreft hier een mededeling en geen verbindend instrument

COM(2004)139
Voorstel voor een Richtlijn van het Europees Parlement en de Raad tot wijziging van richtlijn 91/440/EEG van de Raad betreffende de ontwikkeling van de spoorwegen in de Gemeenschap
Voorstel: geen bezwaar
<i>NB: In het (theoretisch nog niet bestaande) BNC-fiche heeft de regering kenbaar gemaakt wèl problemen te hebben met de subsidiariteit van dit voorstel. Het naar buiten treden met dit (voorgestelde) oordeel van de Kamers zou de positie van de regering kunnen ondergraven.</i>
<p>Argumentatie: de gemengde commissie heeft verdeelde adviezen ontvangen, waarbij het eindoordeel van de commissie Verkeer en Waterstaat van de Tweede Kamer (qua indicatieve stemverhoudingen) onbeslist bleef en de commissie Verkeer en Waterstaat van Eerste Kamer wel bezwaren inbracht, maar niettemin gematigd positief was over het commissievoorstel. De ter tafel gebrachte bedenkingen tegen deze ontwerprichtlijn hebben overwegend betrekking op de proportionaliteit van het commissievoorstel. Een beargumenteerd verzoek tot heroverweging bij de Europese Commissie lijkt niet noodzakelijk. De gemengde commissie adviseert de gesignaleerde bedenkingen kenbaar te maken bij het kabinet en in overleg te treden over de onderhandelingsinzet in de Raad.</p>

COM(2004)142

Voorstel voor een Richtlijn van het Europees Parlement en de Raad inzake de certificering van het treinpersoneel belast met de besturing van locomotieven en treinen op het spoorwegnet van de Gemeenschap

Voorstel: geen bezwaar

Argumentatie: beide geraadpleegde commissies kwamen eenduidig tot het oordeel dat hier geen noodzaak bestaat de Europese Commissie te verzoeken het voorstel te heroverwegen alvorens er onderhandeld kan worden.

1.27 POLAND

Sejm

Opinion

*of the European Union Affairs Committee of the Sejm of the Republic of Poland
on the compliance with the principle of subsidiarity of the*

*“Proposal for a Directive of the European Parliament and of the Council amending Council
Directive 91/440/EEC on the development of the Community’s railways*

COM (2004) 139 final)”

*adopted within the framework of the discussion on a model of application
of the principle of subsidiarity based on the Third railway package*

- The European Union Affairs Committee has not received the proposal of the legislative act in the Polish version.
- The European Commission has not presented a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality, required by the art.5 of the Protocol attached to the Constitutional Treaty.

“This statement should contain some assessment of the proposal’s financial impact (...). The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators.” (Art.5 of the Protocol of application of the principle of subsidiarity and proportionality)

The European Union Affairs Committee on behalf of the Sejm of the Republic of Poland acknowledges that the proposal of the legislative act “Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community’s railways COM (2004) 139 final)” does not comply with the principle of subsidiarity.

The Chairman of the Committee

Robert Smoleń

Opinion

*of the European Union Affairs Committee of the Sejm of the Republic of Poland
on the compliance with the principle of subsidiarity of the*

*“Proposal for a Regulation of the European Parliament and of the Council on International
Rail Passengers’ Rights and Obligations (COM (2004) 143 final)”*

*adopted within the framework of the discussion on a model of application
of the principle of subsidiarity based on the Third railway package*

- The European Union Affairs Committee has not received the proposal of the legislative act in the Polish version.
- The European Commission has not presented a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality, required by the art.5 of the Protocol attached to the Constitutional Treaty.

“This statement should contain some assessment of the proposal's financial impact (...). The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators.” (Art.5 of the Protocol of application of the principle of subsidiarity and proportionality)

The European Union Affairs Committee on behalf of the Sejm of the Republic of Poland acknowledges that the proposal of the legislative act “Proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers’ Rights and Obligations (COM (2004) 143 final)” does not comply with the principle of subsidiarity.

The Chairman of the Committee

Robert Smoleń

Opinion

**of the European Union Affairs Committee of the Sejm of the Republic of Poland
on the compliance with the principle of subsidiarity of the
“Proposal for a Regulation of the European Parliament and of the Council on
compensation in cases of non-compliance with contractual quality requirements for rail
freight services (COM (2004) 144)”
adopted within the framework of the discussion on a model of application
of the principle of subsidiarity based on the Third railway package**

- The European Union Affairs Committee has not received the proposal of the legislative act in the Polish version.
- The European Commission has not presented a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality, required by the art.5 of the Protocol attached to the Constitutional Treaty.

“This statement should contain some assessment of the proposal's financial impact (...). The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators.” (Art.5 of the Protocol of application of the principle of subsidiarity and proportionality)

The European Union Affairs Committee on behalf of the Sejm of the Republic of Poland acknowledges that the proposal of the legislative act “Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services (COM (2004) 144)” does not comply with the principle of subsidiarity.

The Chairman of the Committee

Robert Smoleń

Senate

Opinion
OF THE EUROPEAN UNION AFFAIRS COMMITTEE
of 12 April 2005
on non-conformance to the subsidiarity principle
of the proposal for a Regulation of the European Parliament and of the Council
on International Rail Passengers' Rights and Obligations COM(2004)143
(Third Railway Package)

Pursuant to Art. 6 of the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty Establishing a Constitution for Europe, the European Union Affairs Committee presents hereby its position on draft European legislation adopted at its sitting on 12 April 2005.

I. Draft European legislation

Proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers' Rights and Obligations [COM(2004)143] (Third Railway Package).

II. Committee opinion

The European Union Affairs Committee considers that the presented proposal does not conform to the subsidiarity principle.

III. Justification

The position of the European Union Affairs Committee is that the proposed regulation exceedingly encroaches upon the subject matter regulated by national civil law and upon the subject matter of the Convention of 9 May 1980 concerning International Carriage by Rail (COTIF). In the Committee's opinion, the proposal has not demonstrated the indispensability of the Community to act in the given area, whereas the assessment of the level of execution of the objectives of the proposed regulation must not lead to the direct conclusion that Member States are not able to affect the quality of rail transport more effectively within their own competencies. Burdening carriers with financial consequences of this regulation will lead to an improvement of the quality of services but, by virtue of increasing carriers' operating costs, it will also produce a much less desirable consequence – reduced competitiveness of passenger rail transport.

Opinion
OF THE EUROPEAN UNION AFFAIRS COMMITTEE
of 12 April 2005
on non-conformance to the subsidiarity principle
of the proposal for a Regulation of the European Parliament and of the Council
on compensation in cases of non-compliance with contractual quality requirements
for rail freight services COM(2004)144 (Third Railway Package)

Pursuant to Art. 6 of the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty Establishing a Constitution for Europe, the European Union Affairs Committee presents hereby its position on draft European legislation adopted at its sitting on 12 April 2005.

I. Draft European legislation

Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services COM(2004)144 (Third Railway Package).

II. Committee opinion

The European Union Affairs Committee considers that the presented proposal does not conform to the subsidiarity principle.

III. Justification

The position of the European Union Affairs Committee is that the proposed regulation exceedingly encroaches upon the subject matter regulated by national civil law and upon the subject matter of the Convention of 9 May 1980 concerning International Carriage by Rail (COTIF). In the Committee's opinion, the proposal has not demonstrated the indispensability of the Community to act in the given area, whereas the assessment of the level of execution of the objectives of the proposed regulation must not lead to the direct conclusion that Member States are not able to affect the quality of rail transport more effectively within their own competencies. Moreover, the Committee wishes to draw attention to the fact that over-regulation may lead to a breach of the principle of freedom of contract and will disturb the freight transport market. Burdening carriers with financial consequences of this regulation will lead to an improvement of the quality of services but, by virtue of increasing carriers' operating costs, will also produce a much less desirable consequence – reduced competitiveness of freight rail transport, particularly in comparison to other forms of freight transport.

1.28 SWEDEN

Riksdagen:

The first two Railway Packages primarily concerned measures intended to open rail freight services – both national and international – to regulated competition in the Union. Measures to improve rail safety were also included. The Third Railway Package marks a step forward, with measures to open up international passenger services to competition. It is also about extending interoperability to include not only the technical but also the human dimension, that is, the certification of train drivers, etc. Regarding the proposed Directive on the certification of train drivers, etc. (COM (2004) 142), paragraph 7 of the explanatory memorandum states that one objective of common provisions is to make it easier for drivers to change employment between different Member States, and between different railway undertakings. In addition, the Third Railway Package includes proposals on compensation to passengers in the case of passenger services and to customers in the case of freight services, for errors or omissions in contracted railway services.

Regarding the current proposals from the Commission, it can be noted initially that the Committee on Transport and Communications has given its opinion on all the proposals included in the Third Railway Package, that is, the two proposed directives and the two proposed regulations. The Committee on Civil Law has only commented on the two proposed regulations, which concern its area of responsibility.

In general it can also be said that both the Committee on Transport and Communications and the Committee on Civil Law have expressed some concerns about certain parts of the Commission's proposals, for example, with regard to their compatibility with the principle of proportionality. However, these points of view do not in themselves constitute any part of the actual subsidiarity control. Points of view of this kind can, where appropriate, also be presented to the Government after the expiry of the six-week time limit that applies to the Riksdag's subsidiarity control. There is good reason to assume that the Committees on Transport and Communications and Civil Law will do so.

The Committee on the Constitution also supports the Committee on Transport and Communications' remarks that the Commission's proposals are insufficiently substantiated with regard to the principle of subsidiarity.

With regard to the proposals' compliance with the principle of subsidiarity, the Committee on the Constitution notes the following.

In the matter of the draft Directive on the certification of train drivers, etc. (COM (2004) 142), the Committee on Transport and Communications maintains that there is no reason to regulate – at least not initially – certification for those train drivers who are only intended to drive trains in domestic, non-cross-border traffic. According to the Committee on Transport and Communications, such regulation can continue to be implemented at national level in future.

In this context, the Committee on the Constitution notes that licences are required for railway undertakings in Sweden. In the opinion of the Committee, the licensing assessment process under the provisions of the Railways Act (2004:519) is essentially based on criteria similar to those set out in the draft directive. Thus according to Chapter 2, Section 3, employees in railway undertakings should be well-familiar with the conditions, provisions and terms applicable to their activities and which are relevant to their duties. Tasks of importance from the point of view of safety may only be carried out by those who are otherwise deemed appropriate with regard to professionalism, state of health and personal circumstances. An infrastructure manager or railway undertaking may not, according to Section 4 of the same Chapter, assign anybody tasks of importance from the point of view of safety unless the individual in question has undergone a medical examination that shows that there are no health-related obstacles. An individual with tasks of importance for safety shall regularly undergo medical examination.

For the reasons stated above, the Committee on the Constitution supports the view of the Committee on Transport and Communications that the draft Directive on the certification of train drivers, etc. comes into partial conflict with the principle of subsidiarity.

UNITED KINGDOM

House of Commons

"It is the opinion of the European Scrutiny Committee of the House of Commons that the Commission's proposal for a Directive on the certification of train crews operating locomotives and trains on the Community's rail network (COM (04) 142) breaches the principle of subsidiarity.

In the UK the vast majority of train crews are employed to provide only services within the country. Those engaged in the provision of international services, through the Eurotunnel or across the UK-Irish boarder, are a clearly distinguishable group. The regulation of train crews in the UK is already in place with national health and safety and other social legislation. If it is felt necessary, in connection with the development of international rail services within the Community, to provide for a Community-level licensing system for train crews, that should be applied only to train crews engaged in such services. So the Committee calls on the Commission to reconsider its proposal."

House of Lords

"The Committee of the House of Lords agreed to support the reasoned opinion adopted by the House of Commons European Scrutiny Committee with the addition that the temporary derogation agreed for certain drivers does not remove the Committee's concerns about subsidiarity".

