

November 2008

**Annex to the Report
on the subsidiarity check
on the Proposal for a Council directive
on implementing
the principle of equal treatment
between persons irrespective of religion or
belief, disability, age or sexual orientation:**

**National Parliaments replies
to the questionnaire**



Prepared by the COSAC Secretariat and presented to:

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

3-4 November 2008
Paris

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Questionnaire:

Procedures:

1. What was the procedure used to conduct the subsidiarity check?
 - a. Which committees were involved?
 - b. Was the plenary involved?
 - c. Which administrative services of your parliament were involved?
 - d. What was the chronology of events?
 - e. Did your government provide any information as part of the scrutiny process?
 - f. In case of a bicameral system, did you coordinate with the other chamber?
 - g. Did you consult regional parliaments with legislative powers?
 - h. Did you make use of any external expertise?
2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?
3. Did you publicise your findings (e.g. in a special press release)? No special press release was issued.
4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

Findings:

5. Did you find any breach of the subsidiarity principle?
6. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy)
7. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?
8. Did you encounter any specific difficulties?

Austria: Bundesrat

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

The EU Committee of the Federal Council debated the proposal in a meeting on July 22, 2008. Due to the general elections on September 28 the subsidiarity check is not carried out by the National Council this time.

b. Was the plenary involved?

No.

c. Which administrative services of your parliament were involved?

The EU and International Service as well as the Service of the Federal Council of the administration of the Austrian parliament were involved.

d. What was the chronology of events?

see above a)

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

The Ministry for Economy and Labour provided an explanatory memorandum. During the session experts of this ministry and the Ministry of Social Affairs provided were available to answer questions raised by members.

f. In case of a bicameral system, did you coordinate with the other chamber?

The Chairmen of the EU Committees of the two chambers coordinate the work programmes of their respective committees. Furthermore, coordination is provided for by the joint staff servicing both chambers in EU affairs.

g. Did you consult regional parliaments with legislative powers?

Yes. The President of the diet of Lower Austria, being current chair of the so-called "Landtagspräsidentenkonferenz" (Conference of Presidents of Austrian Diets), took part in the deliberations.

h. Did you make use of any external expertise?

Being a complex issue the committee decided to adjourn the debate in order to invite a series of institutions to present their positions on the subject to parliament until 30 September.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

IPEX was consulted to get information on proceedings in other parliaments.

3. Did you publicise your findings (e.g. in a special press release)?

A summary of the proceedings was published on parliament's homepage.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

The present rules of procedure provide a sufficient basis for the conduction of subsidiarity checks, however further modifications might be necessary.

Findings:

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

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

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

8. Did you encounter any specific difficulties during the examination?

9. Any other comments?

As the meeting on this item was adjourned no decisions have been taken so far.

Belgium: Sénat



SÉNAT

European Affairs

Commission Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation – Replies of the Belgian Senate

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

Justice Committee

b. Was the plenary involved?

No, since the Committee decided there was no reason to take position concerning any breaches of the subsidiarity and proportionality principles.

c. Which administrative services of your parliament were involved?

European Affairs Department, Services of the committees, Legal Department

d. What was the chronology of events?

8 July 2008: proposal (French and Dutch language versions) sent to the legal department for advice on competence, and to the European Affairs Department for drafting a summary document

10 July 2008: proposal sent to the Social Affairs Committee

11 July 2008: proposal referred to the Justice Committee

15 and 16 July 2008: proposal put on the agenda of the Justice Committee

16 July 2008: decision not to treat the proposal, since there were no remarks on the application of the subsidiarity and proportionality principles

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

No

f. In case of a bicameral system, did you coordinate with the other chamber?

No

g. Did you consult regional parliaments with legislative powers?

No

h. Did you make use of any external expertise?

No

2. Did you cooperate with other national parliaments in the process?

No

3. Did you publicise your findings?

No

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon?

The procedure was adapted to incorporate the change from the 6 to 8 week period.

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

No

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

No

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

No comment from the Justice Committee or individual Senators

8. Did you encounter any specific difficulties during the examination?

Due to the parliamentary holiday in Belgium (from 21 July until the beginning of October), it was impossible to treat this proposal in a normal way. This is also the case in other national parliaments and should be remedied in some way.

Tim De Bondt

Belgian Senate – European Affairs

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Bulgarie: Narodno sabranie

Procédure:

1. Quelle a été la procédure utilisée pour réaliser le contrôle de subsidiarité? Veuillez préciser en fonction des points suivants :

La procédure utilisée était la procédure normale de contrôle parlementaire des affaires européennes.

⌚ Quelles commissions ont été impliquées ?

La Commission des droits de l'homme et des affaires religieuses et la Commission des affaires européennes

⌚ La séance plénière a-t-elle été impliquée ?

Non. La procédure de contrôle parlementaire des affaires européennes ne prévoit pas un débat des propositions d'actes de l'UE en séance plénière.

⌚ Quels services administratifs de votre Parlement ont été impliqués ?

La direction des affaires européennes.

⌚ Quelle a été la chronologie de l'examen ?

- 1. Le Gouvernement a déposé à l'Assemblée nationale un rapport explicatif sur la proposition de directive.*
- 2. La direction des affaires européennes a rendu un avis sur le respect du principe de subsidiarité.*
- 3. La proposition de directive a été examinée par Commission des droits de l'homme et des affaires religieuses qui a rendu un rapport sur la proposition.*
- 4. La Commission des Affaires européennes a rendu son rapport sur la base des documents susmentionnés et après avoir entendu des représentants du ministère du Travail et de la Politique sociale.*

⌚ Votre gouvernement a-t-il fourni des informations dans le cadre de la procédure d'examen ?

Le Gouvernement a fourni un avis contenant des informations sur le contenu de l'acte, la position cadre et une évaluation d'impact sur le droit

national. Les commissions permanentes ont entendu les experts du Ministère du Travail et de la Politique sociale.

- ⌚ **En ce qui concerne les parlements bicaméraux : avez-vous coopéré avec l'autre chambre ?**

Non

- ⌚ **Avez-vous consulté les parlements régionaux ?**

Non

- ⌚ **Avez-vous bénéficié d'une expertise extérieure ?**

Non

2. Avez-vous collaboré avec d'autres parlements nationaux au cours du processus ? Si c'est le cas, par quels moyens (le Secrétariat de la COSAC, IPEX, les représentants permanents des parlements nationaux à Bruxelles)?

Oui, des contacts informels avec des experts d'autres parlements nationaux ont été effectués.

3. Avez-vous publié vos conclusions (par exemple dans un communiqué de presse)?

Le rapport de la Commission des affaires européennes est publié sur le site Internet de l'Assemblée nationale. Un compte rendu de l'examen a été publié dans le bulletin de l'Assemblée nationale « Evrovesti ».

4. Votre Parlement a-t-il adapté récemment ses procédures pour se mettre en conformité avec les dispositions du Traité de Lisbonne, ou envisage-t-il de le faire à l'avenir?

La procédure utilisée actuellement inclut le contrôle du principe de subsidiarité.

Conclusions:

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

Non. La conclusion du rapport est que la proposition de directive ne viole pas le principe de subsidiarité, consacré à l'article 5 (2) du Traité CE. Les objectifs de la proposition de directive qui entre dans le champ de compétence de la Communauté, conformément à l'art. 13 (1) du Traité CE, ne peuvent pas être réalisés de manière suffisante par les États membres, agissant séparément. Eu égard la diversité des normes nationales, seule une mesure prise au niveau communautaire peut garantir un niveau de protection minimal uniforme contre la discrimination pour les victimes dans les secteurs indiqués.

6. Avez-vous adopté un avis motivé sur la proposition de directive ? (Dans ce cas veuillez joindre une copie).

Non

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

Il est mentionné dans l'avis présenté par la direction des affaires européennes que les justifications de la Commission au regard du respect du principe de subsidiarité ne sont pas satisfaisantes. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau européen ne sont pas accompagnées par suffisamment d'indicateurs qualitatifs et quantitatifs.

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

Oui, le délai d'examen était extrêmement bref en raison des vacances parlementaires.

9. Avez-vous d'autres observations ?

Le rapport de la Commission des affaires européennes indique que la proposition de directive doit être soutenue en tant qu'elle fait partie des efforts de la Communauté de promouvoir une plus grande cohésion sociale. Ceci s'applique en particulier pour l'établissement de critères communs d'évaluation de la « charge disproportionnée » (art. 4 de la proposition de directive). Toutefois, la réalisation d'une plus grande cohésion dans telle ou telle sphère, dépend de l'existence d'instruments financiers correspondants. C'est la raison pour laquelle la Bulgarie, étant un pays dont les ressources financières sont limitées, devrait insister pour un financement communautaire, appuyant les mesures nationales en matière de non-discrimination.

Cyprus: Vouli ton Antiprosopon

Procedure:

1. What was the procedure used to conduct the subsidiarity check?

a) Which committees were involved in examining the Commission proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation?

The examination was undertaken exclusively by the Parliamentary Committee on European Affairs.

b) Was your plenary involved?

The plenary of the House of Representatives was not involved in this experimental exercise, but this does not preclude the possibility of the plenary being involved in future proceedings and / or when the mechanism of subsidiarity control, as provided in the European Constitution, actually enters into force.

c) Which administrative services of your parliament were involved?

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

d) What was the chronology of events?

On the 23th July 2008, the legislative proposal, accompanied by material concerning the principle of subsidiarity and proportionality and the explanatory note of the COSAC Secretariat concerning the matter, were distributed to the members of the Parliamentary Committee on European Affairs.

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

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

No, however, the text of the proposal and accompanying documents were forwarded to the Office of the Commissioner for Administration (Ombudsman), which constitutes the independent body on equal treatment and the combating of discrimination, for her comments.

f) In case of a bicameral system, did you coordinate with the other chamber?

No bicameral system exists in Cyprus.

g) Did you consult regional parliaments with legislative powers?

No regional parliaments exist in Cyprus.

h) Did you make use of any external expertise?

No.

2. Did you cooperate with other national parliaments in the process?

If so, by what means (the COSAC, Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

Information concerning the subsidiarity check was received from other national parliaments by electronic mail and through the permanent representatives of the House of Representatives in Brussels. Furthermore, IPEX proved, once again, instrumental as a means of obtaining information with regard to the stage of examination of the said proposal in other national parliaments and for obtaining all relevant documents with regard to the check.

3. Did you publicise your findings (eg. In a special press release)?

No.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon, or is it planning to do so?

The House of Representatives may follow largely the same procedure following the Constitutional Treaty's entry into force. In future cases, it is possible that the Parliamentary Committee on European Affairs will, firstly, notify the competent sectoral parliamentary committees and request their views on the matter under

examination and, secondly, invite interested parties, other than representatives from the competent Ministries, to express their views on the matter at hand. 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 also be notified. The findings of the Committee may also be transmitted to the government. The abovementioned procedure is currently under consideration by the House of Representatives.

Findings:

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

The Committee found that the proposal does not contradict the principle of subsidiarity.

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

No.

7. Did you find the Commission's justification with regard to the subsidiary principle satisfactory?

The Commission's justification concerning the principle of subsidiarity was found to have been satisfactory.

8. Did you encounter any specific difficulties during the examination?

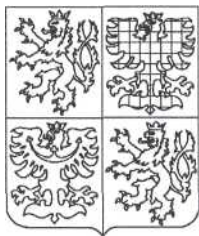
Due to the fact that the Commission proposal in question was transmitted to the House of Representatives during the summer recess, it was difficult to involve other sectoral committees of the House of Representatives other than the Parliamentary Committee on European Affairs. The said Committee, due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

9. Any other comments?

No.

Czech Republic: Poslanecká Sněmovna

PARLIAMENT
OF THE CZECH REPUBLIC
Chamber of Deputies
Petr Krill
Vice-Chairman
Committee for European Affairs



Prague, 23rd September 2008

Dear Madame/ Sir,

I am writing to inform you that according to the Conclusions of the XXXIX COSAC taking place on 7 - 8 May 2008 in Brdo pri Kranju, the Committee for European Affairs of the Chamber of Deputies of the Parliament of the Czech Republic has decided to conduct a subsidiarity check on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (document No. 11531/08, COM(2008) 426 final).

Unfortunately the proposal in question was received by the Chamber of Deputies during its parliamentary summer recess, so it was not possible to scrutinize the proposal within the eight-week period.

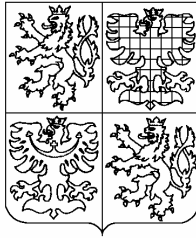
The respective document was included in the agenda of the 38th session of the Committee for European Affairs and was scrutinized on 12th September 2008. According to the Rules of Procedure of the Chamber of Deputies a Vice-Minister of Labour and Social Affairs was present at the session to introduce the preliminary government's framework position.

After the hearing of the rapporteur's review and after the discussion the Committee has adopted resolution No. 265 which is enclosed to this letter. At this moment the scrutiny of the respective proposal has not been finished and the document will be further considered by the Constitutional and Legal Committee and the Permanent Commission for Equal Opportunities.

Yours faithfully,

To be addressed:

Commission: sg-national-
parliaments@ec.europa.eu **European**
Parliament: ep-np@europarl.europa.eu
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COSAC-Secretariat: secretariat@cosac.eu



**PARLIAMENT
OF THE CZECH REPUBLIC**
Chamber of Deputies
Petr Krill
Vice-Chairman
Committee for European Affairs

Committee for European Affairs

**Adopted on the 38th session held on 12 September 2008 the following
Resolution No. 265 on Proposal for a Council Directive on implementing the
principle of equal treatment between persons irrespective of religion or belief,
disability, age or sexual orientation**

after hearing the Government's preliminary position presented by the Deputy Minister of Labour and Social Affairs, Mr. Michal Sedláček, and the rapporteur's report presented by Mrs. Soňa Marková and after a debate:

The Committee

| | |
|-----------|---|
| 1) | Takes into account the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation; |
| 2) | Requests the Government to send to the Committee its framework position and to inform the Committee on further proceeding of negotiations; |
| 3) | Decides upon submitting the proposal for deliberation to the Committee for Constitutional and Legal Affairs and the Permanent Commission for Equal Opportunities. |

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

The procedure used for examination of the proposal in question was the same as for other important EU documents deliberated by the Committee for European Affairs.

The proposal was deliberated at the Committee meeting on 12 September 2008 after hearing the Government's preliminary position presented by the Deputy Minister of Labour and Social Affairs, Mr. Michal Sedláček, and the rapporteur's report. The proposal was assessed based on its legal basis, its compliance with international agreements and on the basis of its likely economic and legal effects. The draft conclusions contained in the rapporteur's report were submitted to discussion and finally were adopted by a large majority of the members of the committee.

The result of the deliberation was a Committee resolution (see the enclosed annex). According to Article 109 (4) of the Rules of Procedure, a resolution of the Committee for European Affairs is deemed to be the position of the Chamber of Deputies.

a. Which committees were involved?

The Committee for European Affairs so far. The Committee for Constitutional and Legal Affairs and the Permanent Commission for Equal Opportunities will deliberate the proposal at their next sessions.

b. Was the plenary involved?

No. As stated above, a resolution of the Committee for European Affairs is deemed to be the position of the Chamber of Deputies.

c. Which administrative services of your parliament were involved?

The Parliamentary Institute of the Office of the Chamber of Deputies provided expert assistance to the Committee for European Affairs and especially to the Member of Parliament, who was appointed by the Committee as rapporteur.

d. What was the chronology of events?

The Committee for European Affairs scrutinized the proposal on 12 September 2008. The dates of the deliberation of the proposal at the Committee for Constitutional and Legal Affairs and the Permanent Commission for Equal Rights have yet to be set.

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

No, not so far. There is a fundamental disagreement over the final governmental position on the proposal between the Office of the Government and the Ministry of Labour and Social Affairs.

f. In case of a bicameral system, did you coordinate with the other chamber?

No.

g. Did you consult regional parliaments with legislative powers?

No.

h. Did you make use of any external expertise?

No.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

There has been a standard type of cooperation with other national parliaments.

3. Did you publicise your findings (e.g. in a special press release)?

Each resolution of the Committee is publicised on its web sites. No special type of publication was used in this case.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

Adaptations and changes to the Rules of Procedure of the Chamber of Deputies are currently being discussed.

Findings:

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

No.

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

No.

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

The Committee's resolution does not contain any findings concerning Commission's justification.

8. Did you encounter any specific difficulties during the examination?

Yes. We found very inconvenient that the proposal was submitted to the National Parliaments at the time of the parliamentary recess when no committee meetings are scheduled.

9. Any other comments?

No.

Czech Republic: Senát

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

The Committee on EU Affairs took position on the proposal at its meeting on 3 September 2008. The Committee resolution was forwarded to the plenary that will deal with it on its next session (18 September 2008).

a. Which committees were involved?

Committee on EU Affairs

b. Was the plenary involved?

Not yet. It will deliberate on the proposal during the next plenary session which starts on 18 September 2008.

c. Which administrative services of your parliament were involved?

European Union Unit and EU Committee advisor

d. What was the chronology of events?

14 July 2008: Receipt of the Proposal by the Senate

22 August 2008: Receipt of the draft Government Explanatory Memorandum

3 September 2008: Debate in Committee on EU Affairs

18 September 2008: Debate in the plenary session

4 September 2008: Final submission to COSAC

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

On 22 August 2008, draft Government Explanatory Memorandum was submitted to the Senate. However, up to now, no final Government position exists since there has been a fundamental disagreement between the Office of the Government and the Ministry of Labour and Social Affairs as to the approach to the Proposal. Representatives of the relevant Ministries were present at the 3 September Committee meeting, gave statements and replied to questions.

f. In case of a bicameral system, did you coordinate with the other chamber?

No.

g. Did you consult regional parliaments with legislative powers?

There are no regional parliaments in the Czech Republic.

h. Did you make use of any external expertise?

No.

- 2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?**

Standard cooperation through permanent representatives of national parliaments in Brussels, consultation the IPEX web pages.

- 3. Did you publicise your findings (e.g. in a special press release)?**

Not in any special way. The resolution of the Committee on EU Affairs has been published on the Senate web pages.

- 4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?**

No adaptations have been made, but they are being considered. Changes to the Rules of Procedure of the Senate, or draft Act on the Principles of Conduct and Relations between both Chambers and in their External Relations – as the case may be – are envisaged. They are aimed at strengthening the link between parliamentary scrutiny and Government responsibility in EU affairs, especially in sensitive issues like the transfer of competences (*passerelle*, flexibility clause). The proposed changes are currently prepared for debate by designated bodies of both chambers.

Findings:

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

The Committee on EU Affairs did find a breach.

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

Yes, although for the time being it is just a proposal for a resolution by the Committee on EU Affairs. Only the Senate resolution (debate and vote expected around 18 September) will carry weight.

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

Answer to this question has to be no, in consequence to answer no. 5.

- 8. Did you encounter any specific difficulties during the examination?**

The timing of the proposal posed problems due to the summer recess. Because of it within the 4 September deadline we managed the Committee Resolution that will only go to the plenary in two weeks time. We also experienced some difficulty with the provision of the Government Memorandum.

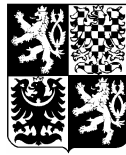
- 9. Any other comments?**

No

4 September 2008

THE PARLIAMENT OF THE CZECH REPUBLIC

SENATE



6th term

310th RESOLUTION

OF THE COMMITTEE ON EU AFFAIRS

Delivered on the 39th session held on 3 September 2008

on Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

(Senate Press no. N 116/06)

Following introductory information from Ms Jana Kolářková, Deputy Minister for Minorities and Human Rights, the rapporteur's report by Senator Luděk Sefzig and after a debate

The Committee

- I. Adopts**
a recommendation on Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, attached to this Resolution;
- II. Recommends**
that the Senate of the Parliament of the Czech Republic give a statement on Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation in accordance with the recommendation adopted by the Committee;
- III. Appoints**
Senator Luděk Sefzig the Committee's rapporteur at the plenary session of the Senate of the Parliament of the Czech Republic;
- IV. Authorises**
the Committee Chairperson Senator Luděk Sefzig to submit this resolution to the President of the Senate of the Parliament of the Czech Republic.

Luděk Sefzig

sign manual

Committee Chairperson

Luděk Sefzig

sign manual

Committee Rapporteur

Tomáš Grulich

sign manual

Committee Verifier

Recommendation to the Senate of the Parliament of the Czech Republic on Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

The Senate

I.

1. **Finds**
that the proposal for a directive in its present form does not comply with the principles of subsidiarity and proportionality;
2. **Considers**
state level of legal regulation adequate, as it reacts to the needs and conditions of the individual Member States more flexibly and better corresponds with the existing norms and customs;

II.

1. **Supposes**
that competence infraction into exclusive powers of state level regulation can be best avoided if the European Commission concentrates in the given case at non-legislative activity;
2. **Does not consider**
it beneficial not to differentiate the intensity of need of regulation by law stemming from the logic of the internal market with regard to the individual forms of discrimination, that at a situation when discrimination justifying intensification of the Community interest can be deemed proven only in case of discrimination on the basis of disability;
3. **Is convinced**
that ambiguity can persist as to the definition of certain terms in relation to the aim of the regulation in question (e.g. harassment outside the field of employment according to art. 2 par. 3 of the proposal);
4. **Considers**
the scope of the directive, encompassing social protection including social security and health care, social advantages, education and access to goods and other services available to the public, including housing, as

too wide, hindering the identification of the exact scope of regulation and its financial and other impact;

5. **Does not agree**

with the introduction of reversed burden of proof to the detriment of the defendant in disputes concerning purely private law relations (art. 8 par. 1);

III.

1. **Requests**

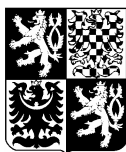
the Government to inform the Senate about the way this position was taken into account and to provide the Senate with information on further proceeding of negotiations;

2. **Authorises**

the President of the Senate to forward this resolution to the European Commission.

THE PARLIAMENT OF THE CZECH REPUBLIC

SENATE



6th term

485th RESOLUTION

OF THE SENATE

Delivered on the 16th session held on 18 September 2008

on Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation
(Senate Press no. N 116/06)

The Senate

I.

3. **Finds**

that the proposal for a directive in its present form does not comply with the principles of subsidiarity and proportionality;

4. **Considers**

state level of legal regulation adequate, as it reacts to the needs and conditions of the individual Member States more flexibly and better corresponds with the existing norms and customs;

II.

6. **Supposes**

that competence infraction into exclusive powers of state level regulation can be best avoided if the European Commission concentrates in the given case at non-legislative activity;

7. **Does not consider**

it beneficial not to differentiate the intensity of need of regulation by law stemming from the logic of the internal market with regard to the individual forms of discrimination, that at a situation when discrimination justifying intensification of the Community interest can be deemed proven only in case of discrimination on the basis of disability;

8. **Is convinced**

that ambiguity can persist as to the definition of certain terms in relation to the aim of the regulation in question (e.g. harassment outside the field of employment according to art. 2 par. 3 of the proposal);

9. **Considers**

the scope of the directive, encompassing social protection including social security and health care, social advantages, education and access to goods and other services available to the public, including housing, as too wide, hindering the identification of the exact scope of regulation and its financial and other impact;

10. **Does not agree**

with the introduction of reversed burden of proof to the detriment of the defendant in disputes concerning purely private law relations (art. 8 par. 1);

III.

3. **Requests**

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

4. **Authorises**

the President of the Senate to forward this resolution to the European Commission.

Přemysl Sobotka
sign manual
President of the Senate

Tomáš Grulich
sign manual
Senate Verifier

Denmark: Folketinget

Procedures:

1. What was the procedure used to conduct the subsidiarity check?
 - a. Which committees were involved? **The European Affairs Committee**
 - b. Was the plenary involved? **No**
 - c. Which administrative services of your parliament were involved? **The EU Secretariat**
 - d. What was the chronology of events?
 - e. Did your government provide any information as part of the scrutiny process? **Yes the government always provides a short subsidiarity memorandum not later than two weeks after the proposal is made available in a Danish language version**
 - f. In case of a bicameral system, did you coordinate with the other chamber?
 - g. Did you consult regional parliaments with legislative powers? **No**
 - h. Did you make use of any external expertise? **No**
2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)? **No**
3. Did you publicise your findings (e.g. in a special press release)? No special press release was issued. **However the opinion will be made available to the public**
4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?
Procedures were changed in December 2004 to take into account the subsidiarity early warning mechanism of the Constitutional Treaty.

Findings:

5. Did you find any breach of the subsidiarity principle? **No**
6. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy) **Yes it has been enclosed**
7. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory? **Yes**
8. Did you encounter any specific difficulties? **No**

FOLKETINGET

**Europaudvalget
EU-konsulenten**

Date: 26 September 2008

Opinion adopted by the European Affairs Committee of the Danish Parliament

On the Commission's proposal for a Directive of the European Parliament and of the Council on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – COM(2008) 426

At the request of COSAC, the European Affairs Committee of the Danish Parliament has conducted an assessment of whether the “proposal for a Directive of the European Parliament and of the Council on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation” complies with the principle of subsidiarity.

The main objective of the proposal is to combat discrimination based on religion or belief, disability, age or sexual orientation and to put into effect the principle of equal treatment outside the field of employment.

Furthermore, the proposal aims at ensuring legal certainty for economic operators and potential victims across the Member States in terms of the extent of protection against discrimination on the grounds referred to above.

The key question as regards the proposal's compliance with the subsidiarity principle is whether the objectives of the proposal can be sufficiently achieved through national legislation? Or whether the objectives, by reason of scale or effects, be better attained by the Community?

The subsidiarity check

In accordance with Article 5 of the TEC it initially has to be clarified if the proposal falls within the limits of powers conferred upon the EU by the treaties, and whether it concerns an area where the EU and the Member States share the competences.

It is the assessment that both these questions can be positively responded to.

However, the proposal gives rise to some more specific concerns, as it contains a number of vaguely delimited provisions as well as vaguely defined exceptions from the scope of the Directive. It is therefore necessary to further consider a number of

questions regarding the legal and economic consequences of the proposal – including the scope of some of the more generally delimited provisions.

It is the overall assessment of a majority of the European Affairs Committee of the Danish Parliament, composed of the Liberal Party, the Social Democrats, the Conservatives, the Socialist People's Party and the Social-Liberal Party, that the objectives of the Directive can best be attained through regulation at the European level, and that the proposal therefore complies with the principle of subsidiarity.

While Member States cannot sufficiently achieve the objective of establishing a minimum standard level of protection against discrimination based on religion or belief, disability, age or sexual orientation in all Member States, EU-regulation provides the necessary legal certainty as to the rights and obligations of citizens and economic operators when moving between the Member States.

However, in this context the majority puts particular emphasis on the fact that the Directive only lays down minimum standards allowing individual Member States to go beyond the common European rules.

Minority opinions:

Two political parties have wished to express a minority opinion.

The Danish People's Party supports combating discrimination based on religion or belief, disability, age or sexual orientation.

However, it finds that the Commission has not provided any good justification for why such measures are best decided at European level. The Danish People's Party holds the view that there are no trans-national aspects to the issue, and that the proposal therefore is in breach with the principle of subsidiarity.

Member States are on the contrary in a far better position to adjust their rules with a view to combating discrimination.

Furthermore the Danish People's Party underlines that it opposes that legal competence in this field is transferred to the European Union institutions, including in particular to the European Court of Justice.

Likewise, it is the view of the Danish People's Party that the work with these questions belongs in the Council of Europe which is already preoccupied with the European Convention of Human Rights. This work should not be transferred to the EU.

The Red-Green Alliance regards the proposal first and foremost as an attempt to expand the powers of the European Union. It stresses that the proposal contains a number of vaguely delimited provisions as well as vaguely defined exceptions from the scope of the Directive. It is therefore difficult to see what objectives are attained with the proposal that could not be achieved through national legislation.

The Red-Green Alliance finds that ensuring equal treatment between persons irrespective of their religion or belief, disability, age or sexual orientation is best achieved through national legislation and by the European Convention of Human Rights, which has been signed up to by all EU Member States.

Estonia: Riigikogu



RIIGIKOGU
PARLIAMENT OF ESTONIA
EUROPEAN UNION AFFAIRS COMMITTEE



COSAC Secretariat

2. September 2008 No 2.1-3/1636

Dear Messrs,

Following the decision of the COSAC Chairpersons meeting on 18 February 2008 in Ljubljana, confirmed in the Conclusions of the XXXIX COSAC on 7-8 May 2008 in Brdo pri Kranju, the European Union Affairs Committee of Riigikogu carried out subsidiarity check on the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

In order to facilitate the compilation of the response we have structured it in the form of answers to the question in the aide-mémoire

1. What was the procedure used to conduct the subsidiarity check?

Q: Which committees were involved?

A: The Social Affairs Committee, the Constitutional Committee and the European Union Affairs Committee of Riigikogu were involved.

Q: Was the plenary involved?

A: No the plenary was not involved.

Q: Which administrative services of your parliament were involved?

A: There were no administrative services of our parliament involved.

Q: What was the chronology of events?

A: 1) In July The European Union Affairs Committee asked the ministry of Social Affairs to present the Proposal for a COUNCIL DIRECTIVE on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation to the Government.

2) On the 21 of August the Government presented its position regarding the Proposal to Riigikogu, the Social Affairs Committee and the Constitutional Committee gave their opinions to the European Union Affairs Committee on that subject.

3) European Union Affairs Committee gave its position on that matter on 29 of August.

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

Yes, the Government provided its position with an explanatory memorandum.

Q: In case of a bicameral system, did you coordinate with the other chamber?

A: Estonia has unicameral system.

Q: Did you consult regional parliaments with legislative powers?

A: There are no regional parliaments in Estonia.

Q: Did you make use of any external expertise?

A: No we did not.

2. **Q:** Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

A: No we did not cooperate with other national parliaments.

3. **Q:** Did you publicize your findings (e.g. in a special press release)?

A: The positions of the Committees are public (we put the minutes on the Riigikogu web).

4. **Q:** Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

A: No it has not.

Findings:

5. **Q:** Did you find any breach of the subsidiarity principle?

A: No, we did not.

6. **Q:** Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy)

A: Just the decision/ position.

7. **Q:** Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?

A: Yes we did.

8. **Q:** Did you encounter any specific difficulties during the examination?

A: No we did not.

9. **Q:** Any other comments?

A: No.

Yours sincerely,



Marko Mihkelson
Chairman of the European Union Affairs Committee
Riigikogu

Kristi Sõber (tel. +3726316487; e-mail: kristi.sober@riigikogu.ee)

Finland: Eduskunta



**EDUSKUNTA – PARLIAMENT OF
FINLAND**

29 October 2008

The Grand Committee

**The subsidiarity check under the Treaty of Lisbon on the Proposal for a
Directive**

**Implementing the Principle of Equal Treatment between Persons
Irrespective of Religion or Belief, Disability, Age or Sexual Orientation**

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

No particular scrutiny check was carried out. According to the procedure that will be introduced when the Treaty of Lisbon enters into force, proposals will be distributed to the members of the Grand Committee (GC) and the appropriate sector committees, who may move that the GC carries out a scrutiny check. (In addition the GC secretariat examines the proposal *ex officio* and will advise the chairman of the committee of any subsidiarity issues that should be raised in the GC.)

The proposal will be scrutinised in accordance with the Eduskunta's normal procedures.

The scrutiny to be used in this case is specified in section 96 of the Constitution according to which the Government is required to communicate to the Grand Committee all EU proposals that fall within the competence of the Parliament according to the Constitution, as soon as possible to enable

early scrutiny and parliamentary input. The purpose of the scrutiny is to authorise the Government's negotiating position with respect to the proposal.

Due to the summer recess, the explanatory memorandum from the Government on this specific proposal will be studied in the Eduskunta only after 26 September 2008. As indicated in previous replies, the Eduskunta views the 'mandating' of the national negotiating position as its real task. Subsidiarity is, for the Eduskunta, rather a secondary consideration.

a. Which committees were involved?

The committees involved most likely are the Constitutional Law Committee and the Employment and Equality Committee who will give their opinions to the Grand Committee, which adopts the Eduskunta's position.

b. Was the plenary involved?

No, since in EU-matters it is the Grand Committee which adopts the Eduskunta's position.

c. Which administrative services of your parliament were involved?

See answer 1 a.

d. What was the chronology of events?

See answer 1 a

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

The Government will provide an extensive explanatory memorandum on the issue.

f. In case of a bicameral system, did you coordinate with the other chamber?

-

g. Did you consult regional parliaments with legislative powers?

-

h. Did you make use of any external expertise?

The sectoral committees will organise extensive hearings with external experts.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

No, no formal contact with other national Parliaments is foreseen.

3. Did you publicise your findings (e.g. in a special press release)??

The findings of the sectoral committees and the position of the Grand Committee will be published as parliamentary documents. The press is informed as a matter of course.

4. Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?

The necessary adaptations of the Eduskunta's rules of procedure have been drafted and approved in principle by the political groups. They will be formally submitted to the plenary when the likely date of entry into force of the Lisbon treaty can be foreseen.

Findings:

The subsidiarity issue will be studied in the course of the national procedure and any observations will be noted in the EU Council. As the Eduskunta chose not to act during the scrutiny period, answers to qu. 5-6 are moot.

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

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

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

The grounds for a community-wide measure on this specific proposal are well argued and balanced given that the objectives of the proposal cannot be sufficiently achieved by the Member States acting alone.

8. Did you encounter any specific difficulties during the examination?

9. Any other comments?

France: Assemblée nationale

Paris, le 3 septembre 2008

**Evaluation du test de subsidiarité sur la proposition
de directive relative à la mise en œuvre du principe d'égalité de
traitement entre les personnes sans distinction de religion ou de
convictions, de handicap, d'âge ou d'orientation sexuelle**

Assemblée nationale française – Délégation pour l'Union européenne

1. Quelle a été la procédure utilisée pour réaliser le contrôle de subsidiarité ? Veuillez préciser en fonction des points suivants :

- Quelles commissions ont été impliquées ?

Réponse : La Délégation de l'Assemblée nationale pour l'Union européenne a procédé, seule, au test de subsidiarité lors de la séance du 22 juillet, dont le compte rendu est ci-joint.

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

Réponse : Il n'y a pas eu de débat en séance publique.

- Quels services administratifs de votre Parlement ont été impliqués ?

Réponse : le secrétariat de la Délégation de l'Assemblée nationale pour l'Union européenne.

- Quelle a été la chronologie de l'examen ?

Réponse : La proposition de directive a été adoptée par la Commission le 2 juillet 2008.

Le 9 juillet, il a été indiqué que la date limite pour effectuer le test était le 4 septembre suivant.

Par conséquent, comme précédemment indiqué, la Délégation de l'Assemblée nationale pour l'Union européenne a procédé au test le 22 juillet.

- Votre gouvernement a-t-il fourni des informations dans le cadre de la procédure d'examen ?

Réponse : Les deux co-rapporteurs ont rencontré le cabinet et les services du ministre compétent.

- En ce qui concerne les parlements bicaméraux : avez-vous coopéré avec l'autre chambre ?

Réponse : Les procédures des deux assemblées sont indépendantes.

- Avez-vous consulté les parlements régionaux ?

Réponse : La France n'est pas un Etat fédéral.

- Avez-vous bénéficié d'une expertise extérieure ?

Réponse : Aucune expertise extérieure n'est intervenue.

2. Avez-vous collaboré avec d'autres parlements nationaux au cours du processus ? Si c'est le cas, par quels moyens (le Secrétariat de la COSAC, IPEX, les représentants permanents des parlements nationaux à Bruxelles) ?

Réponse : Aucune collaboration de ce type n'est intervenue.

3. Avez-vous publié vos conclusions (par exemple dans un communiqué de presse) ?

Réponse : Les réunions de la Délégation pour l'Union européenne font l'objet d'un compte-rendu public, directement accessible sur le site *Internet* de l'Assemblée nationale.

4. Votre Parlement a-t-il adapté récemment ses procédures pour se mettre en conformité avec les dispositions du Traité de Lisbonne, ou envisage-t-il de le faire à l'avenir ?

Réponse : A la suite de la loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République, qui concerne également les procédures d'examen parlementaire des questions européennes, une révision du règlement sera adoptée au cours des prochains mois.

Conclusions:

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

Réponse : La Délégation n'a pas conclu dans le sens d'un manquement au principe de subsidiarité.

6. Avez-vous adopté un avis motivé sur la proposition de directive ? (Dans ce cas veuillez joindre une copie).

Réponse : La Délégation pour l'Union européenne a adopté les conclusions indiquées au compte-rendu ci-joint de sa réunion du 22 juillet.

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

Réponse : Aucune intervention n'a abordé ce point.

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

Réponse : Le respect de l'échéance du 4 septembre a de fait rendu obligatoire de procéder à très bref délai au test de subsidiarité, puisque les travaux des assemblées se sont arrêtés cette année le 24 juillet et qu'ils ne reprendront que le 22 septembre.

9. Avez-vous d'autres observations ?

Réponse : Pas d'autre observation.

Compte rendu n° 60, Délégation pour l'Union européenne

mardi 22 juillet 2008

Présidence de M. Pierre Lequiller Président

I. Communication de MM. Christophe Caresche et Guy Geoffroy sur le test de subsidiarité organisé dans le cadre de la COSAC sur la proposition de directive relative à la mise en œuvre du principe d'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle

Le Président Pierre Lequiller a préalablement indiqué que, pour faciliter l'examen des propositions d'acte communautaire au titre de la subsidiarité et de la proportionnalité, les deux rapporteurs, MM. Jérôme Lambert et Didier Quentin, seraient assistés de deux suppléants, MM. Christian Caresche et Guy Geoffroy.

L'examen au titre de la subsidiarité est destiné à devenir plus fréquent. Le Président de l'Assemblée nationale a récemment rappelé qu'il souhaitait que celle-ci fût exemplaire en la matière. Le traité de Lisbonne prévoit d'ailleurs un renforcement du rôle des parlements nationaux.

Dans cette perspective, il convient d'envisager d'aller au-delà d'un simple examen des textes européens et vers une approche positive de la subsidiarité consistant à demander à la Commission européenne de prendre des initiatives dans certains domaines.

M. Christophe Caresche, rapporteur, a d'abord rappelé que la proposition de directive concernant l'institution d'un comité d'entreprise européen ou d'une procédure dans les entreprises de dimension communautaire et les groupes d'entreprises de dimension communautaire en vue d'informer et de consulter les travailleurs (refonte), de même que la proposition de décision modifiant la décision 2001/470/CE relative à la création d'un réseau judiciaire européen en matière civile et commerciale, n'appelaient pas d'objection au titre de la subsidiarité et de la proportionnalité.

Pour sa part, la proposition de directive relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle vient compléter différentes directives relatives à la lutte contre les discriminations intervenues en dehors du domaine de l'emploi entre 2000 et 2004. Le contenu de ces dernières a d'ailleurs donné récemment lieu à débat puisque la France a dû, à la suite des observations de la Commission, compléter la transposition à laquelle elle avait antérieurement procédé.

La proposition de la Commission doit être saluée puisqu'il s'agit d'appliquer des règles minimales de manière à lutter contre les formes de discrimination dans l'accès aux biens et aux services. Lors de son audition par la Délégation le 4 juin dernier, le ministre du travail, des relations sociales et de la solidarité, M. Xavier Bertrand, avait indiqué qu'il était favorable à ce texte.

Une question mérite cependant un examen attentif, celle du respect de la laïcité. Elle a été traitée en amont par le Gouvernement avec la Commission et se traduit par d'importantes précisions tant dans les considérants que dans le dispositif de l'article 3. Le considérant n° 18 est ainsi assez explicite puisqu'il précise que les Etats membres peuvent autoriser ou interdire le port ou l'exhibition de symboles religieux dans les établissements scolaires.

La Délégation peut donc considérer que la proposition est conforme au principe de subsidiarité à condition qu'elle contienne bien des dispositions garantissant la laïcité d'Etat et la législation française sur le port des signes religieux dans les établissements scolaires.

M. Guy Geoffroy, rapporteur, a ajouté, que cette proposition pouvait être considérée par essence comme consensuelle mais que les débats devant la Délégation devaient témoigner de deux éléments.

D'une part, le délai imparti est extrêmement bref. Il est regrettable de devoir se prononcer dans de telles conditions sur des questions si importantes. Il appartient donc à la Commission européenne de veiller pour l'avenir à ces éléments de calendrier. Les parlements ne sont pas sans activité en période estivale, mais interrompent cependant leurs travaux quelques semaines. Si le délai, à cette période de l'année, apparaît manifestement trop court pour un sujet sur lequel il y a consensus, il sera clairement insuffisant dès lors que la convergence des analyses des rapporteurs sera plus délicate à obtenir.

D'autre part, la nature de la directive pose pour la France une question qui est loin d'être mineure. Notre pays est d'autant plus fondé à la poser que c'est lui qui a été à l'initiative dans l'introduction du traité de Rome du principe d'égalité, directement issu de ses valeurs fondamentales et républicaines. Une grande vigilance s'impose donc dans ce domaine. Pour ce qui concerne l'éducation, le point 4 de l'article 3 et le considérant n° 18 sont effectivement indispensables. Au-delà, il est clairement opportun de faire référence dans l'avis de la Délégation au domaine de la santé, pour lequel des questions similaires se posent.

Le Président Pierre Lequiller a jugé pertinente une telle insertion dans les conclusions de la Délégation, désormais appelée « commission chargée des affaires européennes », en application de la loi constitutionnelle de modernisation des institutions de la V^e République.

Conformément à la proposition des rapporteurs, la Délégation a adopté, au regard de la subsidiarité et de la proportionnalité, les conclusions suivantes sur la proposition de directive du Conseil relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle (COM (2008) 426 final) :

« La Délégation de l'Assemblée nationale pour l'Union européenne considère que la proposition de directive n'apparaît pas, en première analyse, à ce stade et en l'état des informations dont elle a pu disposer, contraire aux principes de subsidiarité et de proportionnalité, dès lors que l'article 3 et le considérant n° 18, entre autres, garantissent le principe de la laïcité de l'Etat et la législation française, notamment celle sur le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, les collèges et lycées publics, ainsi que celle relative aux établissements de santé ».

France: Sénat

Évaluation du test de subsidiarité :

Dans le but de faciliter l'évaluation de ce contrôle de subsidiarité lors de la réunion de la COSAC à venir, les Parlements nationaux sont, au nom de la Présidence française, invités à répondre aux questions suivantes et à envoyer leurs réponses au Secrétariat de la COSAC (secretariat@cosac.eu).

Procédure :

1. Quelle a été la procédure utilisée pour réaliser le contrôle de subsidiarité ? Veuillez préciser en fonction des points suivants :

- Quelles commissions ont été impliquées ? **La commission des Affaires européennes.**
- La séance plénière a-t-elle été impliquée ? **Non.**
- Quels services administratifs de votre Parlement ont été impliqués ? **Le service des Affaires européennes.**
- Quelle a été la chronologie de l'examen ? **En raison des élections sénatoriales, le texte n'a pu être examiné avant le 23 septembre 2008.**
- Votre gouvernement a-t-il fourni des informations dans le cadre de la procédure d'examen ? **Oui.**
- En ce qui concerne les parlements bicaméraux : avez-vous coopéré avec l'autre chambre ? **Il y a eu un échange d'informations.**
- Avez-vous consulté les parlements régionaux ? **Non.**
- Avez-vous bénéficié d'une expertise extérieure ? **Non.**

2. Avez-vous collaboré avec d'autres parlements nationaux au cours du processus ? Si c'est le cas, par quels moyens (le Secrétariat de la COSAC, IPEX, les représentants permanents des parlements nationaux à Bruxelles) ? **Des informations ont été obtenues auprès des représentants des parlements nationaux à Bruxelles.**

3. Avez-vous publié vos conclusions (par exemple dans un communiqué de presse) ? **Oui.**

4. Votre Parlement a-t-il adapté récemment ses procédures pour se mettre en conformité avec les dispositions du Traité de Lisbonne, ou envisage-t-il de le faire à l'avenir ? **Ce n'est pas envisagé avant l'entrée en vigueur du traité de Lisbonne.**

Conclusions:

5. Avez-vous découvert un quelconque manquement au principe de subsidiarité ? **Non.**
6. Avez-vous adopté un avis motivé sur la proposition de directive ? (Dans ce cas veuillez joindre une copie).
Non (une copie de nos conclusions est néanmoins jointe)
7. Avez-vous trouvé les justifications de la Commission sur le respect du principe de subsidiarité satisfaisantes ? **En partie seulement (voir note ci-jointe)**
8. Avez-vous rencontré des difficultés spécifiques pendant l'examen ? **La période était peu propice (vacances parlementaires, puis élections sénatoriales).**
9. Avez-vous d'autres observations ? **Non.**

Dates-clé

- Publication de la proposition de la Commission : 2 juillet 2008
- Lancement officiel du test de subsidiarité : lorsque la traduction de la proposition dans toutes les langues de l'Union sera disponible (d'après les indications fournies par la Commission, au cours de la deuxième quinzaine de juillet)
- Envoi des avis motivés aux institutions de l'Union européenne dans un délai de 8 semaines à compter du lancement officiel du test.
- Envoi au Secrétariat de la COSAC des avis motivés et des réponses au questionnaire dans un délai de 8 semaines à compter du lancement officiel du test.



Paris, le 23 septembre 2008

DELEGATION
POUR
L'UNION
EUROPEENNE

LE PRESIDENT

CONTRÔLE DE SUBSIDIARITÉ

Proposition de directive du Conseil relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle

(Texte retenu pour le test de subsidiarité organisé en vue de la prochaine COSAC)

1) Objet du texte

La proposition de directive a pour but de mettre en œuvre le principe d'égalité de traitement entre les personnes sans distinction de religion ou de conviction, de handicap, d'âge ou d'orientation sexuelle, **en dehors du marché du travail**, c'est-à-dire dans les domaines de la protection sociale, des avantages sociaux, de l'éducation, de l'accès aux biens et services.

Nous ne sommes pas dans un domaine de compétence exclusive de la Communauté, le principe de subsidiarité est donc applicable.

2) Base juridique

La proposition se fonde sur l'article 13, paragraphe 1 du traité instituant la Communauté européenne :

« ... Sans préjudice des autres dispositions du présent traité et dans les limites des compétences que celui-ci confère à la Communauté, le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen, peut prendre les mesures nécessaires en vue de combattre toute discrimination fondée sur le sexe, la race ou l'origine ethnique, la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle. »

Cette base juridique impose donc que la proposition se situe « dans la limite des compétences que [le traité] confère à la Communauté ». Il est regrettable que cette exigence ne soit pas rappelée explicitement dans les dispositions proposées.

3) Motivation

La Commission avance deux arguments :

– tout d'abord, « seule une mesure à l'échelon communautaire peut garantir un niveau minimal de protection standard ». Cet argument ne paraît pas valable : qu'une intervention communautaire soit nécessaire pour garantir un standard minimum commun est pratiquement une évidence ; mais un tel argument pourrait justifier n'importe quelle intervention, privant le principe de subsidiarité de tout effet utile. Ce qu'il faut en réalité établir, c'est que la mise en place d'un standard minimum commun est nécessaire.

– ensuite, un « acte juridique communautaire assure la sécurité juridique en ce qui concerne les droits et obligations des acteurs économiques et des citoyens, y compris ceux qui se déplacent entre les états membres ». Cet argument, en revanche, est convaincant, notamment lorsqu'il met l'accent sur la mobilité des personnes, qui peuvent légitimement s'attendre à un standard minimal en matière de garantie d'égalité de traitement lorsqu'elles se déplacent d'un État membre à l'autre. Or, d'après la Commission, l'analyse de la situation dans les États membres montre que le niveau de protection juridique reste très variable selon les États membres.

Une intervention communautaire paraît donc justifiée dans son principe.

4) Contenu

Toutefois, selon le principe de subsidiarité, la Communauté ne doit intervenir que « dans la mesure où » son action est réellement nécessaire. Il faut donc examiner si la proposition de directive ne va pas plus loin que nécessaire.

Les principaux aspects du texte sont les suivants :

→ **l'article 2** précise le concept de discrimination, ce qui est un facteur de sécurité juridique ;

→ **l'article 3** définit le champ d'application de la directive de manière restrictive, dans un esprit de subsidiarité, puisque le texte précise qu'il ne met pas en cause :

– « les législations nationales relatives à l'état matrimonial ou familial et aux droits en matière de procréation ;

– « *les responsabilités des États membres en ce qui concerne le contenu, les activités et l'organisation de leurs systèmes d'éducation, y compris en matière d'éducation répondant à des besoins spécifiques. Les États membres peuvent permettre des différences de traitement s'agissant de l'accès aux établissements d'enseignement fondés sur la religion ou les convictions ;* »

– « *la législation nationale qui garantit la laïcité de l'État, des institutions et organismes publics ou de l'éducation, ou qui concerne le statut et les activités des Églises et autres organisations fondées sur la religion ou sur certaines convictions* » ;

– « *la législation nationale qui promeut l'égalité entre hommes et femmes* ».

→ Le même article précise que la proposition « *ne couvre pas les différences de traitement fondées sur la nationalité* » et qu'elle « *s'entend sans préjudice des dispositions et conditions relatives à l'admission et au séjour des ressortissants de pays tiers et des apatrides sur le territoire des États membres et de tout traitement lié au statut juridique des ressortissants de pays tiers et des apatrides concernés* ».

→ **l'article 4** porte sur les mesures particulières nécessaires dans le cas des handicapés : la directive précise que ces mesures ne doivent pas imposer de « *charges disproportionnées* » ;

→ **les articles 5 et 6** soulignent que le texte n'empêche pas les États membres de mettre en œuvre des mesures de discrimination positive, ni d'aller plus loin que les standards communs prévus par la directive ;

→ **les articles 7 à 9** concernent les procédures assurant le respect de la non-discrimination. Ces articles se limitent à des principes fondamentaux :

- existence de voies de recours,
- possibilité d'intervention des associations concernées,
- renversement de la charge de la preuve,
- protection contre les rétorsions.

On voit que les dispositions de la directive n'empiètent pas plus que nécessaire sur les législations nationales. Elles ne portent pas atteinte aux choix de société effectués dans les États membres en matière de famille ou d'éducation.

5) Conclusion

La proposition de directive ne porte pas atteinte au principe de subsidiarité.

Germany: Bundesrat

Procedures:

1. What was the procedure used to conduct the subsidiarity check?
 - i. Which committees were involved?

The Committee on European Union Questions is the Bundesrat's lead committee for deliberations on draft EU legislation and other EU documents. The Committee on European Union Questions conducts its deliberations on the basis of recommendations from the sector-specific committees. The draft directive was also examined by the Committee on Labour and Social Policy, the Committee on Women and Youth, the Finance Committee, the Committee on Cultural Affairs, the Committee on Legal Affairs and the Committee on Economic Affairs.

- a. Was the plenary involved?

In its plenary session on 19th September 2008, the Bundesrat adopted an Opinion on the draft directive, based on deliberations in the committees.

- b. Which administrative services of your parliament were involved?

The Office of the Committee on European Union Questions compiled the recommendations from the sector-specific Bundesrat committees into a single text, which was the basis for the vote in the plenary session of the Bundesrat.

- c. What was the chronology of events?

The German version of the draft directive was transmitted to the Bundesrat on 7th July 2008 by the Commission and on 11th July 2008 by the German government. The Secretary-General of the Bundesrat allocated the draft to the lead committee, the Committee on European Union Questions, for examination, as well as to six further sector-specific committees (c.f. question 1 b). It was not possible to initiate deliberations until after the summer recess. The committees involved met in the week of 1st to 5th September 2008 and adopted their recommendations for a Bundesrat Opinion. The draft directive was examined in the Committee on European Union Questions on 5th September 2008. The Committee on European Union Questions based its recommendations to the Bundesrat concerning the Opinion to be adopted on the recommendations from the sector-specific committees.

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

In the course of deliberations in the committees, the federal government explained its interim assessment of the draft directive.

- e. In case of a bicameral system, did you coordinate with the other chamber?

No.

- f. Did you consult regional parliaments with legislative powers?

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

- g. Did you make use of any external expertise?

No expert opinions were transmitted to the Bundesrat.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

There was no cooperation with other national parliaments. Information about progress on deliberations and the outcome of the overall process was entered into the IPEX system immediately.

3. Did you publicise your findings (e.g. in a special press release)?

Bundesrat Resolutions are public and freely available on the Internet. In addition, the result of deliberations on the draft directive was communicated in a press release.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

At present the Bundesrat is still examining whether the procedure needs to be adapted in the light of the early warning system envisaged in the Treaty of Lisbon.

Findings:

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

The Bundesrat did not find any breach of the subsidiarity principle. However, as the EU's existing anti-discrimination legislation provides an adequate legal framework, the Bundesrat considers that further initiatives are not required in this sphere and that proposals to this effect should therefore be rejected.

Furthermore the Bundesrat believes that other, more proportionate measures, which exist alongside legislative provisions, can prove more appropriate, such as for example political coordination organised in the spirit of learning from each other in order to share experience about approaches that have proved helpful in combating discrimination in other Member States. In this context the differing legal systems and traditions in the various Member States must be taken into account and it is also crucial that decisions on how to provide protection from discrimination be left up to Member States. The Commission should avoid introducing excessive and disproportionate requirements for legislation to be adopted in the Member States.

In the light of the high level of protection that has been attained in the Federal Republic of Germany and in many other Member States, which affords greater protection than stipulated in European Union proposals, provisions on proportionality would not be respected if additional European legislation introducing new requirements were to be imposed at present on public bodies and companies across the European Union; this would necessitate renewed adjustments as well as creating uncertainty and disruption.

Before considering the adoption of new anti-discrimination legislation, it would be appropriate to wait until experience has been gleaned with existing legislation, adopted only recently, to implement the current anti-discrimination directives.

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

The Bundesrat adopted the appended Opinion on the draft directive on 19th September 2008.

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

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

8. Did you encounter any specific difficulties during the examination?

No.

9. Any other comments?

If the early warning system had already been in place, it would have been possible to adhere to the eight-week deadline by convening the Chamber of European Affairs.

Bundesrat Drucksache 499/08 (Beschluss) 19.09.08

Beschluss des Bundesrates

**Vorschlag für eine Richtlinie des Rates zur Anwendung des Grundsatzes der Gleichbehandlung ungeachtet der Religion oder der Weltanschauung, einer Behinderung, des Alters oder der sexuellen Ausrichtung
KOM(2008) 426 endg.; Ratsdok. 11531/08**

Der Bundesrat hat in seiner 847. Sitzung am 19. September 2008 gemäß §§ 3 und 5 EUZBLG die folgende Stellungnahme beschlossen:

Allgemeine Anmerkungen

1. Der Bundesrat teilt die Einschätzung der Kommission, dass die wirksame Bekämpfung von Diskriminierungen aller Art sowie die Teilhabe von Menschen mit Behinderungen wichtige Aufgaben sind. Er bekennt sich nochmals zu dem Grundsatz, dass Diskriminierungen wegen der Religion oder Weltanschauung, der Behinderung, des Alters sowie der sexuellen Ausrichtung in einer aufgeklärten, den Grundrechten verpflichteten Gesellschaft keinen Platz haben. Dieser Grundsatz gilt uneingeschränkt auch für den Bereich außerhalb des Arbeitsmarkts.

2. Der Bundesrat hält an seiner bisherigen Haltung fest, wonach angesichts des ausreichenden Rechtsrahmens der EU im Bereich der Antidiskriminierungs-politik weitere Initiativen in diesem Bereich nicht erforderlich und daher abzulehnen sind (vgl. Stellungnahmen des Bundesrates vom 8. Juni 2007, BR-Drucksache 153/07 (Beschluss) und vom 14. März 2008, BR-Drucksache 134/08 (Beschluss) zu den Mitteilungen der Kommission: Jährliche Strategie-planung für 2008 bzw. 2009).

3. Nach Ansicht des Bundesrates sind neben den Rechtsetzungsakten verhältnismäßigere Maßnahmen - wie z. B. eine politische Koordinierung - zielführender, um im Sinne eines voneinander Lernens Erfahrungen zu gewinnen, welche Ansätze der Mitgliedstaaten sich bei der Bekämpfung von Diskriminierung als erfolgreich erweisen. Dabei müssen die unterschiedlichen Rechtssysteme und -traditionen der Mitgliedstaaten berücksichtigt werden und es muss diesen überlassen bleiben, wie sie den Schutz vor Diskriminierung gewährleisten. Auf überzogene und unverhältnismäßige Vorgaben für die Gesetzgebung in den Mitgliedstaaten durch die Kommission sollte dabei ganz verzichtet werden.

4. Zu Recht weist die Kommission in ihrer begleitenden Mitteilung "Nicht-diskriminierung und Chancengleichheit: Erneueres Engagement" vom 2. Juli 2008 (KOM(2008) 420 endg.) darauf hin, dass die EU bereits jetzt über einen der weltweit fortschrittlichsten Rechtsrahmen im Bereich der Nichtdiskriminierung verfügt. Das Schutzniveau geht in der Bundesrepublik Deutschland und vielen anderen Mitgliedstaaten über die europäischen Vorgaben noch hinaus. Auch das spricht dafür, es bei dem bisher Erreichten zu belassen und den hohen Stand zu konsolidieren. Angesichts des erreichten hohen Niveaus ist es nicht verhältnismäßig, durch weitere europäische Rechtsetzung zum jetzigen Zeitpunkt neue Anforderungen und damit erneuten Anpassungsbedarf mit Unsicherheiten und Unruhe den öffentlichen Stellen und den Unternehmen in der Gemeinschaft aufzuerlegen.

5. Nach Ansicht des Bundesrates lässt sich mit dem Argument, dass einige Mitgliedstaaten einen über die bisherigen Regelungen hinausgehenden rechtlichen Schutz vor Diskriminierungen gewähren (wie in Deutschland das AGG), eine Ausdehnung der europäischen Antidiskriminierungsmaßnahmen nicht rechtfertigen. Denn dann käme es zu einer unzulässigen schrittweisen Harmonisierung auf höchstem Niveau, obwohl eine 1:1-Umsetzung der durch die Richtlinien vorgegebenen Mindestschutzanforderungen genügt. Hinzu kommt, dass ein europäischer Konsens zur Art und Weise des Diskriminierungsschutzes offensichtlich nicht besteht - was nicht zuletzt die Vielzahl der Vertragsverletzungsverfahren zeigt, die im Hinblick auf die Umsetzung der Antidiskriminierungsrichtlinien aus dem Jahr 2000 gegen etwa die Hälfte der Mitgliedstaaten von der Kommission initiiert wurde.

6. Bevor überhaupt neue Rechtsakte im Bereich der Antidiskriminierung ins Auge gefasst werden, müssen zunächst die Erfahrungen der Mitgliedstaaten mit den noch jungen Gesetzen zur Umsetzung der bisherigen Antidiskriminierungsrichtlinien 2000/43/EG, 2000/78/EG, 2002/73/EG und 2004/113/EG abgewartet werden. Die Mitgliedstaaten haben erst vor kurzem in Umsetzung der bisherigen Antidiskriminierungsrichtlinien ihre nationalen Gesetze erlassen. Die Vielzahl der hierzu von der Kommission eingeleiteten Vertragsverletzungsverfahren (nach der Mitteilung der Kommission "Nichtdiskriminierung und Chancengleichheit: Erneueres Engagement" vom 2. Juli 2008 (KOM(2008) 420 endg.) sind etwa die Hälfte der Mitgliedstaaten betroffen) macht die erheblichen Schwierigkeiten der Mitgliedstaaten bei der Umsetzung der bestehenden Richtlinien deutlich.

7. Die Schwierigkeiten zahlreicher Mitgliedstaaten bei der Umsetzung der bisherigen Antidiskriminierungsvorschriften belegen, dass schon die bestehenden Richtlinien keinen hinreichend klaren Rechtsrahmen gesetzt haben. Die bestehende Rechtsunsicherheit würde durch den weiteren Richtlinienvorschlag der Kommission zum Diskriminierungsschutz zum jetzigen Zeitpunkt, zu dem die zutage getretenen unterschiedlichen Auffassungen zur Lesart der bisherigen Richtlinien noch keiner Klärung zugeführt sind, nur noch verstärkt.

8. Der Vorschlag - dessen Umsetzung mit erheblichem Änderungsbedarf im deutschen Recht verbunden wäre - würde der Gesetzgebung in den Mitgliedstaaten gleichsam übergestülpt und hätte häufig Friktionen mit den nationalen Gesetzen, die erst vor kurzem in Umsetzung der vorangegangenen Antidiskriminierungsrichtlinien erlassen wurden, zur Folge. Die Kommission scheint sich dieser Problematik selbst bewusst zu sein, wenn sie in ihrer Mitteilung etwa äußerst unterschiedliche Ausgangslagen beim Schutz von Menschen mit Behinderungen einräumt und den Mitgliedstaaten daher eine "gewisse Flexibilität" zugestehen will.

9. Der Bundesrat ist der Ansicht, dass der Richtlinienvorschlag durch unscharfe und von den Mitgliedstaaten nicht flexibel handhabbare Vorgaben weitere erhebliche Rechtsunsicherheit und überflüssige Belastungen für das Wirtschafts- und Rechtsleben schafft. Eine Vielzahl von Rechtsstreitigkeiten könnte provoziert werden, die für die wirtschaftlichen Abläufe erforderliche Vorhersehbarkeit des Rechts würde empfindlich gestört. Dies gilt besonders für das Zivilrecht.

10. Vor dem Hintergrund des bestehenden AGG ist der Richtlinienvorschlag so-wohl hinsichtlich seines Anwendungsbereichs wie auch seiner konkreten Anforderungen und den daraus entstehenden Folgeb Belastungen für die Wirtschaft bedenklich.

11. Bei einem Unternehmer sind sämtliche Kontakte zu Kunden und Interessenten, von der Begrüßung über Informationen und Produktangebote, die Konditionen, das Beratungsgespräch oder die Verhandlung bis hin zum Vertragsabschluss zu erfassen. Der Bundesrat befürchtet, dass sich der beabsichtigte Diskriminierungsschutz in sein Gegenteil verkehrt, wenn z. B. Vermieter angesichts der auf sie zukommenden Dokumentations- und Rechtfertigungslasten auf einen Vertrag mit möglichen Diskriminierungsopfern von vorneherein verzichten.

12. Die in Artikel 8 (Beweislast) und 7 (Rechtsschutz) vorgesehenen Regelungen würden insbesondere im Hinblick auf die beabsichtigten Bestimmungen in Artikel 4 (Gleichbehandlung von Menschen mit Behinderungen) i. V. m. Artikel 2 Abs. 5 (Verweigerung angemessener Vorkehrungen) zu einer nicht überschaubaren Dokumentationsbürokratie und einer Vielzahl von Klageverfahren führen. Die Pflicht, im Vorfeld Maßnahmen zu ergreifen, die eine Benachteiligung verhindern, kann auch bedeuten, dass beispielsweise Schulgebäude umgebaut oder die gesamte Verkehrsinfrastruktur umgestaltet werden muss. Über die Frage der Zumutbarkeit dürften bei Sachverhalten von hohem allgemeinen Interesse regelmäßig Rechtsstreitigkeiten entstehen. Ein Unternehmen müsste gegebenenfalls zum Nachweis einer Nichtbenachteiligung wegen vorliegender Unverhältnismäßigkeit sämtliche internen Daten offen legen. Zusätzliche europäische Rechtsakte ohne konkreten Nutzen für die Bürgerinnen und Bürger konterkarieren die nachdrücklichen Bemühungen um bessere Rechtsetzung.

13. Auch wenn an einigen Stellen der Richtlinienvorschlag, wie in Artikel 4 (Gleichbehandlung von Menschen mit Behinderungen) auf die Verhältnismäßigkeit der Belastung abhebt und damit der reduzierten Leistungsfähigkeit von KMU Rechnung tragen will, bringt das Regelungs werk insbesondere für KMU einen hohen zusätzlichen Verwaltungsaufwand mit sich. Sie müssen sich, ohne dass sie über in dem Maße spezialisierte Personal- und Rechtsabteilungen verfügen, mit den Vorschriften vertraut machen und sie anwenden. Der Umfang der zu beachtenden europäischen Vorschriften wird erhöht.

14. Der Bundesrat vermisst eine konsequente Umsetzung des Grundsatzes der Kommission "Zuerst an die KMU-Dimension denken". In ihrer Mitteilung "Umsetzung des Lissabon-Programms der Gemeinschaft - eine zeitgemäße KMU-Politik für Wachstum und Beschäftigung" (KOM(2005) 551 endg.) möchte die Kommission diesen Grundsatz allen gemeinschaftlichen Politiken voranstellen und sich für die Vereinfachung der Rechts- und Verwaltungsverfahren einsetzen. Der neue Richtlinienvorschlag zur Antidiskriminierung geht mit diesem Denken nicht konform.

15. Der Bundesrat weist ebenfalls darauf hin, dass die Bemühungen der Kommission, mit dem Aktionsprogramm zur Verringerung der Verwaltungslasten in der EU (KOM(2007) 23 endg.) die Informationspflichten der Unternehmen bis 2012 um ein Viertel zu reduzieren, konterkariert werden, wenn, wie in der begleitenden Mitteilung vorgeschlagen, regelmäßige statistische Erhebungen über die Zahl und Auswirkungen von Diskriminierungen durchgeführt werden.

16. Die im Richtlinienvorschlag vorgesehene Ausdehnung hätte einen massiven, zum effektiven Schutz vor Diskriminierung in dieser Form nicht erforderlichen Eingriff in den auch gemeinschaftsrechtlich anerkannten Grundsatz der Vertragsfreiheit zur Folge. Ohne das Prinzip der Privatautonomie sind moderne Gesellschaften indes nicht denkbar. Zivilgesellschaften sind auf das vor allem durch Verträge in freier Selbstbestimmung gesetzte private Recht angewiesen. Der Richtlinienvorschlag ist nach Auffassung des Bundesrates insoweit nicht geeignet, das berechnigte Interesse des Einzelnen, vor Diskriminierung geschützt zu werden, mit den berechtigten Interessen von Wirtschaft und Gesellschaft in ein ausgewogenes und angemessenes Verhältnis zu bringen.

Zu den Regelungen im Einzelnen

17. Insbesondere für den Bildungsbereich lehnt der Bundesrat jede Ausweitung des EU-Antidiskriminierungsrechts ab: Nach Artikeln 149, 150 EGV bleibt die Verantwortung für die allgemeine und berufliche Bildung den Mitgliedstaaten vorbehalten; die EU ist auf koordinierende, unterstützende oder ergänzende Maßnahmen beschränkt. Mit dieser klaren Regelung ist vor allem die von der Kommission vorgeschlagene pauschale Ausweitung des Geltungsbereichs der Richtlinie auf die Bildung nicht vereinbar.

18. Der Richtlinienvorschlag nimmt vom Diskriminierungsverbot nur die nicht-gewerblichen Vermieter aus (vgl. Artikel 3 Abs. 1 Satz 2). Aber auch den gewerblichen "kleinen" Vermietern werden durch die Dokumentationslasten der Richtlinie ein unverhältnismäßig großer organisatorischer Aufwand und damit unverhältnismäßig hohe Kosten auferlegt.

19. Ungleichbehandlungen - beispielsweise wegen einer Behinderung oder des Alters - sind nicht per se diskriminierend. Nicht selten folgen sie objektiven Notwendigkeiten (z. B. Zugangsbeschränkungen bei gefährlichen Dienstleistungen aus Gründen der Verkehrssicherungspflicht). Entsprechend fehlt im Richtlinienvorschlag eine Generalklausel, die es den Mitgliedstaaten bei der Umsetzung der vorgeschlagenen Richtlinie generell ermöglicht, bei Vorliegen eines sachlichen Grundes insbesondere im Bereich des Zivilrechts eine Ungleichbehandlung im Einzelfall zuzulassen.

20. Der Bundesrat stellt fest, dass die mit dem Vorschlag angestrebte Rechtssicherheit hinsichtlich der Rechte und Pflichten der Wirtschaftsakteure und Bürgerinnen und Bürger nicht erreicht wird. Vielmehr entstehen durch un-scharfe und nicht handhabbare Vorgaben für die nationale Gesetzgebung Rechtsunsicherheit und Anlässe für Rechtsstreitigkeiten.

21. Nach Artikel 3 Abs. 1 Buchstabe d des Richtlinienvorschlags soll das Diskriminierungsverbot in Bezug auf den Zugang zu und die Versorgung mit Gütern und Dienstleistungen, die der Öffentlichkeit zur Verfügung stehen, einschließlich Wohnraum für alle Personen im öffentlichen und privaten Bereich gelten. Dies bedeutet im Grundsatz eine Ausweitung des Benachteiligungsverbots auf alle privatrechtlichen Rechtsgeschäfte, mit Ausnahme der familien- und erbrechtlichen Schuldverhältnisse. Dass dies eine völlig unverhältnismäßige Überreglementierung des täglichen Lebens bedeuten würde, ist offenbar auch der Kommission bewusst. Die daher vorgesehene Einschränkung, für Einzelne solle das Diskriminierungsverbot nur insoweit gelten, als sie ihre berufliche oder gewerbliche Tätigkeit ausüben, ist allerdings in ihrer

Reichweite unklar und für eine verlässliche Rechtsanwendung ungeeignet. Was die Kommission unter "beruflicher oder gewerblicher Tätigkeit" versteht, erschließt sich nicht. Die Erläuterung, "Transaktionen zwischen Privatpersonen, die als solche handeln" sollten nicht erfasst sein, kann zu einer Klärung des Anwendungsbereichs nichts Substantielles beitragen.

22. Wenn die Kommission hinsichtlich des Artikels 3 Nr. 1 Buchstabe d des Richtlinienvorschlags Handeln im privaten Bereich von vornherein ausschließen will, wäre bereits der Anwendungsbereich der Vorschrift auf das Handeln von Personen im öffentlichen Bereich einzugrenzen. In der Mitteilung vom 2. Juli 2008 spricht die Kommission - anders als in den Erläuterungen zum Richtlinienvorschlag - davon, dass Privatpersonen dann betroffen sein sollen, wenn ihre Tätigkeiten auf einen "Erwerbszweck" ausgerichtet sind. Danach blieben - in der Sache viel zu weit gehend - alle entgeltlichen Rechtsgeschäfte von Privatpersonen in den Anwendungsbereich einbezogen.

23. Die in Artikel 3 Abs. 2 enthaltene Einschränkung des Geltungsbereichs ist zu eng und missverständlich gefasst. Dass einzelstaatliche Gesetze über Ehe- oder Familienstand von dieser Richtlinie unberührt bleiben ist im Grunde selbstverständlich und deklaratorischer Natur, da mit der Richtlinie keine personenstandsrechtlichen Regelungen getroffen werden sollen. In Artikel 3 stehen jedoch von Ehe- und Familienstand u. U. abhängige Leistungen in Rede. Sinnvoll erscheint daher nur, dass einzelstaatliche Gesetze, die diese Leistungen an den Ehe- oder Familienstand anknüpfen, von der Richtlinie unberührt bleiben. Dies wurde auch bereits im Erwägungsgrund 22 der Richtlinie 2000/78/EG niedergelegt, auf der dieser neue Richtlinienvorschlag basiert und an den Artikel 3 Abs. 2 ersichtlich anknüpfen soll. Um Missverständnisse zu vermeiden, ist daher in Artikel 3 Abs. 2 eine Klarstellung erforderlich.

24. Ebenso unklar ist die Regelung des Artikels 4 Abs. 1 Buchstabe a des Richtlinienvorschlags, wonach für Menschen mit Behinderung ein effektiver diskriminierungsfreier Zugang zu und die Versorgung mit Gütern und Dienstleistungen, die der Öffentlichkeit zur Verfügung stehen, einschließlich Wohnraum und Transport, im Voraus zu gewährleisten und im Voraus vorzusehen ist, einschließlich angemessener Veränderungen oder Anpassungen. Dies hätte zur Folge, dass Anbieter von Waren und Dienstleistungen grundsätzlich verpflichtet wären, alle Güter und Dienstleistungen (auch) in einer Form auf den Markt zu bringen, die eine Nutzung durch Menschen mit Behinderung ermöglicht. So würde durch die Regelung z. B. ein Anspruch auf behindertengerechten Wohnraum statuiert. Für die gesetzliche Verankerung eines solchen Anspruchs fehlt der EU jedoch die Regelungskompetenz. Der Bereich des Wohnungswesens unterfällt eindeutig der Gesetzgebungskompetenz der Mitgliedstaaten. Eine derart weitgehende Verpflichtung würde letztlich jeden Anbieter überfordern. Dabei ist zu berücksichtigen, dass nach dem Wortlaut des Richtlinienvorschlags jede Art von Waren und Dienstleistungen (nicht nur Wohnungen oder Verkehrsmittel) und jede Art von Behinderung (nicht etwa nur Gehbehinderungen) erfasst wären. Der Versuch der Kommission, den viel zu weit gefassten Anwendungsbereich der Vorschrift nachträglich dadurch einzuschränken, dass "unverhältnismäßige Belastungen" ausgenommen werden sollen (wobei insbesondere auf "Größe, Ressourcen und Art" des Anbieters abgestellt wird), ist unpraktikabel. Eine Verhältnismäßigkeitsprüfung kann nur im jeweiligen Einzelfall -

im Nachhinein - erfolgen. Die für die Anbieter zwingend erforderliche Vorhersehbarkeit des Rechts wäre nicht mehr gewährleistet. Angesichts der Vielfalt möglicher Fallgestaltungen erscheint es auch nicht vertretbar, darauf zu vertrauen, dass die unbestimmten Regelungen in absehbarer Zeit durch die Rechtsprechung der Gerichte handhabbar gemacht werden. Dies gilt umso mehr, als die für die Verhältnismäßigkeitsprüfung vorgesehenen Kriterien (z. B. Größe und Ressourcen des Anbieters) in jedem Einzelfall mit großem Aufwand geprüft werden müssten.

Aus Sicht des Bundesrates wird bereits durch die beiden oben genannten Beispiele aufgezeigt, dass der Richtlinienvorschlag Rechtsunsicherheit schaffen und eine Vielzahl von Rechtsstreitigkeiten provozieren würde. Die für die wirtschaftlichen Abläufe erforderliche Vorhersehbarkeit des Rechts würde empfindlich gestört.

25. Unklar bleibt auch, ob Artikel 14 des Richtlinienvorschlags das Verbot eines verschuldensabhängigen Schadenersatzanspruchs für alle Bereiche, insbesondere das Zivilrecht, nach sich zieht. In den Aufforderungsschreiben der Kommission vom 23. Oktober 2007 (Vertragsverletzungsverfahren Nr. 2007/2253 betreffend die Umsetzung der Richtlinie 2000/43/EG) bzw. vom 31. Januar 2008 (Vertragsverletzungsverfahren Nr. 2007/2362 betreffend die Umsetzung der Richtlinie 2000/78/EG) heißt es zu den insoweit inhaltsgleichen Artikeln 15 bzw. 17, dass ein Verstoß gegen die Antidiskriminierungsvorschriften per se kein Verschulden voraussetze und etwaige Sanktionen deshalb an ein solches Erfordernis nicht geknüpft werden dürften. Unklar bleibt aber, ob sich diese Sichtweise angesichts der hierzu ergangenen Rechtsprechung des EuGH ausschließlich auf den Bereich des Arbeitsrechts oder - im Hinblick auf die Umsetzung der Richtlinie 2000/43/EG - auch auf den Bereich des Zivilrechts beziehen soll.

Das ausnahmslose Verbot eines verschuldensabhängigen Schadenersatzanspruchs hätte - insbesondere für das Zivilrecht - weit reichende und nach Auffassung des Bundesrates nicht tragbare Konsequenzen. Das deutsche Zivilrecht knüpft, wie das Zivilrecht in den meisten europäischen Staaten, Schadenersatzansprüche aus gutem Grund - von wenigen Ausnahmen im Bereich der Gefährdungshaftung einmal abgesehen - an das Erfordernis des Vertretenmüssens bzw. im Bereich der EU-Rechtsetzung an das Erfordernis der Verantwortlichkeit des Schuldners. Die Folge einer in Artikel 14 des Richtlinienvorschlags normierten verschuldensunabhängigen Haftung wäre hingegen eine Art "Gefährdungshaftung" für Diskriminierung mit unkalkulierbaren Risiken für die betroffenen Vertragspartner. Eine derart weitgehende Sanktion ist für einen effektiven Schutz vor Diskriminierungen im Zivilrechtsverkehr indes nicht erforderlich. Den Interessen der Betroffenen kann in diesem Bereich auch durch andere Maßnahmen wie z. B. durch verschuldensunabhängige Unterlassungs- bzw. Beseitigungsansprüche, die durch einen verschuldensabhängigen Schadenersatzanspruch flankiert werden, wirksam und in ausreichendem Maße Rechnung getragen werden.

Der Richtlinienvorschlag lässt offen, wer bei der Realisierung des Anspruchs auf Herstellung des Zugangs zu einer konkreten Wohnung die Kosten der erforderlichen Umbaumaßnahmen zu tragen hat. Eine Belastung des Vermieters wäre aber nicht sachgerecht.

Beteiligung eines Bundesratsbeauftragten:

26. Der Bundesrat stellt fest, dass für die von der Kommission eingesetzte Regierungsexpertengruppe für Nichtdiskriminierung die Beteiligung eines Bundesratsbeauftragten erforderlich ist.

Greece: Vouli Ton Ellinon

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

a) Which Committees were involved?

Beside the Special Standing Committee for European Affairs, two other Committees were involved according to their competences; the Standing Committee for Social Affairs and the Standing Committee for Public Administration, Public Order and Justice.

b) Was the Plenary involved?

No

c) Which administrative services of your parliament were involved?

The advisors of the Chairperson of the Committee for European Affairs, the Directorate for European Relations (Department for European Affairs, which provides secretarial support to the Committee for European Affairs) and the Directorate of Parliamentary Committees.

d) What was the chronology of events?

We received the translated text of the proposal by the European Commission on **July 9, 2008** and the written remarks by the competent Ministries at the end of that month. After the end of summer recess, the Speaker of the Hellenic Parliament convened a joint meeting of the aforementioned committees for the **27th of August** (according to article 41B "Opinions on legislative acts of the European Union" of the Regulation of the Hellenic Parliament).

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

Representatives of the competent Ministries (Under Secretary for Social Affairs, Secretary General of the Ministry of Justice and Secretary General for Equality) participated in the committees' joint meeting. The above mentioned Ministries and the Permanent Representation of Greece in EU had also sent explanatory memoranda.

Did you make use of external practice?

No

2. Did you cooperate with other national Parliaments in the process of opinion?

We viewed (through IPEX) the contributions of Parliaments having already dealt with the subject.

3. Did you publicize your findings?

Yes. We sent a summary of the proceedings and the final opinion that was adopted to all the Members of the Hellenic Parliament and we issued a press release on the site of the Hellenic Parliament. Additionally, the opinion of the committees was published on the IPEX website (related dossier CNS/2008/0140).

4. Has your Parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or it is planning to do so?

The existing provisions of our rules of procedures cover the issue so there is no need for a change.

Findings:

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

No (see attached Opinion).

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

The majority of the Committees' members adopted an opinion summarizing the conformity of the proposal with the subsidiarity principle and proposing some improvements in the text.

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

Yes.

8. Did you encounter any specific difficulties during the examination?

Given the experience accumulated so far by previously conducted tests under the guidelines of COSAC, the competent services proceeded in convenient activation of the subsidiarity check mechanism, in order to achieve the coordination of necessary actions, which led to the completion of the procedure in one session and ended up with the adoption of a positive opinion by vast majority.

- Joint Meeting of the**
- **Standing Committee for Social Affairs**
 - **Standing Committee for Public Administration, Public Order and Justice**
 - **Special Standing Committee for European Affairs**

The aforementioned Committees were convened in a joint meeting on Wednesday 27.08.2008 in order to adopt:

An OPINION

regarding the Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age, or Sexual Orientation, COM(2008)426 final

pursuant to the

- Decision of the XXXIX COSAC Meeting in Brdo, according to which the Parliaments of EU member states were called to proceed on a subsidiarity check of the Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age, or Sexual Orientation.

Having considered:

- The “**Renewed social agenda : Opportunity, access and solidarity in 21st century Europe**”,(COM (2008)412 final) and particularly the priority regarding the fight against discrimination,
- The communication of the Commission “**Non –discrimination and equal opportunities: a renewed commitment**” , (COM(2008)420 final),
- The principles governing the **United Nations’ Convention for disabled persons**, i.e. the elimination of discriminations, the participation and integration in society, the equality of chances and the accessibility,
- The **Presidency Conclusions of the European Council of 14th December 2007** (16616/07REV1,point 50) and the highlighting of the need to strengthen the efforts aiming to the prevention and fight against discrimination in and out of the labour market.
- The **Resolution of the European Parliament of 20 May 2008**, (P6_TAPROV(2008)0212), concerning the progress achieved so far regarding equality

of chances and elimination of discriminations in EU, where the need of expansion of the existing European Union legislation for protection against discriminations was pointed out,

- **The article 13 par. 1 of the EC Treaty**, according to which “*without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”.
- The **Commission staff working document** (SEC(2008)2180) regarding the **impact assessment**, as well as its summary (SEC(2008)2181), accompanying the Commission’s proposal for a Council directive,
- The explanatory memoranda transmitted to the Hellenic Parliament by the competent Ministries,
- The oral contributions by the Undersecretary for Employment and Social Welfare, the Secretary General for Justice and the Secretary General for Equality,

After the consultation that took place, the aforementioned Committees’ members reached the following conclusions:

- Despite intense efforts for combating discrimination, the phenomenon still persists at a wide range,
- The level of protection against discriminations on grounds of religion or beliefs, disability or sexual orientation is lower than the protection provided against discrimination on grounds of sex, race or ethnic origin.
- The existing European legislation in force concerning discriminations suffered by specific social groups, covers the field of employment, occupation and vocational training, whereas for the remaining fields (education, services and goods, social protection) equal treatment between men and women is mainly guaranteed, as well as between persons irrespective of racial or ethnic origin.
- The need for covering the institutional gap is given, initially at a European level, concerning the aforementioned categories of persons and fields.

- Substantial differences among member-states are observed, both regarding the protection of groups concerned against possible discrimination, and compliance with provisions on equal treatment.
- The need for ensuring a common level of protection against discrimination becomes imperative due to inability of achieving that goal through individual actions on the part of member- states.
- The Directive applies with the reservation of national legislation in matters relating to family and marital status, reproductive rights, content of teaching and education courses and organization of education systems, securing the secular character of the state, state organizations or institutions, of education, as well as of churches and other religious institutions.
- The implementation of Directives 2000/43/EP, 2000/78/EP and 2004/113/EP has demonstrated the importance for acting legislation in what concerns combating discrimination.

Moreover,

They deem positive Commission's proposal on supplementing its institutional arsenal by the aforementioned proposal for Directive, aiming at achieving a uniform minimum level of protection for the Union's citizens against any kind of discrimination on the basis of religion or belief, disability, age or sexual orientation.

They ascertain that the proposal for Directive **is in conformity with the subsidiarity principle**, on the one part as falling within the limits of E.U legislative action, in line with Article 19 of the Treaty on the European Union function (former 13 of the ECT), and on the other hand as containing the necessary reservations pro national legislations.

They deem the selection of directive as legal instrument as appropriate, as achieving to cover existing institutional gaps in the European legal framework on the one hand, and, on the other hand, to smooth out intense differentiations between member-states through establishing a minimum protection level providing simultaneous possibility for going beyond these minimum models.

They consider **the principle of proportionality as being abided by**, since no extravagant costs or other acts beyond the scope of the proposal in question are required. Moreover, it is up to member-states to select measures to be taken in the frame of implementing the principle of equal treatment of persons.

They call upon the European Commission to proceed to clarification of certain general concepts that could be misinterpreted, such as:

- Article 2, par. 2.7, providing for the possibility of declining from the principle of equal treatment in case of monetary services, which is explained- yet not adequately- in section 15 of the explanatory memorandum.
- In article 3 clarification of the term “social advantages” is imperative.
- Article 4, covering equal treatment of disabled persons, is in need of a more clear phrasing , while the point defining the concept of disproportional burden needs improvement, since during assessment subjective factors may be introduced thus reversing the overall spirit of the regulation. More specifically, interpretation of the disproportional burden criterion contained in the proposal for Directive must not function in a way that will inhibit the taking of measures to facilitate access of disabled persons, emphasizing first and foremost the fields of social protection and education.
- A stricter phrasing might be preferable, in combination with the provision on gradual implementation, so as to reduce the impact of economic burdens during the adaptation phase of service providers to the data introduced by the regulation, or even to possibly distinguish the case of small and medium-sized enterprises.

Hungary: Országgyűlés

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

The procedure of the subsidiarity check is regulated by Act on the cooperation of the Parliament and the Government in European Union affairs (Act LIII of 2004) and the Standing Orders of the Parliament. By virtue of paragraph 1 of Article 134/D of the Standing Orders, the Committee on European Affairs (hereinafter called: the Committee) has the competence to start the subsidiarity check.

This time, the secretariat staff of the Committee prepared a draft opinion on the Proposal which was sent to the members prior to the committee meeting.

a. Which committees were involved?

Since the ordinary spring session of Parliament finished in the first half of June, it was not possible to involve any other committee within the 8-week timeframe.

b. Was the plenary involved?

No. As a rule the plenary is involved in the procedure only if a breach of the principle of subsidiarity is presumed by the Committee. In such a case, the plenary should decide on the motion of the Committee within fifteen days.

c. Which administrative services of your parliament were involved?

Generally, subsidiarity check is carried out by the Committee on European Affairs. At this stage there has been cooperation with the permanent representative in Brussels.

d. What was the chronology of events?

The first language versions of the Proposal were published on 2 July 2008, while the official 8-week period started on 9 July 2008. The members of the Committee and experts of the parliamentary factions were informed by email on the adoption of the Proposal and the launch of the subsidiarity control on the following days.

The staff of the Secretariat has immediately started the examination of the draft and sent their preliminary findings to the Chairperson of the Committee by the end of July.

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

At this stage there has been no information provided by the government on the Proposal.

f. In case of a bicameral system, did you coordinate with the other chamber?

The Hungarian National Assembly is a unicameral parliament.

g. Did you consult regional parliaments with legislative powers?

No, in Hungary there are no regional parliaments.

h. Did you make use of any external expertise?

No, the staff of the Committee examined the Proposal thoroughly and presented their findings in a paper. No further external expertise were involved.

2. *Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?*

Yes, the Committee cooperated informally with other national parliaments through the permanent representative in Brussels.

3. *Did you publicise your findings (e.g. in a special press release)?*

No special press release was published, but the minutes of the Committee meeting and a short memo summarizing the main discussion points were published on the website of the Committee.

4. *Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?*

The procedure of the subsidiarity check is regulated by Act on the cooperation of the Parliament and the Government in European Union affairs (Act LIII of 2004) and the Standing Orders of the Parliament. As the regulation was prepared with regard to the draft Constitutional Treaty, and the Treaty of Lisbon does not entail significant changes regarding the Protocol on National Parliaments – apart from the extended timeframe of 8 weeks – no adaptation of the relevant rules is necessary at this point. Some changes in practice, however, are to be expected in order to comply with the prospective increase in the number of checks.

Findings:

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

No breach of subsidiarity was found by the Committee.

However, the Committee observed that the exact scope and connection to the relevant Community policies of points a) and b) of paragraph 1 of Article (3) of the Proposal, namely social protection and social advantages, should be further clarified.

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

No reasoned opinion was adopted but the minutes of the Committee meeting and a short memo summarizing the main points of the profound discussion were published on the website of the Committee.

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

The justification of the Commission with regard to the subsidiarity principle was found satisfactory both in the Explanatory Memorandum and the attached Impact

Assessment. Since numerous Directives were already adopted in the field concerned and the Proposal respects the competences of the Member States and observes, the principles of subsidiarity and proportionality.

Nevertheless, the explanation with regard to social advantages and social protection (Art. 3 (1) a-b)) seems to be too general and short. Without further clarifications, it can lead to disharmonous application in the Member States.

8. Did you encounter any specific difficulties during the examination?

Based on the latest Legislative and Work Programme of the Commission and previous comments, the Proposal was expected to be published in the first half of the year. The delay in the publication caused difficulties because of the parliamentary recess. The Committee considers that such a method, when the adoption of a Proposal takes place between the ordinary sessions of parliaments, should be avoided in the future.

9. Any other comments?

Building upon their structure, concept and approach the Proposal is the fourth in the series of the so-called Article 13 EC Directives (2000/43/EC, 2000/78/EC, 2004/113/EC). If the equal treatment directives were regulated in one legal norm, that would make both the legislation and transposition much more transparent and coherent.

Ireland: Houses of the Oireachtas

Procedures:

1. What was the procedure used to conduct the subsidiarity check?
 - a. Which committees were involved?
 - b. Was the plenary involved?
 - c. Which administrative services of your parliament were involved?
 - d. What was the chronology of events?
 - e. Did your government provide any information as part of the scrutiny process?
 - f. In case of a bicameral system, did you coordinate with the other chamber?
 - g. Did you consult regional parliaments with legislative powers?
 - h. Did you make use of any external expertise?

- a. *The subsidiarity check was conducted by the Oireachtas Joint Committee on European Scrutiny (JCES). As the Committee with the primary responsibility for subsidiarity checks and the scrutiny of EU legislative proposals, there were no other parliamentary committees involved.*

- b. *As the JCES is a joint committee of the Houses of the Oireachtas, it includes members of both the Dáil and the Seanad. Therefore, there was no need to facilitate co-ordination between the two chambers as members of both houses were involved simultaneously in the subsidiarity check. The check and the Reasoned Opinion were finalised and subsequently adopted by the JCES acting as a committee of the Houses of the Oireachtas. Given that the Lisbon Treaty has yet to be ratified and that procedures for the implementation of Protocol 2 of the Lisbon Treaty have yet to be decided, the plenary was not involved in the subsidiarity check.*

- c. *The Office of the Parliamentary Legal Advisor and the Secretariat of the JCES, including two policy advisors, were involved in facilitating and administering the subsidiarity check.*

- d. *The draft proposal was first considered by the JCES in the context of the COSAC subsidiarity check on 15 July. At this meeting, it was agreed to seek the views of the relevant Government Department (Department of Justice, Equality and Law Reform), the advice of the Parliamentary Legal Advisor and the opinions of three bodies representing civil society – the Irish Human Rights Commission, the Equality Authority and the Iona Institute (a religious based NGO dedicated to strengthening civil society). The proposal was reviewed again by the JCES on 22 July following the receipt of views from the Department of Justice, Equality and Law Reform and the legal advice from the Office of the Parliamentary Legal Advisor. On the basis of this information, and on the opinions subsequently received from the three civil society bodies, a policy advice note and draft reasoned opinion were prepared. The JCES adopted its reasoned opinion on 29 July. It should be noted that the process was accelerated to take account of the impending recess of parliament for the summer break. This short time frame, imposed by the summer recess, was not*

ideal but necessary. Otherwise, it would not have been possible for the JCES to meet the eight week deadline which expires on 3 September.

- e. *At the request of the JCES, information was provided by the Government Department with primary responsibility for the draft proposals – the Department of Justice, Equality and Law Reform.*
 - f. *See b above.*
 - g. *There are no regional parliaments in Ireland. Local town and county councils were not consulted.*
 - h. *The JCES did not make use of any external expertise as it was felt that it was not necessary. However, it did seek, and received, the opinions of three civil society bodies involved in the field of equal treatment and non-discrimination (see d above).*
2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

The JCES did not cooperate with other national parliaments during the process. The JCES believes that cooperation with other national parliaments is essential to the success of the subsidiarity checking mechanism envisaged in the Lisbon Treaty. However, given the summer recess and therefore the very short time frame for the completion of the check it was simply not possible to consult other national parliaments.

3. Did you publicise your findings (e.g. in a special press release)?

The Reasoned Opinion was posted on the webpage of the JCES.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

Under the subsidiarity check mechanism as foreseen in the Lisbon Reform Treaty each House of the Oireachtas will have an independent vote. However, each House, the Dail and the Seanad, has yet to decide how they will implement the provisions of Protocol 2 of the Lisbon Reform should the Treaty come into force.

Findings:

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

*The JCES concluded that there **may** be a breach of the subsidiarity principle as certain aspects of the Commission's proposal may be better left to Member States and given that there was no consultation by the Commission with most Member States before publishing the draft proposal.*

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

Yes (it is enclosed)

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

The JCES found that the Commission's justification with regard to subsidiarity was not completely satisfactory as it concluded that a test of subsidiarity should have been undertaken for each of the measures proposed in the proposal by reference to each sector such as education, health services etc.

8. Did you encounter any specific difficulties during the examination?

The main difficulty was the tight time frame imposed upon the Committee by the impending summer recess. This meant that the process had to be substantially accelerated before the Oireachtas rose for the summer in order to meet the deadline of 3 September and that it was impossible to consult with other national parliaments. It is therefore important that COSAC look at the practical and logistical consequences for the subsidiarity checking procedure when the Commission publishes a proposal running up to or during a period when most of the national parliaments are in recess.

9. Any other comments?

If the new provisions contained in Protocol 2 of the Lisbon Reform Treaty, if ratified, are to be effective, national parliaments will need to work closely together and therefore they should work under the same understanding of the principle of subsidiarity. Therefore, in its reasoned opinion, the JCES recommends that agreement should be reached within COSAC on a common understanding or definition of the subsidiarity principle.

**Secretariat to the Oireachtas Joint Committee on European Scrutiny
21 August 2008**

Reasoned Opinion for COM (2008) 426

The Oireachtas Joint Committee on European Scrutiny concludes that **some parts** of the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation **may** violate the principle of subsidiarity.

The Oireachtas Joint Committee on European Scrutiny considers that two issues arise in assessing the proposal's conformity with the principle of subsidiarity. They are:

1. **There may be certain aspects of the scope of the proposed directive that may be best left to Member States, while others have clear advantages if action is taken at Community level.** The test of subsidiarity (necessity and clear benefit) would need to be applied to the measures proposed by reference to each sector, for example education, as the Community has greater competence in some sectors than in others and the necessity and clear benefits tests may be met more clearly in some sectors than in others.
2. Application of the principle of subsidiarity according to the guidelines set out in the Treaties requires extensive consultation by the Commission, except in cases of particular urgency or confidentiality. While there has been consultation, by means of opinion polls, discussions with equality bodies, and organisations representative of civil society and business interests, **there was no consultation with most Member States, including Ireland, prior to the announcement of the Commission's proposals on 2 July 2008.**

In reaching this conclusion the Committee noted that:

- the legal basis stated in the proposal would appear to be in order (Article 13(1))
- the views of three NGOs consulted by the Committee are that it would be better to legislate at EC level rather than at national level.

The Oireachtas Joint Committee on European Scrutiny also recommends that COSAC consider in its final report

- the practical and logistical difficulties that arise when a proposal being tested on subsidiarity grounds is one published heading into the summer recess period for most parliaments
- if agreement can be reached on a common definition and/or interpretation of what the 'principle of subsidiarity' means as different interpretations may lead to great disparities of opinion between each of the national parliaments with the result that the threshold will never be reached for the 'yellow card' or 'orange card' mechanism to be triggered

**Oireachtas Joint Committee on European Scrutiny
Dublin, 29 July 2008**

Italy: Camera dei Deputati

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

As the Chamber rules do not provide a specific procedure for the subsidiarity check the ordinary scrutiny procedure was followed. Under this procedure the Committee on EU Policies issues an opinion to the Committee which is competent by subject matter.

a. Which committees were involved?

The Committee on EU Policies issued an opinion to the Committee on Constitutional affairs which is supposed adopt a final document in the following weeks.

b. Was the plenary involved?

No.

c. Which administrative services of your parliament were involved?

The Department for EU Affairs, the secretariat of the EU Affairs Committee and the Research Department

d. What was the chronology of events?

The Scrutiny Sub-committee within the Committee on EU Policies started the consideration of the proposal on 31 July. The Committee on EU Policies issued an opinion on 5 August. Due to the busy parliamentary agenda the Committee on Constitutional affairs will start the consideration of the proposal on 8 October.

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

No.

f. In case of a bicameral system, did you coordinate with the other chamber?

No

g. Did you consult regional parliaments with legislative powers?

No

h. Did you make use of any external expertise?

No

2. Did you cooperate with other national parliaments in the process?

If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of National parliaments in Brussels)?

Information about any step of the scrutiny of the proposal within the Italian Chamber was provided timely in the IPEX web site. The Department for EU Affairs provided the

EU Policies Committee with information about the state of scrutiny in other parliaments by using IPEX.

3. Did you publicise your findings (e.g. in a special press release)?

No

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

No. A reflection on the adaptation of the Chamber Rules to the recent developments in the Italian and EU legal system – included the Lisbon Treaty – was undertaken at administrative level.

Findings:

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

No. In its opinion the Committee on EU Policies found that the proposal fully complies with the principle of subsidiarity.

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

No. Under the existing EU and internal Rules it is not possible for the Italian Chamber to issue a reasoned opinion.

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

No. The opinion of the Committee on EU Policies stressed that the Commission's justification with regard to the subsidiarity principle in the preamble of the proposal is unsatisfactory.

8. Did you encounter any specific difficulties during the examination?

No

9. Any other comments?

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {COM(2008) 426 final}

OPINION APPROVED BY THE COMMITTEE

The 14th Committee on EU Policies of the Italian Chamber of Deputies,

having considered the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426 final);

taking into account that the consideration of the proposal forms part of an exercise to control subsidiarity by national Parliaments that is being promoted by the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC);

emphasizing, with reference to Article 4 of Law no. 11/2005, that once the Houses of Parliament begin considering proposed EU acts, the Government shall not proceed with activities within its remit relating to the preparation of the relevant Community and European Union acts until the consideration has been concluded and in any case not before 20 days by applying the scrutiny reserve in the Council of Ministers of the European Union;

acknowledging that the proposal is intended to build a general framework for combating discrimination on grounds of religion or belief, disability, age or sexual orientation so that the principle of equal treatment in areas other than employment may be put into effect in EU Member States;

recognising that the legal basis for the proposal, which is Article 13, para. 1 of the EC Treaty, appears to be both appropriate and sufficient for the adoption of the measures envisaged in the proposal;

considering that the proposal complies with the principle of subsidiarity and proportionality for the following reasons:

with reference to the elements contained in the report accompanying the proposal and the impact assessment made by the European Commission, it does not appear that Member States have sufficiently achieved the aims as set forth in the proposal; it therefore seems that, given the scope and impact of the action being proposed, the aims can be better realized at an EU level;

given that, in particular, only a Community measure can ensure that there is a minimum standard of protection against discrimination based on religion or belief, disability, age or sexual orientation in all Member States;

a Community legal act seems to be the best way of providing legal certainty as to the rights and obligations of economic actors and citizens, including for those moving between the Member States;

in defining the concept of discrimination, Article 2 of the proposed act appears to take adequate account of the competences and specific characteristics of Member States with particular regard to public security, law enforcement, the prevention of criminal offences, the protection of health and the rights and freedoms of others;

Article 3 ensures that the proposed act does not prejudice the responsibility of Member States for educational content, the activities and organization of their educational systems, including making arrangements for special teaching;

the same Article specifies, moreover, that matters related to marital and family status, which includes adoption and reproductive rights, are outside the scope of the directive;

recognising, however, that the motivations given in the preamble to the proposal in respect of subsidiarity and proportionality are not clear, and merely quote a standard formula,

does herewith express itself

FAVOURABLE

With the following condition:

in the final document, the relevant Committee shall stress the need for the Government, in the course of its consideration of the proposal, to ensure that the provisions of the Directive are not modified in a manner that might vitiate the full implementation of the principles of subsidiarity and proportionality, with particular reference to the provisions of Articles 2 and 3 of the proposal.

Italy: Senato della Repubblica

Procedures:

1. What was the procedure used to conduct the subsidiarity check? **The Italian Senate followed the procedure concerning scrutiny of European draft legislation provided for by its Rules of Procedure.**
 - a. Which committees were involved? **Pursuant to Rule 144, the draft proposal was referred to the Constitutional Affairs Committee for consideration, as the Committee having jurisdiction over the subject matter, and to the Committee on European Union Policies and the Foreign Affairs Committee for an opinion. The Committee on European Union Policies issued an opinion on 29 July, 2008. According to Rule 144 (5), in the event that the Committee responsible by subject matter does not complete consideration within 15 days of receiving the opinion of the Committee on European Union Policies, this latter “may request that its opinions, comments and proposals be forwarded to the Government”.**
 - b. Was the plenary involved? **No.**
 - c. Which administrative services of your parliament were involved? **The Office for Relations with European Institutions and the Secretariat to the Committee on European Union Policies.**
 - d. What was the chronology of events? **The date of referral by the President of the Senate was 16 July 2008. The Committee on European Union Policies started consideration of the text on 23 July and ended on 29 July.**
 - e. Did your government provide any information as part of the scrutiny process? **No.**
 - f. In case of a bicameral system, did you coordinate with the other chamber? **No.**
 - g. Did you consult regional parliaments with legislative powers? **No.**
 - h. Did you make use of any external expertise? **No.**
2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)? **The IPEX website was visited to find other parliaments’ results of scrutiny.**
3. Did you publicise your findings (e.g. in a special press release)? **The Secretariat to the Committee on European Union Policies drafted minutes of the sittings. with the opinion as an annex. As is common practice for all Committee sittings, the minutes were made available to the public the following day.**
4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so? **The Italian Senate started preliminary consideration of how to implement the Lisbon Treaty new provisions.**

Findings:

5. Did you find any breach of the subsidiarity principle? **According to the opinion issued on 29 July 2008, the Committee on European Union Policies “believes that the proposal is compliant with such principle in that instances of discrimination – also in view of the different national equal treatment regulations – are more effectively dealt with through minimum standards enforceable in all EU member States”.**
6. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy). **According to the opinion issued on 29 July 2008, the Committee on European Union Policies, “with respect to the content of the proposal: a) believes that, regarding the right of member States to permit, in the provision of financial services, proportionate differences in treatment on the basis of age or disability following relevant and accurate actuarial or statistical data, it would be appropriate to specify, with all due consideration for national differences and through the definition of a number of parameters, such minimum levels of age or disability as may be considered a key factor in the assessment of risk; b) believes that, regarding people with disabilities, incentives should be envisaged for small and medium-sized enterprises and micro-enterprises ensuring effective access of such people to the services they supply, also in view of the fact that such access may entail too heavy a burden for such organisations, as is often the case with personal requirements calling for reasonable solutions. Still in this area, a system of incentives may be devised for those enterprises which, in spite of the existence of a disproportionate burden as assessed under the Directive, nonetheless resolve to ensure non-discriminatory access to their own services on the grounds that such practice may in the long term improve the quality of such service; c) believes that, with reference to Article 10, in addition to the development of tools to disseminate knowledge of the Directive and other relevant provisions already in force, information should be provided on the concrete enforcement of such provisions; d) believes that the competences of the bodies for the promotion of equal treatment under Article 12 of the Directive should be implemented by resorting to existing public agencies in the member States”.**
7. Did you find the Commission’s justification with regard to the subsidiarity principle satisfactory? **The European Commission justification was found satisfactory.**
8. Did you encounter any specific difficulties during the examination? **No.**
9. Any other comments? **No.**

**DRAFT OPINION OF THE 14TH COMMITTEE
ON COMMUNITY ACT NO. 6**

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008) 426 final)

The 14th Committee, on European Union Policies,

upon completing consideration of the EU measure referred to above,

whereas Article 13 of the EC Treaty vests the Council with the power to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;

whereas discrimination is still widespread despite efforts to combat it;

whereas European anti-discrimination legislation in force only covers employment and, whenever it refers to sectors other than employment, it only applies to certain categories of people in certain sectors;

realising the need to complete the EU legal framework on discrimination;

whereas broad differences exist in member States in the fields of protection and compliance with equal treatment provisions and considering that it is necessary to ensure a common level of protection of such principle in all member States;

whereas such goal cannot be achieved by the member States acting alone;

whereas the proposal is without prejudice to the right of individual States to take more binding actions than those envisaged in this Directive;

whereas this Directive is without prejudice to domestic legislation and practice on the content of education, marital or family status, adoption, reproductive rights and other similar questions;

whereas national rules governing the activities of churches and other religious organisations or their relationship with the State are likewise unaffected;

expresses a positive opinion with the following observations:

a) with respect to the subsidiarity principle,

1. the Committee believes that the proposal is compliant with such principle in that instances of discrimination – also in view of the different national equal treatment regulations – are more effectively dealt with through minimum standards enforceable in all EU member States;

b) with respect to the content of the proposal,

1. the Committee believes that, regarding the right of member States to permit, in the provision of financial services, proportionate differences in treatment on the basis of age or disability following relevant and accurate actuarial or statistical data, it would be appropriate to specify, with all due consideration for national differences and through the definition of a number of parameters, such minimum levels of age or disability as may be considered a key factor in the assessment of risk;
2. the Committee believes that, regarding people with disabilities, incentives should be envisaged for small and medium-sized enterprises and micro-enterprises ensuring effective access of such people to the services they supply, also in view of the fact that such access may entail too heavy a burden for such organisations, as is often the case with personal requirements calling for reasonable solutions. Still in this area, a system of incentives may be devised for those enterprises which, in spite of the existence of a disproportionate burden as assessed under the Directive, nonetheless resolve to ensure non-discriminatory access to their own services on the grounds that such practice may in the long term improve the quality of such service;
3. the Committee believes that, with reference to Article 10, in addition to the development of tools to disseminate knowledge of the Directive and other relevant provisions already in force, information should be provided on the concrete enforcement of such provisions;
4. the Committee believes that the competences of the bodies for the promotion of equal treatment under Article 12 of the Directive should be implemented by resorting to existing public agencies in the member States.

Latvia: Saeima

Procedure:

1. What was the procedure used to conduct the subsidiarity check?

A subsidiarity and proportionality check for the above-mentioned draft Council Directive was conducted by the Saeima European Affairs Committee.

The European Affairs Committee asked opinion of the Saeima Human Rights and Public Affairs Committee and Secretariat of the Special Assignment Minister for Social Integration. Human Rights and Public Affairs Committee consulted the Ministry of Welfare and forwarded its opinion to European Affairs Committee.

Since the subject of above mentioned draft Council Directive is not directly within the competence of Latvia's local governments, consultations with local governments were not carried out.

Because of the specific character of the issue, external expertise was not used in the subsidiarity and proportionality check and given issue has not been on the agenda of Saeima plenary meetings.

The issue of conformity with the principles of subsidiarity and proportionality was considered in two European Affairs Committee meetings (03.09.2008. and 19.09.2008.) cause open question was on financial and administrative assessment.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

While preparing its statement on subsidiarity and proportionality check the Saeima European Affairs Committee did not directly cooperate with other EU national parliaments. European Affairs Committee followed subsidiarity and proportionality checks in other EU parliaments through IPEX.

3. Did you publicise your findings (e.g., in a special press release)?

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

4. Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty, or is it planning to do so?

Currently, the Saeima is conducting a subsidiarity and proportionality check only for those draft legislative acts which were agreed upon by the COSAC. Thus, there is no single permanent procedure yet for the subsidiarity check mechanism. It is possible that in the future this procedure will be adapted according to the Lisbon Treaty.

Findings:

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

Breaches of the subsidiarity and proportionality principles were not detected.

6. Did you adopt a reasoned opinion on the Framework Decision? (Please enclose a copy.)

Taking into account the fact that no breaches of the subsidiarity and proportionality principles were detected, the Saeima opinion on the afore-mentioned draft Council Framework Decision was not adopted.

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

The justification put forward by the European Commission is satisfactory.

8. Any other observations?

Saeima European Affairs Committee used politically based argument prevised that European Union is based on particular values and antidiscrimination is one of European Union values. So the Saeima European Affairs Committee's initial assessment about observance of subsidiarity and proportionality principles is as follows: the European Commission has chosen an adequate framework for developing legislative acts, and the European Commission's conclusion concerning observance of subsidiarity and proportionality is well-founded. But more detailed financial and administrative assessment is highly recommended in order to scrutiny subsidiarity and proportionality using legal based arguments.



REPUBLIC OF LATVIA SAEIMA
EUROPEAN AFFAIRS COMMITTEE

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Rīga, September 26, 2008
No 9/17-2-n/155-(9/08)

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European Parliament

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European Council

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COSAC Secretariat

E-mail: secretariat@cosac.eu

On the subsidiarity and proportionality check

The participants of the Conference of Community and European Affairs Committees of Parliaments of the European Union (hereinafter – COSAC) chairpersons meeting, which took place in Ljubljana on 18 February 2008, agreed to conduct a subsidiarity and proportionality check on the final wording of the Proposal for a Council Directive COM (2008) 426 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Proposal for a Council Directive was adopted by the Commission on 2 July 2008.

Accordingly, the Parliament of the Republic of Latvia (Saeima) has carried out a subsidiarity and proportionality check concerning the final version of the Proposal for a Council Directive COM (2008) 426 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

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

Annex: A copy in English (two pages) of the opinion of the Saeima European Affairs Committee regarding the observation of the principles of subsidiarity and proportionality in the 2 July 2008 proposal for the final version of the Proposal for a Council Directive COM (2008) 426 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Sincerely,

Vaira Paegle

Chairperson of the Saeima
European Affairs Committee

Lithuania: Seimas

Procedure:

1. What was the procedure used to conduct the check?

a. Which committees were involved?

Three parliamentary committees are involved in the subsidiarity check: the Committee on European Affairs and two specialised committees, in particular, the Committee on Human Rights and Committee on Social Affairs and Labour. The specialised committees will submit expert conclusions to the Committee on European Affairs, which will take the final decision.

b. Was the plenary involved?

No. Not at this stage. Under the provisions of the Statute of the Seimas upon deciding that the proposal to adopt a legal act of the European Union may not be in conformity with the principle of subsidiarity, the conclusion of the Committee on European Affairs is referred for debate in the Seimas plenary sitting.

c. Which administrative services of your parliament were involved?

The Legal Department of the Office of the Seimas was asked to submit an opinion on the compliance of the proposal with the principle of subsidiarity.

d. What was the chronology of events?

The subsidiarity check organized through the COSAC is conducted following the usual control mechanism of the principle of subsidiarity provided for in Article 180⁶ of the Seimas Statute, with the exception of one aspect: the procedure is initiated by the Committee on European Affairs, rather than by a specialised committee, which is responsible, within its competence, for proper and timely control of the principle of subsidiarity, as generally provided in 180⁶(1) of the Seimas Statute.

- **Taking into account that the legislative proposal in Lithuanian was received during the summer recess, the Chairman of the Committee applied, in writing, to the Legal Department of the Seimas and the European Law Department under the Ministry of Justice with the request to present their expert conclusions on the compliance of the Commission proposal with the principle of subsidiarity. Additionally, the Chairman informed the responsible specialized committees of the Seimas in writing about the initiated check.**
- **The Legal Department of the Office of the Seimas issued its legal conclusion. Based on the conclusion there is no obvious conflict with the principle of subsidiarity.**

- The European Law Department under the Ministry of Justice submitted its opinion to the Committee on European Affairs. In its opinion, there are no reasons to state that the draft proposal would be clearly in conflict with the legal criteria of the principles of subsidiarity and proportionality. However, when making a final decision on this issue, consideration should be given not only to the legal criteria of these principles but also to the economic (i.e., potential costs of the project implementation), political and social (e.g., maintaining the stability of social and legal relationship) aspects of the subsidiarity principle. As regards conformity with the proportionality principle certain Directive provisions proposed are to be considered as to whether they do not provide more than required for the purposes under the Directive.

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

Yes.

The Ministry of Social Security and Labour of the Republic of Lithuania was commissioned, in cooperation with other responsible institutions, to draft the Governments' position on the proposal for the Council Directive. The position also contains the primary opinion about whether the proposal concerning the legal act of the European Union is in conformity with the principle of subsidiarity.

According to the opinion of the **Ministry of Justice**, the explanatory memorandum of the proposal for the Directive does not provide for a sufficiently detailed reasoning as to why the Member States can not attain the goals set in the draft Directive by themselves. The attention should also be paid to the proposal to establish a sufficiently wide scope of the Directive, including socially vulnerable areas such as social security and healthcare. In each state, the legal regulation of these areas has its own specifics and is founded on different legal traditions. It is the detailed analysis of the national provisions that would allow to state whether there is a need for adopting a legal act regulating a respective area on the European Union level and how wide the scope of a legal act should be.

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

f. In case of a bicameral system, did you coordinate with the other chamber?

-

g. Did you consult regional parliaments with legislative powers?

-

h. Did you make use of external expertise?

Yes. **Various NGOs working in the field of social integration of the handicapped were asked by the specialised committees to submit their opinion (for example, the Lithuanian Association of the Deaf, Lithuanian Welfare Society for the Mentally Disabled, Lithuanian Union of Persons with Disabilities, Lithuanian Welfare Society for People With Intellectual**

Disability “Viltis”, Lithuanian Association of the Blind and Visually Handicapped, Lithuanian Paralympic Committee and Association for the Physically Disabled of Lithuania).

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

The information about the decision taken by other Parliaments of the Member States and provided on the IPEX website in English is often presented to the members of the Committee.

3. Did you publicise your findings (e. g. in a special press release?)

No.

4. Has your parliament lately adapted its procedures with regard to the subsidiarity check mechanism as foreseen in the Lisbon Treaty or is it planning to do so?

Current provisions of the Statute do not prohibit a proper subsidiarity check.

Findings:

The Committee on European Affairs is still in the process of the subsidiarity check procedure; for this reason it has not yet adopted its final conclusion finding about the conformity with the principle of subsidiarity.

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

-

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

-

7. Did you find the Commission’s justification with regard to the subsidiarity principle satisfactory?

-

8. Did you encounter any specific difficulties during the examination?

Yes, we had timing problems. The Seimas of the Republic of Lithuania took part in all subsidiarity checks organised through the COSAC. However, this subsidiarity check was special as it coincided with the summer recess period of the Seimas. Summer vacations prevented the Committee from timely running of the subsidiarity check. With the opening of Parliament for the autumn session in September, an examination of the matter will be immediately conducted first by the specialised committees, then by the Committee on European Affairs and, if appropriate, by the plenary session. The COSAC also will be informed accordingly.

9. Any other comments?

The Seimas extensively uses the possibilities provided by the initiative of Mr Barroso to state its opinion not only on the subsidiarity principle, but also on that of proportionality, content of the proposal or its legal grounds.

Luxembourg: Chambre des Députés

Procédure

1. Quelle a été la procédure utilisée pour réaliser le contrôle de subsidiarité ?

La documentation pour le nouveau test de subsidiarité a été communiquée à la Commission de la Famille, de l'Égalité des chances et de la Jeunesse par courrier du Président de la Chambre des Députés du 7 juillet 2008.

Dans sa réunion du 28 juillet 2008, la Commission de la Famille, de l'Égalité des chances et de la Jeunesse a procédé au contrôle de subsidiarité de la proposition de directive COM(2008) 426 final en présence de la Ministre de la Famille et de l'Intégration et de ses collaborateurs.

La séance plénière n'a pas été impliquée et il n'a pas été fait recours à une expertise extérieure.

2. Avez-vous collaboré avec d'autres parlements nationaux ?

Non.

3. Avez-vous publié vos conclusions ?

Non.

4. Votre Parlement a-t-il adapté récemment ses procédures pour se mettre en conformité avec les dispositions du Traité de Lisbonne, ou envisage-t-il de le faire à l'avenir ?

Non.

Conclusions

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

Non.

6. Avez-vous adopté un avis motivé sur la proposition de directive ?

Oui (cf. copie jointe)

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

Oui.

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

Non.

9. Avez-vous d'autres observations ?

Non.

**Avis de la Commission de la Famille, de l'Égalité des chances et de la
Jeunesse de la Chambre des Députés**
(28 juillet 2008)

Dans les conclusions de la XXXIX^e COSAC il a été décidé de conduire un test de subsidiarité sur la proposition de directive du Conseil relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle (COM(2008) 426 final).

Cette proposition, présentée par la Commission le 2 juillet 2008, vise la mise en œuvre du principe de l'égalité de traitement en dehors du marché du travail. Comme il ressort de l'exposé des motifs, elle définit un cadre pour l'interdiction de toute discrimination fondée sur les motifs énumérés ci-dessus et établit un niveau de protection minimal uniforme à l'intérieur de l'Union européenne pour les personnes victimes de telles discriminations.

Selon la Commission européenne, l'application du principe de subsidiarité se justifie dans la mesure où les Etats membres ne sauraient seuls réaliser de manière suffisante les objectifs de la proposition, car seule une mesure à l'échelle communautaire peut garantir ce niveau de protection minimal. En ce qui concerne le principe de proportionnalité, le texte proposé ne va pas au-delà du nécessaire pour atteindre ses objectifs.

La Commission de la Famille, de l'Égalité des chances et de la Jeunesse de la Chambre des Députés peut en principe se déclarer d'accord avec une nouvelle directive, car elle propose de « traiter » les discriminations de façon égale, c'est-à-dire sans hiérarchisation des motifs.

Elle est d'avis que la proposition qui lui est soumise pour examen est conforme au principe de subsidiarité, puisqu'un certain niveau d'harmonisation à travers l'Union européenne est nécessaire en matière de lutte contre les discriminations. Elle tient toutefois à souligner qu'elle ne considère pas cette démarche comme inéluctable. Dès lors, à titre subsidiaire, la Commission de la Famille, de l'Égalité des chances et de la Jeunesse ne s'opposerait pas à suivre une autre voie, consistant à apporter un complément aux directives existantes. Les deux méthodes aboutissent en fait au même résultat.

La Commission de la Famille, de l'Égalité des chances et de la Jeunesse considère également que la directive proposée se conforme au principe de proportionnalité.

Luxembourg, le 28 juillet 2008

La Présidente
Marie-Josée Frank

The Netherlands: Staten-Generaal

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

The specific subsidiarity procedure of the States-General, which involves both Houses, was used.

a. Which committees were involved?

The standing committees on the Interior of both Houses and the standing committee on Social Affairs of the House of Representatives were involved

b. Was the plenary involved?

Yes, the plenary of Both Houses have fixed the position of the States-General on the proposal. The Senate voted on 7 October and the House of Representatives voted on 9 October.

c. Which administrative services of your parliament were involved?

The Staff of the Temporary Joint Committee on the Subsidiarity Check and the staff of the standing committees on the Interior of both Houses and of the standing committee on Social Affairs of the House of Representatives were involved

d. What was the chronology of events?

| | |
|--------------|---|
| 2 July | Commission proposal |
| 23 July | request of the Temporary Joint Committee on the Subsidiarity Check to the standing committees on the Interior of both Houses and of the standing committee on Social Affairs of the House of Representatives to send an advice on the proposal to the Joint Committee |
| 11 September | advice to the Joint Committee of the standing committees on the Interior and Social Affairs of the House of Representatives |
| 25 September | advice to the Joint Committee of the standing committee on the Interior of the Senate |
| 3 October | advice of the Joint Committee to both Houses of the States-General |
| 7 October | approval of the advice by the Senate |
| 9 October | approval of the advice by the House of Representatives |
| 10 October | advice of the States-General sent out to the Commission, European Parliament, the Council, the State secretary on European Affairs of The Netherlands and the COSAC Secretariat. |

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

Yes, the government provided a so-called fiche on the proposal, which contains the first opinion of the government, including an opinion on the compliance of the proposal with the principles of subsidiarity and proportionality.

f. In case of a bicameral system, did you coordinate with the other chamber?

Yes, coordination was done by and through the Temporary Joint Committee on the Subsidiarity Check

g. Did you consult regional parliaments with legislative powers?

No

h. Did you make use of any external expertise?

No, but both House received opinions of NGO's

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

IPEX

3. Did you publicise your findings (e.g. in a special press release)?

The findings were published in the official publications of both Houses.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

The States-General adopted a specific subsidiarity mechanism in 2005 and installed a joint committee on the subsidiarity check, which involved both the Senate and the House of Representatives. This procedure anticipated on the subsidiarity Protocol of the Constitutional Treaty, including the six week period. The procedure has not (yet) been adapted to Protocol 2 of the Treaty of Lisbon, but in practice the foreseen eight week period is applied.

Findings:

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

For the time being, both Houses of the States-General are not convinced that the proposal complies with the principles of subsidiarity and proportionality. A final assessment can only be made if the Commission and the Dutch government give more clearness about the scope of the proposal and the practical, judicial and financial implications of the proposal.

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

Yes

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

As stated under question 5, the States-General need more information from the Commission.

8. Did you encounter any specific difficulties during the examination?

The political appreciation of the various political groups in both Houses diverged, which led to a laborious process in reaching a widely supported final advice.



De vicevoorzitter van de Europese Commissie
mevrouw M. Wallström
B - 1049 BRUSSEL
België

datum 9 oktober 2008

betreft Subsidiariteitstoets van het voorstel voor een Richtlijn van de Raad betreffende de toepassing van het beginsel van gelijke behandeling van personen ongeacht godsdienst of overtuiging, handicap, leeftijd of seksuele geaardheid (COM(2008)426)

Geachte mevrouw Wallström,

Beide Kamers der Staten-Generaal van het Koninkrijk der Nederlanden hebben - overeenkomstig de door hen vastgestelde procedures – het voorstel voor een Richtlijn van de Raad betreffende de toepassing van het beginsel van gelijke behandeling van personen ongeacht godsdienst of overtuiging, handicap, leeftijd of seksuele geaardheid (COM(2008) 426) getoetst aan de beginselen van subsidiariteit en proportionaliteit. Zij hebben daarmee toepassing gegeven aan artikel 5 EG-Verdrag en Protocol 30 bij het Verdrag van Amsterdam betreffende de toepassing van het subsidiariteits- en het evenredigheidsbeginsel.

Beide Kamers der Staten-Generaal zijn van oordeel dat in het EG-Verdrag voldoende rechtsgrondslag bestaat voor maatregelen zoals voorgesteld in de conceptrichtlijn. Ten aanzien van de vragen of is voldaan aan de beginselen van subsidiariteit en proportionaliteit, zijn de beide Kamers der Staten-Generaal van oordeel dat de uiteindelijke beantwoording van deze vragen pas mogelijk is, nadat de Europese Commissie en de Nederlandse regering meer duidelijkheid hebben verschaft over de reikwijdte van de voorgestelde maatregelen, alsmede over de praktische, juridische en financiële implicaties van het voorstel. Dit wordt toegelicht in de bij deze brief gevoegde motivering.

Derhalve zijn beide Kamers der Staten-Generaal er vooralsnog niet van overtuigd dat met het richtlijnvoorstel is voldaan aan de vereisten van subsidiariteit en proportionaliteit. Zij zien de toelichting van zowel de Europese Commissie, als de reactie van de Nederlandse regering op het richtlijnvoorstel met belangstelling tegemoet.

Hoogachtend,

mr. Yvonne E.M.A. Timmerman-Buck
Voorzitter van de Eerste Kamer
der Staten-Generaal

Gerdi A. Verbeet
Voorzitter van de Tweede Kamer
der Staten-Generaal

Subsidiariteitstoets van het voorstel voor een Richtlijn van de Raad betreffende de toepassing van het beginsel van gelijke behandeling van personen ongeacht godsdienst of overtuiging, handicap, leeftijd of seksuele geaardheid (COM(2008) 426)

Beide Kamers der Staten-Generaal van het Koninkrijk der Nederlanden hebben - overeenkomstig de door hen vastgestelde procedures – het voorstel voor een Richtlijn van de Raad betreffende de toepassing van het beginsel van gelijke behandeling van personen ongeacht godsdienst of overtuiging, handicap, leeftijd of seksuele geaardheid (COM(2008) 426) getoetst aan de beginselen van subsidiariteit en proportionaliteit. Zij hebben daarmee toepassing gegeven aan artikel 5 EG-Verdrag en Protocol 30 bij het Verdrag van Amsterdam betreffende de toepassing van het subsidiariteits- en het evenredigheidsbeginsel. De uitkomsten van deze toetsing waren als volgt.

Rechtsgrondslag

Beide Kamers der Staten-Generaal achten de door de Europese Commissie voorgestelde rechtsgrondslag adequaat met het oog op het te bereiken doel. De Europese Commissie is bevoegd op basis van artikel 13, lid 1 van het EG-verdrag het voorstel te presenteren.

Subsidiariteit en evenredigheid

Het subsidiariteitsbeginsel schrijft voor dat Europees optreden een meerwaarde heeft ten opzichte van optreden door de lidstaten. Tevens impliceert het beginsel dat exclusief optreden van de lidstaten (afzonderlijk of in gezamenlijkheid) het beoogde doel niet kan realiseren. Anders gezegd, dat er een noodzaak is voor Europees optreden. Het proportionaliteitsbeginsel vereist dat de voorgestelde maatregelen niet verder gaan dan strikt noodzakelijk.

Het voorstel zoals dat thans door de Europese Commissie is gepresenteerd, alsmede de toelichting daarop en de bijbehorende effectbeoordeling roepen in beide Kamers der Staten-Generaal vragen op over de meerwaarde, reikwijdte en gevolgen van de voorgestelde maatregelen. Beide Kamers der Staten-Generaal zijn er daarom vooralsnog niet van overtuigd dat met de voorgestelde maatregelen is voldaan aan de vereisten van subsidiariteit en proportionaliteit.

Om beide vragen – die naar de subsidiariteit en proportionaliteit van de voorgestelde maatregelen - adequaat te kunnen beantwoorden achten beide Kamers der Staten-Generaal het een *conditio sine qua non* dat door de Europese Commissie en de Nederlandse regering meer duidelijkheid wordt geboden over de reikwijdte van de voorgestelde maatregelen, alsmede over de praktische, juridische en financiële implicaties van het voorstel.

Beide Kamers der Staten-Generaal hebben in dat licht met name behoefte aan een nadere toelichting en verdere verduidelijking van de werkingssfeer van de voorgestelde richtlijn (in casu het voorgestelde artikel 3, evenals artikel 2, lid 6 t/m 8). In de aangehaalde artikelen wordt onder andere bepaald dat deze richtlijn nationale

wetgeving inzake de burgerlijke staat, de gezinssituatie, reproductieve rechten, de inhoud, opzet en de stelsels van (buitengewoon) onderwijs onverlet laat, evenals nationale wetgeving die betrekking heeft op de status en de activiteiten van kerken en andere op godsdienst of overtuiging gebaseerde organisaties. Beide Kamers der Staten-Generaal zien graag toegelicht hoe deze “uitzonderingsbepalingen” – na eventuele inwerkingtreding – zich zullen verhouden tot de (bestaande) nationale wetgeving op onderhavige terreinen en of zij op enigerlei wijze (en tevens: in welke mate) een inperking (kunnen) betekenen van de primaire bevoegdheid van de lidstaten op deze beleidsterreinen, zoals die ook blijkt uit de Europese verdragen.

Beide Kamers der Staten-Generaal zijn daarnaast van oordeel dat de toelichting op het richtlijnvoorstel en de bijbehorende effectbeoordeling onvoldoende duidelijkheid verschaffen over de praktische, juridische en financiële implicaties van het voorstel. Noopt bijvoorbeeld het in het richtlijnvoorstel geformuleerde beginsel van gelijke behandeling van gehandicapten tot verdergaande praktische maatregelen en voorzieningen dan waartoe vigerende nationale regelgeving reeds verplicht? Ook op het gebied van sociale zekerheid is voor beide Kamers der Staten-Generaal op dit moment onduidelijk wat precies de materiële implicaties van de voorgestelde richtlijn zullen zijn. Zullen er bijvoorbeeld personen rechten verwerven die zij op dit moment op grond van de thans geldende nationale wetgeving niet hebben? De gevolgen voor het onderwijs zijn, in weerwil van de geformuleerde beperkingen van de werkingssfeer van de voorgestelde richtlijn voor dit beleidsterrein, evenmin duidelijk. Ten slotte hebben beide Kamers der Staten-Generaal behoefte aan meer duidelijkheid over de gevolgen van een (geclausuleerd) verbod op leeftijdsdiscriminatie, zoals thans voorgesteld.

Conclusie

Beide Kamers der Staten-Generaal zijn van oordeel dat in het EG-Verdrag voldoende rechtsgrondslag bestaat voor maatregelen zoals voorgesteld in de conceptrichtlijn. Ten aanzien van de vragen of is voldaan aan de beginselen van subsidiariteit en proportionaliteit, zijn de beide Kamers der Staten-Generaal van oordeel dat de uiteindelijke beantwoording van deze vragen pas mogelijk is, nadat de Europese Commissie en de Nederlandse regering meer duidelijkheid hebben verschaft over de reikwijdte van de voorgestelde maatregelen, alsmede over de praktische, juridische en financiële implicaties van het voorstel.

Derhalve zijn beide Kamers der Staten-Generaal er vooralsnog niet van overtuigd dat met het richtlijnvoorstel is voldaan aan de vereisten van subsidiariteit en proportionaliteit. Zij zien de toelichting van zowel de Europese Commissie, als de reactie van de Nederlandse regering op het richtlijnvoorstel met belangstelling tegemoet.

Courtesy - unofficial - translation of the Conclusion

Both Chambers of the States-General share the opinion that the provisions within the EC-Treaty provide sufficient legal basis for the regulations as proposed in the draft-directive.

As regards to the question if the principles of subsidiarity and proportionality have been fully applied, both Chambers of the States-General share the opinion that a final answer to this question will only be possible once the European Commission and the Dutch Government have given further clarification on the scope of the proposed measures, as well as on the practical, juridical and financial implications of the proposal.

In this respect, both Chambers of the States-General are not yet convinced that this proposal for a directive meets the requirements of subsidiarity and proportionality. They look forward to receiving the explanation of the European Commission as well as the reaction of the Dutch government on the draft directive.

Poland: Sejm



SEJM
OF THE REPUBLIC OF POLAND

EUROPEAN UNION AFFAIRS COMMITTEE

CHAIRMAN

Andrzej Grzyb

Warsaw, September 2nd, 2008

**Answers on the following questions concerning subsidiarity check on the
“Proposal for a Council Directive implementing the principle of equal treatment between
persons irrespective of religion, or belief, disability, age or sexual orientation (COM(2008)
426)” adopted by European Union Affairs Committee of the Sejm of the Republic of Poland
on 24th July 2008.**

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

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

b. Was the plenary involved?

No, it was not.

c. Which administrative services of your parliament were involved?

In subsidiarity check was involved:

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

d. What was the chronology of events?

The presented document was the subject of the agenda of the meeting of the European Union Affairs Committee on 24th July 2008 on two stages. The Committee considered the draft legislative act (COM(2008) 426) under article 6 of the *Act of 11 March 2004 on co-operation of the Council of Ministers with the Sejm and the Senate in matters related to Republic of Poland's membership in the European Union (Co-operation Act)*. The two co-rapporteurs chosen among members of the Committee analysed the proposed act and draft government's position aiming to give the opinion whether it should be discussed at the Committee meeting or not. The above mentioned document was discussed in the agenda of the meeting of the Committee on 24th July 2008. At the same Committee meeting, in the next item on the agenda, the EUAC adopted an opinion concerning subsidiarity check. The whole procedure was preceded with two hours long seminar, which was conducted by the experts from the Bureau of Research of the Chancellery of

the Sejm. The opinion of the EUAC was held in accordance with the Protocol (No.2) on the Application of the principles of Subsidiarity and Proportionality to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, on the “Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion, or belief, disability, age or sexual orientation (COM(2008) 426)”.

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

There was no written information from the government, but the representative of the government, on the meeting of the EUAC, gave an oral opinion about whether the legislative proposal is complied with the principle of subsidiarity or not.

f. In case of a bicameral system, did you coordinate with the other chamber?

No, we did not. The European Union Affairs Committee of the Sejm and the European Union Affairs Committee of the Senat work separately.

g. Did you consult regional parliaments with legislative powers?

No, we do not have regional parliaments.

h. Did you make use of any external expertise?

No, we did not.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

No, we did not cooperate with other national parliaments in the process.

3. Did you publicise your findings (e.g. in a special press release)?

The Committee’s opinion was transmitted to the government and was publicised on the website of the EUAC. Additionally, the shorthand record from the EUAC meeting is available on the website of the Sejm.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

Procedures with regard to subsidiarity check has not been adopted yet. However this matter lie in the area of EUAC’s interests.

Findings:

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

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

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

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

1. acknowledges the ‘Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion, or belief, disability, age or sexual orientation (COM(2008) 426)’ in conformity with subsidiarity check.
2. does not raise any remarks to the proposal for a directive referred to point 1 and to the relevant government’s draft position”.

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

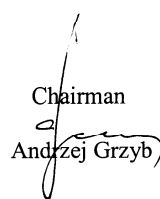
The European Union Affairs Committee found justification of the Commission satisfactory. The written opinion of the Bureau of Research of the Chancellery of the Sejm, was also positive but there were also few remarks. The authors claimed that a form of the legislative draft comply with the requirements of subsidiarity principle, as well as the obligation to carry out widen consultations. Reservations refer to justification's content of the proposal. The requirement concerning quantitatively and qualitatively indications was not fully complied. The information contained in justification of the proposal are too general and do not fully allow to formulate an opinion concerning conformity of the proposal with subsidiarity principle.

8. Did you encounter any specific difficulties during the examination?

No, there was no specific difficulties.

9. Any other comments?

No, we do not have any other comments.

Chairman

Andrzej Grzyb

Opinion No. 21
of the European Union Affairs Committee of
the Sejm of the Republic of Poland
on the ‘Proposal for a Council Directive implementing the principle of equal
treatment between persons irrespective of religion, or belief, disability,
age or sexual orientation (COM(2008) 426)’
adopted at the 54th sitting on 24 July 2008

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

1. acknowledges the ‘Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion, or belief, disability, age or sexual orientation (COM(2008) 426)’ in conformity with subsidiarity check.
2. does not raise any remarks to the proposal for a directive referred to point 1 and to the relevant government’s draft position.

Chairman

Andrzej Grzyb

Poland: Senat

At the sitting on 6th August 2008 the Senate's European Union Affairs Committee carried out a subsidiarity check following the procedure agreed by the COSAC. The check was completed and the conclusions formulated as follows:

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

The European Union Affairs Committee, with the cooperation of the Human Rights and the Rule of Law Committee.

b. Was the plenary involved?

No.

c. Which administrative services of your parliament were involved?

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

d. What was the chronology of events?

- **9 July 2008**, the European Commission published all linguistic versions of the *Proposal for a Council Directive*
- **17 July 2008** – the sitting of the *European Union Affairs Committee*
 - *discussing the procedures regarding the subsidiarity check*
 - *approving the working agenda*
 - *appointing the sectoral committees to give opinions on the said proposal*
 - *choosing the experts*
- **6 August 2008** – the joint sitting of the *European Union Affairs Committee and the Human Rights and the Rule of Law Committee.*
 - *hearing the opinions of the government representatives*
 - *hearing the opinions of the Committee experts*
 - *discussion*
 - *adopting an opinion on the basis of the tabled motions*
- *Preparing and forwarding the report to the COSAC secretariat (before 4 September).*

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

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

f. In case of a bicameral system, did you coordinate with the other chamber?

No.

g. Did you consult regional parliaments with legislative powers?

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

h. Did you make use of any external expertise?

Yes, the Committee was provided with an external expertise.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

No.

3. Did you publicise your findings (e.g. in a special press release)?

No.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

In the present subsidiarity check the same procedure was applied as in the previous tests. Before the possible entry into force of the Treaty of Lisbon, a selection system of documents has to be worked out to seek those legislative proposals which may raise doubts about their compliance with the subsidiarity principle. It will make therefore necessary for an experienced team of parliamentary staff to specify precise selection criteria.

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

The European Union Affairs Committee came to the conclusion that the Proposal for a Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation does not breach the subsidiarity principle.

6. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy) - *No.*

7. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory? - *Yes.*

8. Did you encounter any specific difficulties during the examination?

The obligatory 8 week rule may become difficult to comply with, especially when it covers the summer recess. In the present case it turned out to be quite a challenge to find an external expert who would agree to provide an opinion in such a short period of time.

9. Any other comments?

Portugal: Assembleia da República

Procedures:

1. What was the procedure used to conduct the subsidiarity check?
 - a. Which committees were involved?

The European Affairs Committee, which always triggers the scrutiny process, and the Committee on Ethics, Society and Culture, competent for the issues covered by this Proposal for a Directive.

- b. Was the plenary involved?

No. The timeframe in which this subsidiarity test occurred was outside the normal parliamentary term, that goes from 15 September to 15 June. Given that outside this period only the meetings absolutely necessary to conclude a legislative procedure are authorized to take place, the plenary was not involved.

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

- c. Which administrative services of your parliament were involved?

Only the above mentioned Committees and the translation service.

- d. What was the chronology of events?

15 July – the EC Affairs Committee asked the relevant Committee (Committee on Ethics, Society and Culture) to issue its opinion on the compliance of this Proposal for a Directive with the principle of subsidiarity.

16 July – the Committee on Ethics, Society and Culture appointed its rapporteur.

2 September – the Committee on Ethics, Society and Culture approved its report on the the Proposal.

4 September – the European Affairs Committee endorsed the report from the Committee on Ethics, Society and Culture an adopted a reasoned opinion on the *Proposal for Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, concluding that it complies with the principle of subsidiarity.

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

There was no direct request for information sent to the government. Nevertheless, the government provides the Parliament with all the documents received from the EU, namely the working group documents, etc. For this specific matter, it was of special interest the outcome of proceedings of The Working Party on Social Questions.

f. In case of a bicameral system, did you coordinate with the other chamber?

N.a.

g. Did you consult regional parliaments with legislative powers?

No.

h. Did you make use of any external expertise?

No.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

IPEX was consulted throughout the scrutiny process.

3. Did you publicise your findings (e.g. in a special press release)?

No.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

The Portuguese Parliament has adopted a new Law in 2006 on the *Monitoring, assesment and pronouncement of the Assembleia da República within the scope of the EU*, which is already prepared to deal with the mechanisms envisaged by the Treaty of Lisbon.

Findings:

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

No.

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

Yes (see attached copy).

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

Yes.

8. Did you encounter any specific difficulties during the examination?

Yes, the eight week period in which this subsidiarity test took place was outside the normal parliamentary term which limited the capacity for a more in-depth debate.

9. Any other comments?

No.

Key dates

- Publication of the Commission Proposal: 2 July 2008.
- Official launch of the check: when translations of the Proposal into all the official languages of the EU are available (according to the information from the Commission, this will be in the second half of July 2008).
- Send reasoned opinions to the EU Institutions within eight weeks of the official launch of the check.
- Send reasoned opinions and answers to the above questions to the COSAC Secretariat within eight weeks of the official launch of the check.



**REPORT AND FORMAL OPINION
OF THE EUROPEAN AFFAIRS COMMITTEE**

COSAC Subsidiarity check

Proposal for a Council Directive which implements the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

COM (2008) 426 final

{SEC (2008) 2180}

{SEC (2008) 2181}

1. Context

The XXXVII COSAC, which took place in Berlin on 14 and 15 May 2007, gave a positive assessment of the subsidiarity and proportionality tests carried out in the framework of COSAC up to that time. It also concluded that at least two tests of this type should be performed annually.

The XXXVIII COSAC, held in Estoril between 14 and 16 October 2007, invited the national parliaments to put forward the two proposals that they would like to see undergo subsidiarity tests in 2008, based on the Legislative and Working Programme of the European Commission for 2008.

Based on the national parliaments' replies to this request, the Meeting of the COSAC Chairpersons, held in Ljubljana on 18 February 2008, decided that the first subsidiarity test would be applied to the Proposal for a Council Directive which implements the principle of equal treatment outside the labour market (2008/EMPL/017). The final title adopted when this proposal was published was: *Proposal for a Council Directive which implements the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*.

The results of this test will be analysed at the XL COSAC, which will take place in Paris on 3 and 4 November.

2. Procedure at the Assembly of the Republic (AR)

The European Commission adopted the proposal on 2 July. The subsidiarity test will be carried out, on an experimental basis, in accordance with the provisions in the Protocol on the implementation of the principles of subsidiarity and proportionality (No. 2) in the Treaty of Lisbon. A period of 8 weeks elapsed for the preparation of a reasoned opinion by each parliament. This period started on 9 July, the date on which all the different linguistic versions of the proposal were published. Hence, the deadline for the preparation of each parliament's reasoned opinion expires on 4 September 2008.

On 15 July 2007, the European Affairs Committee (EAC) referred the proposal under analysis to the two Parliamentary Committees responsible for this matter, namely the Committee on 2 September. The period during which this pilot project was carried out must, however, be mentioned. Even though the AR is not closed during the summer, Parliamentary Committee meetings can only be called with the authorization of the Speaker of the AR, and it had already been laid down that this year, there would be no such meetings held between 19 July and 1 September, unless these were for finalising legislative initiatives that had already been approved. Thus, the 8-week period available for the preparation of the reasoned opinion about the proposal under analysis clashed with the time that the AR does not operate normally. Consequently, it is worth noting that the timing of the European legislative process does not necessarily coincide with the AR's normal operating period, and it is suggested that this factor be taken into account when authorization for holding meetings outside this period is necessary in the future.

3. Report and formal opinion

The aim of this proposal is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market. It sets out a framework for the prohibition of discrimination on these grounds and establishes a uniform minimum level of protection within the European Union for people who have suffered such discrimination.

This proposal builds on the existing community legal framework, which is based on three directives:

- Directive 2000/43/EC of 29 June 2000, which implements the principle of equal treatment between persons irrespective of racial or ethnic origin;

- Directive 2000/78/EC, of 27 November 2000, which sets out a general framework for equal treatment in employment and occupation;

- Directive 2004/113/EC, of 13 December 2004, which implements the principle of equal treatment between men and women in the access to and supply of goods and services.

The European Commission has given its reasons for presenting this proposed Directive by stating that it is “the instrument that best ensures a coherent minimum level of protection against discrimination across the EU, whilst allowing individual Member States that want to go beyond the minimum standards to do so.” On the other hand, it also allows them to choose the most appropriate means of enforcement and sanctions. Finally, past experience in the non-discrimination field is that a directive was the most appropriate instrument.

It is also important to note that the position defended by Portugal within the scope of the Committee's negotiations, was that this proposal could have been more ambitious. On the other hand, doubts were also raised concerning the text of Article 4 of the proposal which, according to the position defended by Portugal, needs to be better explained.

FORMAL OPINION

In the light of the considerations above and taking into account the opinion of the Committee on Ethics, Society and Culture about the *Proposal for a Council Directive which implements the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, the European Affairs Committee considers that the proposal under analysis does not violate the principle of subsidiarity, since the objective will be more efficiently reached by means of a community action.

São Bento Palace, 3 September 2008

**The Rapporteur (M.P.) of the
European Affairs Committee
Committee**

(Ana Catarina Mendes)

**The Chairman of the
European Affairs**

(Vitalino Canas)

Annex:

- Report of the Committee on Ethics, Society and Culture, prepared by Agostinho Branquinho
MP (PSD) 4

2 September 2008

FORMAL OPINION OF THE COMMITTEE ON ETHICS, SOCIETY AND CULTURE

COSAC Subsidiarity check

Proposal for a
COUNCIL DIRECTIVE
on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation
COM(2008) 426 final
{SEC(2008) 2180}
{SEC(2008) 2181}

Rapporteur: Agostinho Branquinho MP

1. Procedure

In accordance with the terms of Article 7(1) of Law No 43/2006 of 25 August, the abovementioned community documents were distributed to the Parliamentary Committee on Ethics, Society and Culture, on 14 July 2008, so that their content could be brought to the Committee's notice and a formal opinion could be issued.

To prepare this Formal Opinion, the text and the foundations of the Proposal for a Council Directive "on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation"¹, the Committee Services impact assessment report² concerning the Proposal for a Directive, and the Working Group Document on Social Issues, within the scope of the Council of the European Union³ were taken into account.

2. Framework

The XXXVII COSAC⁴, held in Berlin on 14 and 15 May 2007, made a positive assessment of the subsidiarity and proportionality tests previously carried out under the umbrella of COSAC, and concluded that at least two such tests of this type should be carried out annually.

The XXXVIII COSAC, held in Estoril between 14 and 16 October 2007, invited the national parliaments to present the two proposals for which they would like to see subsidiarity tests organised in 2008, based on the Legislative and Work Programme of the European Commission for 2008.

Based on the responses submitted by the national parliaments, the COSAC Chairpersons Meeting, held in Ljubljana on 18 February 2008, decided to perform

¹ COM(2008) 426 final.

² SEC(2008) 2181.

³ CNS 12071/08.

⁴ Conference of Community and European Affairs Committees of Parliaments of the European Union.

subsidiarity tests on two proposals. The presentation of one of these proposals has been postponed until the first quarter of 2009.

Therefore, this Formal Opinion on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation has been prepared⁵, in compliance with the terms of Article 7(1, 2) of Law No 43/2006 of 25 August, and in accordance with the remit of this Committee on Ethics, Society and Culture.

3. The European Commission Proposal 3.1. Grounds for the proposal

3.1. Grounds for the proposal

On 23 October 2007⁶, the European Commission (EC) adopted its legislative and work programme and announced that it would propose new initiatives to complete the EU anti-discrimination legal framework.

The EC presents this proposal as part of the “Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe” package⁷ and states that it accompanies the communication on “Non-Discrimination and Equal Opportunities: A Renewed Commitment”⁸.

The EC also bases its grounds for this proposal on the “United Nations Convention on the Rights of Persons with Disabilities”, which has, according to the most up-to-date information available, already been signed by all Member States. This Convention is based on the principles of non-discrimination, participation and inclusion in society, equal opportunities and accessibility, and will shortly be signed by the European Union.

The EC assumes that the initiative supplements the current community legal framework, the proposal being based in Directives 2000/43/EC, 2000/78/EC and 2004/113/EC⁹, which prohibit discrimination on the grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief¹⁰.

Discrimination based on racial or ethnic origin is prohibited in employment, occupation and vocational training, as well as in non-employment areas such as social protection, health care, education and access to goods and services, including housing, which are available to the public. Discrimination based on sex is prohibited in the same range of areas, with the exception of education and media and advertising.

⁵ COM(2008) 426 final.

⁶ COM(2007) 640.

⁷ COM(2008) 412.

⁸ COM(2008) 420.

⁹ Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373 of 21.12.2004, p.37).

¹⁰ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180 of 19.7.2000), Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2.12.2000).

However, as has already been mentioned, discrimination based on age, religion and belief, sexual orientation and disability is prohibited only in employment, occupation and vocational training.

In the grounds for the draft legislative act in question, the EC mentions that “Directives 2000/43/EC and 2000/78/EC had to be transposed into national law by 2003, with the exception of those provisions dealing with age and disability discrimination, for which an extra three years was available”.

It is also mentioned that “in 2006¹¹, the Commission adopted a report on the implementation of Directive 2000/43/EC and, on 19 June 2008¹², a report on the implementation of Directive 2000/78/EC was adopted. All except one Member State have transposed these directives. Directive 2004/113/EC had to be transposed by the end of 2007”.

The EC also mentions that the proposal builds upon “the strategy developed since the Amsterdam Treaty to combat discrimination and is consistent with the horizontal objectives of the European Union, and in particular with the Lisbon Strategy for Growth and Jobs and the objectives of the EU Social Protection and Social Inclusion Process. It will help to further the fundamental rights of citizens, in line with the EU Charter of Fundamental Rights”.

3.2. Objectives

The aim of this draft EC legislative act is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market, since the community regulation currently in force prohibits this discrimination only in employment, occupation and vocational training.¹³

This proposal aims to create a regulatory framework prohibiting discrimination based on an extended range of factors and establishes a minimum level of standardised protection within the European Union that benefits those that have already suffered from this type of discrimination. As far as the *acquis communautaire* is concerned, the EC states that: “as far as possible, the concepts and rules provided for in this proposal build on those used in the existing Directives based on Article 13 of the EC treaty”.

The foundation text of the Proposal claims that a directive is “the instrument that best ensures a coherent minimum level of protection against discrimination across the EU, whilst allowing individual Member States that want to go beyond the minimum standards to do so. It also allows them to choose the most appropriate means of enforcement and sanctions. Past experience in the non-discrimination field is that a directive was the most appropriate instrument”.

3.3. Consultation procedures

¹¹ COM(2006) 643 final.

¹² COM(2008) 225.

¹³ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin (OJ L 180 of 19.7.2000, p.22), and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2.12.2000, p.16).

The EC publicly consulted all the stakeholders with a potential interest, on the back of encouraging participation in the debate arising from the European Year of Equal Opportunities for All.

The foundation text of the draft legislative act highlights an on-line public consultation¹⁴, a survey of industry¹⁵ and a written consultation, together with meetings, as the main procedures, in the sphere of the social partners and the Non-Governmental Organizations (NGOs) that are active in the non-discrimination field at the European level¹⁶. These procedures did not show there to be a general consensus about the need for this Directive.

A study¹⁷ in 2006 showed that, even though most countries provide legal protection in some form that goes beyond the current EC requirements in most of the areas examined, there is a good deal of variety between countries as to the degree and nature of the protection. A further study¹⁸ looked at the nature and extent of discrimination outside employment in the EU, and the potential (direct and indirect) costs this may have for individuals and society.

In addition, the Commission has used the reports from the European Network of Independent Experts in the non-discrimination field, notably their overview “Developing Anti-Discrimination Law in Europe”¹⁹ as well as a study on “Tackling Multiple Discrimination: practices, policies and laws”²⁰.

Finally the EC understands that the text of the proposal refers to the results of a special Eurobarometer survey²¹ and to a Flash Eurobarometer survey in February 2008²². Hence, this Formal Opinion also does so. These surveys can be consulted at the websites given in the footnotes.

3.4. Impact assessment

“The impact assessment report²³ looked at evidence of discrimination outside the labour market. It found that, while non-discrimination is recognised to be one of the fundamental values of the EU, in practice the level of legal protection to secure these values differs between Member States and between discrimination grounds. As a result, those at risk of discrimination often find themselves less able to participate fully in society and the economy, with negative effects both for the individual and for broader society.”

¹⁴ Results of this consultation available from:

http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm#impass.

¹⁵ http://ec.europa.eu/yourvoice/ebtp/consultations/index_pt.htm

¹⁶ http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm#ar

¹⁷ http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf

¹⁸ http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm

¹⁹ http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#leg

²⁰ http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multidis_en.pdf

²¹ Special Eurobarometer Survey 296 on discrimination in the EU:

http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm and

http://ec.europa.eu/public_opinion/archives/eb_special_en.htm.

²² Flash Eurobarometer 232: http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf

²³ http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm

The impact assessment report for the Proposal for a Directive defined three objectives which any initiative in this field should meet. These range from increasing protection from discrimination, to ensuring legal certainty for economic operators and potential victims across the Member States and to enhancing social inclusion and promoting the full participation of all groups in society and the economy.

The report states that, irrespective of the Commission's proposal, Member States will have to implement the UN Convention on the Rights of Persons with Disabilities which defines the denial of reasonable accommodation as discrimination. Hence, it refers that "a legally binding measure which prohibits discrimination on grounds of disability entails financial costs because of the adaptations needed but there are also benefits from the fuller economic and social inclusion of groups currently facing discrimination".

A small number of Member States already have rather complete legislative protection while most others have some, but less comprehensive, protection. The legislative adaptation arising from new EC rules would therefore vary. The report concludes that a multi-ground directive would be the appropriate response, designed so as to respect the principles of subsidiarity and proportionality.

3.5. Legal base

The proposal is based on Article 13(1) of the European Community (EC) Treaty²⁴.

3.6. Budgetary implications

The Proposal for a Directive will have no implications for the Community budget, but makes no claims about the type of implications for the national budgets.

3.7. Description and analysis of the provisions

The Proposal for a Directive contains a detailed explanation of the specific provisions. The Rapporteur has decided to include a part of this description in this Formal Opinion.

This decision of the Rapporteur is not unusual in view of the short period of time available for the preparation and discussion of the Formal Opinion, as well as the period when it had to be carried out. Even though the Assembly of the Republic is not in recess during the summer period, the holding of Parliamentary Standing Committee meetings requires the authorization of the President of the Assembly of the Republic, who decided that, this year, there would be no meetings between 19 July and 1 September, except for any meetings that were necessary for finalizing any legislative initiatives that had already been passed by the Plenary Assembly. Hence, opportunities to meet, deeply analyse and consider alternative proposals, for such a sensitive subject

²⁴ 1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. 2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.

as the one dealt with in this proposed European Community legislative act, were clearly thin on the ground.

It must also be added that the EC working document is not available in Portuguese, which is a pity as this is, in itself, interestingly, a factor of discrimination.

The Rapporteur believes that the partial transposition, article by article, from the text of the explanations included in the Proposal is a contribution towards enabling the Proposal for a Directive to be quickly assimilated, so that it can be reflected upon and criticized. An analysis of the explanations of the articles goes a long way towards explaining the intentions of the legislator, but does not substitute the interpretive exercise of reading these articles.

As this proposal is legally based on Article 13(1) of the European Community (EC) Treaty with references to Article 141, it has been considered helpful to include the text of these articles in this Formal Opinion:

Chapter I – General Provisions

Article 1: Purpose

The main objective of the directive is to combat discrimination on the grounds of religion or belief, disability, age or sexual orientation and to put into effect the principle of equal treatment other than in the field of employment. The directive does not prohibit differences of treatment based on sex which are covered by Articles 13 and 141²⁵ of the EC Treaty and related secondary legislation.

Article 2: Concept of discrimination

The definition of the “principle of equal treatment” is based on that contained in the previous directives adopted under Article 13(1) of the EC Treaty (as well as relevant case law of the European Court of Justice).

Direct discrimination consists of treating someone differently solely because of his or her age, disability, religion or belief and sexual orientation.

²⁵ 1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. 2. For the purpose of this article, “pay” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means: a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; b) that pay for work at time rates shall be the same for the same job. 3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. 4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Indirect discrimination is more complex in that a rule or practice which seems neutral in fact has a particularly disadvantageous impact upon a person or a group of persons having a specific characteristic.

Harassment is also a form of discrimination. The unwanted conduct can take different forms, from verbal or written comments, gestures or behaviour, but it has to be serious enough to create an intimidating, humiliating or offensive environment. This definition is identical to the definitions contained in the other Article 13 directives.

A denial of reasonable accommodation is considered a form of discrimination. This is in line with the UN Convention on the Rights of Persons with Disabilities and coherent with Directive 2000/78/EC.

Although the current proposal does not cover employment, as has already been mentioned in this Formal Opinion, there will be differences of treatment in the areas mentioned in Article 3 that should be allowed. However, as exceptions to the general principle of equality should be narrowly drawn, the double test of a justified aim and proportionate way of reaching it (i.e. in the least discriminatory way possible) is required.

As a result of the participation of individuals and organisations in the consultation process, a special rule has been added for insurance and banking services, in recognition of the fact that age and disability can be an essential element of the assessment of risk for certain products, and therefore of price.

If insurers are not allowed to take age and disability into account at all, the additional costs will have to be entirely borne by the rest of the “pool” of those insured, which would result in higher overall costs and lower availability of cover for consumers. The use of age and disability in the assessment of risk must be based on accurate data and statistics.

The directive does not affect national measures based on public security, public order, and the prevention of criminal offences, the protection of health, and the rights and freedoms of others.

Article 3: Scope

Discrimination based on religion or belief, disability, age or sexual orientation is prohibited by both the public and private sector in: 1. social protection, including social security and health care; 2. social advantages; 3. education, 4. access to and supply of goods and services which are available to the public, including housing.

In terms of access to goods and services, only professional or commercial activities are covered. In other words, transactions between private individuals acting in a private capacity will not be covered: letting a room in a private house does not need to be treated in the same way as letting rooms in a hotel.

It also mentions that the areas are covered only to the extent that the subject matter falls within the competences of the Community. Thus, for example, the organisation of the

school system, activities and the content of education courses, including how to organise education for persons with disabilities, is a matter for the Member States, and they may provide for differences in treatment in access to religious educational institutions. For example, a school could arrange a special presentation just for children of a certain age, while a faith based school would be allowed to arrange school trips with a religious theme.

The text makes it clear that matters related to marital and family status, which includes adoption, are outside the scope of the directive. This includes reproductive rights.

Member States remain free to decide whether or not to institute and recognise legally registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies²⁶.

Article 3 specifies that the directive does not cover national laws relating to the secular nature of the State and its institutions, nor to the status of religious organisations. Member States may thus allow or prohibit the wearing (in the terminology of the Proposal) of religious symbols in schools. Differences in treatment based on nationality are also not covered.

Article 4: Equal treatment of persons with disabilities

Effective access for disabled people to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, will be provided by anticipation. This obligation is limited by the defence that if this would impose a disproportionate burden or would require major changes to the product or service, it does not need to be done.

In some cases individual measures of reasonable accommodation may be necessary to ensure effective access for a particular disabled person.

The concept of reasonable accommodation already exists in the employment sphere under Directive 2000/78/EC, and Member States and businesses therefore have experience in applying it. What might be appropriate for a large corporation or public body may not be for a small or medium-sized company. The requirement to make reasonable accommodation does not only imply making physical changes but may entail an alternative means of providing a service.

Article 5: Positive action

This provision is common to all Article 13 directives.

Article 6: Minimum requirements

This provision is common to all Article 13 directives.

²⁶ Judgment of the ECJ of 1.4.2008 in case C-267/06C-267/06 Tadao Maruko.

Chapter II – Remedies and enforcement

Article 7: Defence of rights

This provision is common to all Article 13 directives.

Article 8: Burden of proof

This provision is common to all Article 13 directives.

Article 9: Protection against acts of retaliation

This provision is common to all Article 13 directives.

Article 10: Dissemination of information

This provision is common to all Article 13 directives.

Article 11: Dialogue with relevant stakeholders

This provision is common to all Article 13 directives.

Article 12: Bodies for the promotion of equal treatment

This provision is common to two Article 13 directives. This article requires the Member States to have a body or bodies (“Equality Body”) at national level to promote equal treatment of all persons irrespective of their religion or belief, disability, age or sexual orientation.

It sets out minimum competences applicable to bodies at the national level which should act independently to promote the principle of equal treatment. Member States may decide that these bodies be the same as those already established under the previous directives.

A key role of the Equality Bodies is to give independent help to victims of discrimination. They must also be able to conduct independent surveys on discrimination and to publish reports and recommendations on issues relating to discrimination.

Chapter III – Final Provisions

Article 13: Compliance

This provision is common to all Article 13 directives.

Article 14: Sanctions

This provision is common to all Article 13 directives.

Article 15: Implementation

This provision is common to all Article 13 directives.

Article 16: Report

This provision is common to all Article 13 directives.

Article 17: Entry into force

This provision is common to all Article 13 directives. The Directive shall enter into force on the day of its publication in the Official Journal.

Article 18: Addressees

This provision is common to all Article 13 directives. The Directive is clearly addressed to the Member States.

3.8. Principles of subsidiarity and proportionality

The **Principle of Subsidiarity** was set out in the following terms in Article 5 of the Treaty on European Union: “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community”.

The Protocol annexed to the Treaty of Amsterdam Protocol (No 30), setting out guidelines on how the principles of subsidiarity and proportionality should be applied (1997), goes beyond laying down the conditions for their application and highlights the narrow relationship between these two principles. The Protocol determines that “in exercising the powers conferred on it, each institution shall ensure that the principle of subsidiarity is complied with. It shall also ensure compliance with the principle of

proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty”.

The Protocol also lays down that “The application of the principles of subsidiarity and proportionality shall respect the general provisions and the objectives of the Treaty, particularly as regards the maintaining in full of the *acquis communautaire* and the institutional balance; it shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law”.

According to the text of the Protocol, “the principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified”.

As far as the Proposal in question is concerned, the principle of subsidiarity is considered to be applicable if, on the one hand, we are looking at a proposal for which the Community does not have exclusive competence and, on the other, the objectives to be achieved – a minimum level of protection against discrimination based on religion or belief, disability, age or sexual orientation – will only be possible at the Community level.

Hence, the initiative in question brings a legal certainty as to the rights and obligations of economic operators and citizens, including those moving between the different Member States.

It adds that “national traditions and approaches in such areas as health care, social protection and education tend to be more diverse than in employment-related areas”. These areas are characterised by legitimate societal choices in areas which fall within national competence.

The European Commission itself recognises that “the diversity of European societies is one of Europe's strengths, and is to be respected in line with the principle of subsidiarity”.

The Directive does not require any Member State to amend its present laws and practices in relation to diverse issues such as the organisation and content of education, recognition of marital or family status, adoption, reproductive rights and other similar questions as these are best decided at national level. The Directive also does not affect national rules governing churches and other religious organisations or their relationship with the state. According to the Proposal for a Directive, it will remain for Member States alone to take decisions on questions such as whether to allow selective admission to schools, whether to allow the wearing of religious clothes or symbols at schools, whether to recognise same-sex marriages, and the nature of any relationship between organised religion and the state.

The Provisions described are in accordance with Protocol No 30 and it is important to point out that “the principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of

Justice. The criteria referred to in the second paragraph of Article 5 of the Treaty shall relate to areas for which the Community does not have exclusive competence. The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified”.

The **Principal of Proportionality**, as defined in Article 5 of the Treaty on European Union, states that “any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty”.

“The Principle of Proportionality is directly related to the carrying out of community assignments, and simultaneously presents two aspects: on the one hand, it implies that the decision of a community court is necessary for it to be adopted; and on the other, requires that this decision shall not go beyond what is necessary to achieve the intended results of the Treaty.”²⁷

The proposal under analysis will, therefore, be in compliance with the principle of proportionality, as it is limited to achieving its objectives.

4. Conclusions

1. The XXXVIII COSAC, held in Estoril between 14 and 16 October 2007, invited the national parliaments to present the two proposals for which they would like to see subsidiarity tests organised in 2008, based on the Legislative and Work Programme of the European Commission for 2008.
2. Based on the responses submitted by the national parliaments, the COSAC Chairpersons Meeting, held in Ljubljana on 18 February 2008, decided to perform subsidiarity tests on two proposals. The presentation of one of these proposals was postponed until the first quarter of 2009.
3. On 14 July 2008, the Committee on Ethics, Society and Culture received the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, so that it could issue a definite statement on the principles of subsidiarity and proportionality within the scope of the 5th COSAC Pilot Project.
4. The procedures adopted by the Assembly of the Republic in the analysis of the principles of subsidiarity and proportionality within the scope of the 5th COSAC Pilot Project are in compliance with the terms of Law No 43/2006 of 25 August concerning “The Follow-up, Assessment and Pronouncement by the Assembly of the Republic on the Process of Construction of the European Union”.

²⁷ José Matos Correia in *Dicionário de Termos Europeus / Dictionary of European Terms*, Carlos Coelho, Lisbon, Alêtheia Publishing House, 2005, p.272.

5. Article 13(1) of the European Community (EC) Treaty states “without prejudice to the other provisions of this treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin”.
6. The Proposal supplements the current community legal framework, based on the proposal in Directives 2000/43/EC, 2000/78/EC and 2004/113/EC, which prohibit discrimination on grounds of gender, racial or ethnic origin, age, disability, sexual orientation, religion or belief in various fields.
7. The aim of this draft European Community legislative act is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market, since the community regulation currently in force prohibits this discrimination only in employment, occupation and vocational training.
8. If approved, the Proposal for a Directive will not only compel the Portuguese State to create or transpose new legislation, but also lead to a change in attitude, to a change in how the Public Administration relates to and provides equal service to citizens with disabilities, especially where making infrastructure changes are needed to provide a suitable service.
9. The Portuguese position in the European Union is known and has been transmitted to the Assembly of the Republic in the Working Group on Social Issues’ Document, within the scope of the Council of the European Union, and in Chapter III of the document “Comments of a General Nature” the Portuguese delegation is mentioned, along with the Spanish, Austrian and Slovene delegations, as one of those that has stated that the Commission’s Proposal should have been more ambitious in the measures proposed, especially in the case of disabilities.
10. As part of the work by the 12th Commission, particular reference is made to that carried out recently by the Assembly of the Republic, culminating in the approval of Law No 33/2008, which establishes “measures to promote the accessibility to information on certain goods on sale to the public to people with disabilities and eyesight problems”.
11. The European Commission carried out a consultation process before presenting the proposal for a directive and this did not show there to be a general consensus. It collected supplementary information, in the following ways:
 - On-line public consultation;
 - A survey of industry;
 - Written consultation;
 - Meetings with social partners and NGOs, which are active in the non-discrimination field at the European level;
 - A comparative analysis of the measures implemented by the Member States to combat discrimination outside the employment or professional occupation area;
 - A study on discrimination in the fields of religion and belief, age, disability or sexual orientation, outside employment;
 - Reports by the European Network of Independent Experts in the non-discrimination field: 1. Developing Anti-Discrimination Law in Europe; 2. Tackling Multiple Discrimination: practices, policies and laws;
 - Special Eurobarometer Survey on discrimination in the European Union; and

- Flash Eurobarometer 232 of February 2008 on discrimination in the European Union.
12. This proposal will have no implications for the Community budget.
 13. The objectives of the proposal will be easier to achieve if they are legally instituted through a legislative act issued by the community courts rather than by the Member States, individually.
 14. A community legislative act guarantees a legal certainty with respect to the rights and obligations of economic operators and citizens, especially those moving between the different Member States.
 15. There does not appear to be any violation of the principle of subsidiarity.
 16. On the other hand, the proposal is limited to what is necessary to achieve its objective, and thus complies with the principle of proportionality.
 17. The European Commission's Proposal is presented as a Proposal for a Council Directive, which can be seen to be in compliance with the terms in No 6 of the Protocol on the application of the principles of subsidiarity and proportionality. This establishes that "the Community shall legislate only to the extent necessary" and that "other things being equal, directives should be preferred to regulations and framework directives to detailed measures".

5. FORMAL OPINION

In view of the above, and as there is nothing further to add, the Parliamentary Committee on Ethics, Society and Culture proposes that this report be sent to the European Affairs Committee, for approval, in accordance with the terms of Article 7(2) of Law No 43/2006 of 25 August.

São Bento Palace, 2 September 2008

Deputy Rapporteur

Agostinho Branquinho

Chairman of the Committee on
Ethics, Society and Culture

Matos Correia

José

Romania: Camera Deputatilor and Senatul

Contribution of the Parliament of Romania to the subsidiarity check under the Treaty of Lisbon on the Proposal for a Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation

Following the analysis of opinions given by all stakeholders, the European Affairs Committee, on behalf of the Parliament of Romania, deems the Proposal for a Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation, as being in full compliance with the requirements formulated under the provisions in Protocol no. 2 of the Treaty of Lisbon, concerning the principle of subsidiarity.

The following pledges were given special attention, to ascertain they have been fully observed in the text of the Directive:

- Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions;
- Directive maintains the competences of the Member States in the areas of education, social security and health care;
- Appreciation of the facts presumed discrimination remain a matter for the national judicial or other;
- Directive respects other fundamental rights and freedoms, including the protection of private and family life and transactions carried out in that context, the freedom of religion, and the freedom of association;
- Directive is without prejudice to national laws on marital or family status, including on reproductive rights. It is also without prejudice to the secular nature of the State, state institutions or bodies, or education.

Further more, the Committee notes that - according to the 2008 Annual Report of the European Fundamental Rights Agency, stating that Romania is amongst the member states efficiently enforcing previous antidiscrimination EU legislation – the anti-discrimination know how and the institutional framework are already in place, making easier the implementation of the additional provisions in the draft Directive COM (2008) 426.

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

Chamber of Deputies

- Committee for Human Rights, Cults and National Minorities Issues

- Committee on Equal Opportunities for Women and Men
Senate
- Committee for Human Rights, Cults and National Minorities
- Committee on Equal Opportunities

b. Was the plenary involved?

No. The Parliament was in summer recess.

c. Which administrative services of your parliament were involved?

The Directorates for European Affairs of the Chamber of Deputies and the Senate.

d. What was the chronology of events?

- 14 July: distribution to the European Affairs Committee's members of the draft Directive, COSAC Aide-mémoire, other documentation, and request for analysis;
- 16 July: distribution of relevant documentation and request by the European Affairs Committee, with 18 August deadline, of opinions from the 4 parliamentary committees mentioned in point 1.a), the Directorates for European Affairs in the Chamber of Deputies and the Senate, the European Affairs Department of the Government, the Ministry of Labour, the Family and Equal Opportunities, the National Council for Combating Discrimination, the National Agency on Equal Opportunities for Women and Men, the National Authority for Handicapped Persons, the State Secretariat for Cults; an assessment on the transposition of other relevant Directives and their enforcement in Romania (2000/43/EC, 2000/78/EC, 2002/73/EC, 2004/113/EC) was also required.
- 17 July-29 August: assessment by the European Affairs Committee's Secretariat of the opinions delivered by other entities, distribution to committee members of all documentation, collection of MP opinions, formulation of the final draft of the Contribution of the Parliament of Romania.
- 3 September: European Affairs Committee's meeting approving the Contribution of the Parliament of Romania.

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

Yes, as mentioned in point 1.d).

f. In case of a bicameral system, did you coordinate with the other chamber?

The European Affairs Committee of the Parliament of Romania is a joint committee of both Chambers; coordination with other committees and administrative bodies, took place as mentioned in point 1.d).

g. Did you consult regional parliaments with legislative powers?

Not applicable.

h. Did you make use of any external expertise?

No.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

Check of the information in IPEX data base.

3. Did you publicise your findings (e.g. in a special press release)?

No.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

The Parliament of Romania has not yet adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon. A draft proposal in this matter, by the European Affairs Committee, will be presented in the session starting on September 1, 2008.

Findings:

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

No.

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

No.

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

The Commission's justification does not contain full details, item by item, as to the Commission's effort to comply with the subsidiarity principle.

8. Did you encounter any specific difficulties during the examination?

The examination by members of Parliament during the summer recess (July 1-September 1) was achieved on-line, without direct dialogue or debate.

9. Any other comments?

No.

Slovakia: Národná Rada

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

Committee on European Affairs

b. Was the plenary involved?

No

c. Which administrative services of your parliament were involved?

Department for European Affairs (extended Secretariat of the Committee on European Affairs)

d. What was the chronology of events?

11 September 2008 – meeting of the Committee on European Affairs

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

Yes, a preliminary position.

f. In case of a bicameral system, did you coordinate with the other chamber?

Not relevant

g. Did you consult regional parliaments with legislative powers?

Not relevant

h. Did you make use of any external expertise?

No

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)? *Yes, informal contacts*

3. Did you publicise your findings (e.g. in a special press release)? *No*

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so? *No*

Findings:

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

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

No

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

8. Did you encounter any specific difficulties during the examination? *No*

9. Any other comments?

No



REPUBLIC OF SLOVENIA NATIONAL ASSEMBLY

Committee on EU Affairs

Slovenia: Državni zbor

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

a. Which committees were involved?

Committee for Labour, the Family, Social Policy and the Disabled
Committee on EU Affairs
Legislative and legal service

b. Was the plenary involved?

No

c. Which administrative services of your parliament were involved?

Secretariat of the above mentioned working bodies and all technical departments that are normally in charge of the preparation and conduct of meetings of working bodies.

d. What was the chronology of events?

The proposal was received on 9 July 2008 just before the parliamentary recess. The Committee on EU Affairs on its 40 extraordinary session on 18. July 2008 adopted the decision to forward the proposal to the Committee for Labour, the Family, Social Policy and the Disabled and to the Legislative and legal service. It was envisaged that this two working bodies should adopt an opinion (till the 3. September) and present their assessment of the compliance of the proposal with the principles of subsidiarity.

Legislative and legal service adopted the reasoned opinion that proposal is in compliance with the principle of subsidiarity as well as with the principle of proportionality. However the Committee for Labour, the Family, Social Policy and the Disabled did not managed to hold a session about the proposal due to summer recess. They are not likely to hold a session in September since there are parliamentary election on 21. September.

But we did receive the joint opinion of Commissions from the National Council in which they stated that respective proposal is in compliance with the principle of subsidiarity. In their opinion they expressed that in the Republic of Slovenia the standards are already higher than foreseen in the respective proposals and expressed their expectation that Slovenian Government shall strive after higher standards in the EU as well. The Commissions also predicted that in order to fully comply with the principle of equal treatment of the disabled it would be necessary to amend the national legislation with the clause of reasonable adjustments.

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

Not for the parliamentary Committee on EU Affairs.

f. In case of a bicameral system, did you coordinate with the other chamber?

Not in these particular case.

g. Did you consult regional parliaments with legislative powers?

There are no regional parliaments in Slovenia.

h. Did you make use of any external expertise?

No external actors were involved in examination.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

No.

3. Did you publicise your findings (e.g. in a special press release)?

The press release was published on the web site of the Parliament.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

No.

Findings:

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

No.

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

No, but the Committee on EU Affairs will be notified about the above mentioned opinion on its 140 session on 12 September 2008.

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

Yes.

8. Did you encounter any specific difficulties during the examination?

Eight weeks period coincided with summer parliamentary recess. It also coincided with the official beginning of the electoral campaign as there are parliamentary elections for the National Assembly on 21 September.

9. Any other comments?

No.

Slovenia: Državni svet

Procedures:

1. What was the procedure used to conduct the subsidiarity check?
 - a. Which committees were involved?

Commission for Social Care, Labour, Health and the Disabled
Commission for International Relations and European Affairs
 - b. Was the plenary involved?

No
 - c. Which administrative services of your parliament were involved?

Secretariat of the above mentioned Commissions and all technical departments
that are normally in charge of the preparation and conduct of meetings
of working bodies.
 - d. What was the chronology of events?

The proposal was received on 9 July 2008 just before the parliamentary recess. The Chairmen of the before mentioned commissions decided to call a Joint Commission Meeting which was held on 2 September. Ministry of Labour, Family and Social Affairs and Government Office for Equal Opportunities were asked to attend the joint commission meeting and present their assessment of the compliance of the proposal with the principles of subsidiarity, together with a draft position of the Republic of Slovenia on the draft regulation. Both Commissions adopted the joint opinion that respective proposal is in compliance with the principle of subsidiarity. In their opinion they expressed that in the Republic of Slovenia the standards are already higher than foreseen in the respective proposals and expressed their expectation that Slovenian Government shall strive after higher standards in the EU as well. The Commissions also predicted that in order to fully comply with the principle of equal treatment of the disabled it would be necessary to amend the national legislation with the clause of reasonable adjustments.
The joint opinion was sent to the EU Affairs Committee of the National Assembly and the Government.
 - e. Did your government provide any information as part of the scrutiny process?

Yes. Ministry of Labour, Family and Social Affairs and Government Office for Equal Opportunities were invited to the joint session to present their assessment of the compliance of the proposal with the principles of subsidiarity, together with a draft position of the Republic of Slovenia on the draft regulation.
 - f. In case of a bicameral system, did you coordinate with the other chamber?

Not in these particular case.
 - g. Did you consult regional parliaments with legislative powers?

There are no regional parliaments in Slovenia.
 - h. Did you make use of any external expertise?

No external actors were involved in examination.

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

No.

3. Did you publicise your findings (e.g. in a special press release)?

The press release was published on the web site of the National Council.

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

No.

Findings:

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

No.

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

No.

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

Yes.

8. Did you encounter any specific difficulties during the examination?

Eight weeks period coincided with summer parliamentary recess. It also coincided with the official beginning of the electoral campaign as there are parliamentary elections for the National Assembly on 21. September.

9. Any other comments?

No.

Sweden : Sveriges Riksdag

PM

29 September 2008

3. Evaluation of the subsidiarity check

To facilitate the evaluation of the subsidiarity check at the XL COSAC meeting in Paris, national parliaments are, on behalf of the French Presidency, kindly asked to reply to the following questions and send their answers to the COSAC Secretariat (secretariat@cosac.eu).

Procedures:

9. What was the procedure used to conduct the subsidiarity check?
 - a. Which committees were involved? *The Committee on the Labour Market*
 - b. Was the plenary involved? *No*
 - c. Which administrative services of your parliament were involved? *The secretariat of the Committee and the secretariat of the Chamber.*
 - d. What was the chronology of events? *17th of September: A presentation about the subsidiarity principle to the Committee was made by a committee official. The Committee held deliberations regarding the proposal with the Minister for Integration and Gender Equality. 21st of October: Committee decision on the reasoned opinion.*
 - e. Did your government provide any information as part of the scrutiny process? *Se above, question 1d. Also the Ministry of Integration and Gender Equality provided an explanatory memorandum on the proposal.*
 - f. In case of a bicameral system, did you coordinate with the other chamber? *Not applicable.*
 - g. Did you consult regional parliaments with legislative powers? *Not applicable.*
 - h. Did you make use of any external expertise? *No.*
10. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)? *The secretariat of the Committee consulted IPEX for some of the available opinions. This was very useful.*
11. Did you publicise your findings (e.g. in a special press release)? *The findings were noted in an annex to the record from the Committee meeting and the findings were published on IPEX. Otherwise no special measures such as press releases etc.*
12. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so? *No measures are put into place yet. The Riksdag Board has appointed an investigator who will look into the issue of subsidiarity control, as well as other provisions in the Lisbon Treaty related to national parliaments.*

Findings:

- 13. Did you find any breach of the subsidiarity principle? No.*
- 14. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy) Yes. Reasoned opinion enclosed.*
- 15. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory? No. See enclosed reasoned opinion.*
- 16. Did you encounter any specific difficulties during the examination? Yes. See enclosed reasoned opinion.*
- 17. Any other comments? The reasoned opinion was to be turned in by the 4th of September. The Swedish Parliament was in summer recess until middle of September. If the Committee is to meet during recess, only for conducting a subsidiarity check, it could be complicated.*

Record from Committee meeting on testing the subsidiarity control mechanism

General opinions on subsidiarity control

The possibility for national parliaments to examine whether proposals from the EU are compliant with the principle of subsidiarity is important both for the legitimacy of the EU's legislative work and for democracy. It gives national parliaments a more direct and active role in the work of the EU.

This subsidiarity control is formulated as an obligation for national parliaments. This means that they must be given the necessary conditions to satisfactorily carry out their examination in practice. The provisions of Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality are of fundamental importance in this context. Draft legislative acts have to be justified with regard to these principles. 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.

The test to be used by national parliaments can be seen as a matter of objectives and means. A measure at Union level shall only be taken if the objective cannot be achieved at a lower level. It is imperative that there is no doubt about what the objective is, that is, what is to be achieved using the proposed measures. The results of a subsidiarity control can be dependent on how the objectives for a particular measure are formulated.

A further aspect is the following. The principle of subsidiarity is expressed negatively, in that a measure at the higher level shall only be taken if, and to the extent that, the objectives cannot be adequately achieved at the lower level. It is reasonable, then to assume that the proposing party's justification as regards the issue of subsidiarity should also address the issue of why a measure at the lower level is insufficient. This should be explicit and not merely implicit.

A justification that only mentions the prerequisites of the article regulating the principle of subsidiarity can, in general, not be considered sufficient. Arguments on the issue of subsidiarity may then appear circular.

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM (2008) 426 Final

As regards the proposed Directive which is currently being considered, the Committee has the following to say. The proposed measures fall under the EU's competence in accordance with Article 13.1 of the EC Treaty. It is an area involving shared competence, which means that the principle of subsidiarity is applicable.

The aim of the proposed measures is stated in Section 1 of the proposal, *Context of the Proposal*, namely "to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market". It is stated that the proposal supplements the existing EC legal framework

under which the prohibition of discrimination on grounds of religion or belief, disability, age or sexual discrimination applies only to employment, occupation and vocational training. Section 5. *Detailed Explanation of the Specific Provisions* gives as an explanation of Article 1 that “the main objective of the directive is to combat discrimination” on the given grounds and to “put into effect the principle of equal treatment” outside the field of employment.

In Section 3. *Legal Aspects* under the heading *Subsidiarity and proportionality* it is stated that “the objectives of the proposal cannot be sufficiently achieved by the Member States acting alone because only a Community-wide measure can ensure that there is a minimum standard level of protection against discrimination...”.

In the opinion of the Committee, the aim of more generally combating discrimination and introducing the principle of equal treatment is different from the aim of guaranteeing a certain level of protection against discrimination.

If the aim or purpose is the former, the more general political question arises of whether statutory regulation is at all the most effective, or whether general measures and shaping public opinion and attitudes are better methods of combating discrimination and promoting equal treatment. Another aspect to be considered is the risk of statutory regulation becoming counterproductive when more active and costly political ambitions are toned down with reference to the fact that legislation is in force. The choice of method can depend on the extent of the problem. Regarding both the occurrence of discrimination and the formulation of general policies, e.g. in the field of disability, conditions can vary between member states, and therefore speak to a greater or lesser extent in favour of legislative measures. In this context, it should be stressed that it is, generally speaking, difficult to assess the practical effects of legislation on discrimination. It must be even more difficult to determine whether the level of legislation has any impact on the practical effects.

If the aim is more specifically to “ensure that there is a minimum standard level of protection against discrimination”, the option of introducing legislation seems to be more or less self-evident. Subsidiarity control then becomes technical in nature, that is how to effectively achieve the harmonisation (at a certain level) of protection against discrimination.

The above views present an argument of principle that illustrates how important it is that the party presenting the proposal in the EU clearly sets out the objective of the measures.

If the issue of subsidiarity is to be related to the more specific aim, there is, in the opinion of the Committee, little doubt that a “minimum standard level of protection against discrimination” in the given areas can only be ensured by measures at Community level.

If the aim or purpose is the broader one of implementing the principle of equal treatment and combating discrimination, the Committee makes the following assessment. Today, prohibitive legislation may be regarded as an established method of combating discrimination, even if it should be emphasised that legislation is just one method alongside more active measures and general policy. Regulation at Community

level has gradually been introduced as regards various grounds for discrimination and in various areas of society. The reasons for introducing legislation in this area may, as mentioned above, vary between member states depending on actual conditions. There is, nevertheless an added value in implementing consistent legislation in the member states. Such regulation can more efficiently be achieved at Community level. Here, the Committee is also taking into account the fundamental values upon which the Union is based under the Lisbon Treaty. According to Article 2 of the Treaty, these values shall be common to the member states in a society characterised by diversity, non-discrimination, tolerance, justice, solidarity and the principle of equality between women and men. The Committee concludes that the proposal may be seen as being complying with the principle of subsidiarity, despite the fact that the issue cannot be regarded as having any obvious cross-border aspects.

The conclusion is therefore that the principle of subsidiarity is no impediment to the current proposal.

United Kingdom: House of Commons

Procedures

1. What was the procedure used to conduct the subsidiarity check?

- Which Committees were involve?

The European Scrutiny Committee of the House of Commons.

- Was the plenary involved?

No.

- Which administrative services of your parliament were involved?

The Clerks of the Committee and the Legal Adviser.

- What was the chronology of events?

The draft Directive was deposited in the UK Parliament on 10 July 2008. The European Scrutiny Committee reached its conclusions on the document on 16 July and decided its response to the COSAC Questionnaire on 10 September 2008.

- Did your Government provide any information for the scrutiny process?

Yes.

- In case of a bicameral system, did you coordinate with the other chamber?

No.

- Did you consult regional parliaments with legislative powers?

They had the opportunity to make comments on the document.

- Did you make use of external expertise?

No.

2. Did you cooperate with other national parliaments in the process?

No.

3. Did you publicise your findings?

Yes, in a published Report to the House of Commons.

4. Has your parliament lately adopted its procedures with regard to the Lisbon Treaty's subsidiarity check mechanism?

No.

Findings

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

No. We concluded that the draft Directive, provided it respects the limits of Community competence, appears to be compatible with the principle of subsidiarity. We await a further note by the Government on its consideration of whether the Community has competence to legislate on some of the matters covered by the draft Directive.

6. Did you adopt a reasoned opinion on the proposal?

No.

7. Did you find the Commission's justification on compliance with the principle of subsidiarity satisfactory?

Yes.

8. Did you encounter any specific difficulties during the examination?

No.

**Prohibition of discrimination on grounds of religion or belief,
disability, age or sexual orientation**

| | |
|------------------------------------|---|
| (29819) 11531/08 COM(08) 426 | Draft Council Directive on implementing the principle of equal treatment between people irrespective of religion or belief, disability, age or sexual orientation |
| + ADD 1 | Commission staff working document: impact assessment |
| + ADD 2 | Summary of impact assessment |

| | |
|-----------------------------------|--|
| <i>Legal base</i> | Article 13(1) EC; consultation; unanimity |
| <i>Document originated</i> | 2 July 2008 |
| <i>Deposited in Parliament</i> | 10 July 2008 |
| <i>Department</i> | Government Equalities Office |
| <i>Basis of consideration</i> | EM of 14 July 2008 |
| <i>Previous Committee Report</i> | None |
| <i>To be discussed in Council</i> | 2 October 2008 |
| <i>Committee's assessment</i> | Politically important |
| <i>Committee's decision</i> | Not cleared; further information requested |

Background

(b) Article 13(1) of the EC Treaty authorises the Council to take appropriate action, within the limits of the powers conferred by the Treaty on the Community, to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

(c) The Council has already adopted three Directives which prohibit discrimination on any of these grounds in employment, occupation or training.²⁸ Discrimination on grounds of sex and racial or ethnic origin is also prohibited in health care, social care, social security and goods and services available to the public.

(d) The EC and all the Member States are signatories to the United Nations Convention on the rights of persons with disabilities.

The document

(e) The purpose of the draft Directive is to further the implementation of Article 13 of the EC Treaty by prohibiting discrimination on grounds of religion or belief, disability, age or sexual orientation in health care, social care, social security, education and the supply of goods and services which are available to the public.

(f) The Commission says that the proposal complies with the principle of subsidiarity because:

²⁸ Directive 2000/43/EC: OJ No. L 180, 19.7.00, p.22; Directive 2000/78/EC: OJ No. L 303, 2.12.00, p.16; and Directive 2000/113/EC: OJ No. L 373, 21.12.04, p. 37.

- only EC legislation can ensure that there is a uniform minimum level of protection throughout the Community against discrimination on the grounds covered by the Directive;
 - EC legislation on the subject would provide legal certainty about the rights and obligations of the people and bodies to which it applies; and
 - the existing Directives prohibiting discrimination have been effective in achieving better protection against unequal treatment.
- (g) The draft Directive prohibits direct and indirect discrimination. It requires harassment and the denial of reasonable accommodation to a disabled person to be treated as discrimination. The draft Directive's definitions of direct and indirect discrimination and of harassment are identical to the definitions in the existing Directives implementing Article 13 of the EC Treaty.
- (h) Article 2(6) of the draft Directive gives Member States discretion to provide that differences of treatment on grounds of age are not to constitute discrimination if:
- “they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain goods and services.”
- (i) Moreover, Article 2(7) gives Member States discretion to permit proportionate differences of treatment in financial services (such as insurance) where the use of age or disability is a key factor in the assessment of risk using relevant and accurate actuarial or statistical data.
- (j) Article 3 exempts from the scope of the draft Directive:
- Member States' domestic law on marital or family status and reproductive rights;
 - Member States' responsibilities for the organisation of their educational systems and the contents of the school curriculum;
 - any national legislation on the secular nature of the State and education; and
 - any national legislation on the status and activities of churches and other religious organisations.

The Article also provides that Member States may “provide for differences in treatment in access to educational institutions based on religion or belief”.

(k) Article 4 concerns the equal treatment of people with disabilities. It requires providers to make appropriate modifications or adjustments so as to enable people with disabilities to have non-discriminatory access to housing, transport and other services, goods, social security, social and health care and education. It also provides, however, that such modifications and adjustments should not impose a disproportionate burden. The Article includes a definition of how to assess the burden.

(l) The remaining Articles of the draft Directive are the same as the corresponding Articles in the Article 13 Directives which have already been adopted. The Articles concern:

- “positive action” to prevent or correct inequality;

- discretion for Member States to provide a level of protection from discrimination higher than the level which would be guaranteed by the Directive if adopted;
- arrangements for people to defend their rights to the protection provided by the Directive;
- the onus of the respondent to prove that there has not been the alleged breach of a right to protection;
- protection from victimisation of a person who complains of a breach of a right;
- dissemination of information about the provisions of the Directive and measures to implement it;
- dialogue between Member States and bodies, including non-governmental organisations, with a legitimate interest in over-coming discrimination on grounds of religion or belief, disability, age or sexual orientation;
- Member States' duty to ensure the abolition or cessation of any law, practice, contractual provision or rule — public or private — which does not comply with the Directive;
- Member States' duty to provide effective, proportionate and dissuasive sanctions for non-compliance with national measures to implement the Directive;
- Member States' duty to transpose the Directive into their domestic law;
- the Commission's duty to make reports on the application of the Directive; and
- the commencement date of the Directive.

The Government's view

(m) The Parliamentary Under-Secretary of State for Women and Equality at the Government Equality Office (Barbara Follett) tells us that the draft Directive contains much that the Government can agree with and which is broadly compatible with UK policy and legislation. For example, the proposal recognises that there can be a legitimate justification for some age-based discrimination, such as the entitlement to a free TV licence for people aged 75 or more. But the Government wishes to consider further whether all the provisions of the draft Directive — for example, in their application to education and healthcare — are within the Community's competence. There are also some matters where the Government will need to seek clarification or amendment. The Minister says, for instance, that the Government will want to ensure that the provisions of the draft Directive on age discrimination do not extend to children; the provisions on providing access for disabled people are not clear; and the cost implications for health and social care require careful consideration.

(n) The Minister says that she will send us the Government's detailed Impact Assessment of the proposal as soon as it is ready and that she will provide us with progress reports on the negotiation of the draft Directive.

Conclusion

(o) Article 13 EC appears to provide the appropriate legal base for the proposal. In our view, the draft Directive is proportionate and, provided it respects the limits of Community competence, appears also to us to be compatible with the principle of subsidiarity.

(p) We are grateful to the Minister for her clear and helpful Explanatory Memorandum. We look forward to receiving:

- her progress reports on the negotiations and the Impact Assessment;**
- a note on the conclusions of the Government's further consideration of the Community's competence to legislate on some of the matters covered by the draft Directive; and**
- information on the clarification the Government will be seeking of the meaning and effect of some of the provisions.**

Meanwhile, we shall keep the document under scrutiny.

United Kingdom: House of Lords



HOUSE OF LORDS (UK) EUROPEAN UNION COMMITTEE

Response to COSAC Subsidiarity Check on the Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation

Procedures:

1. What was the procedure used to conduct the subsidiarity check?

The Social Policy Sub-Committee of the House of Lords' EU Committee took a position on the issue at its last meeting before the summer on 17th July 2008.

a. Which committees were involved?

Social Policy Sub-Committee of the EU Committee.

b. Was the plenary involved?

No

c. Which administrative services of your parliament were involved?

The Committee Office

d. What was the chronology of events?

18 June 2008: Initial contact with Government Department

23 June 2008: Contacted Devolved Assemblies

2 July 2008: Publication of the proposals

7-11 July 2008: Staff analysis of the proposals

15 July 2008: Receipt of Government Explanatory Memorandum

15 July 2008: Receipt of information from National Assembly of Wales

17 July 2008: Debate in Social Policy Sub-Committee

17 July 2008: Letter to Government

4 September 2008: Final submission to COSAC.

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

Government Explanatory Memorandum dated 14 July 2008

f. In case of a bicameral system, did you coordinate with the other chamber?

Some coordination, but no consultation.

g. Did you consult regional parliaments with legislative powers?

Yes. Response received from the National Assembly for Wales on 15 July 2008.

h. Did you make use of any external expertise?

No

2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?

Cooperation through permanent representatives of national parliaments in Brussels.

3. Did you publicise your findings (e.g. in a special press release)?

No

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

It is planning to do so and has used this exercise as a “pilot” project.

Findings:

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

No.

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

No.

7. Did you find the Commission’s justification with regard to the subsidiarity principle satisfactory?

Yes, although the National Assembly for Wales considered that the justification was insufficiently detailed.

8. Did you encounter any specific difficulties during the examination?

The timing of our own summer recess and those of the Devolved Assemblies caused difficulties in consulting with the latter while ensuring that the eight week deadline was met.

9. Any other comments?

No.

4 September 2008