

February 2008

**Report on
the results of the Test on
the subsidiarity check mechanism
of the Lisbon Treaty coordinated by COSAC
on the Commission proposal for
a Framework Decision
on Combating Terrorism**

Prepared by the COSAC Secretariat



Testing the subsidiarity check mechanism of the Lisbon Treaty: The Framework Decision on Combating Terrorism

1 Introduction

1.1 BACKGROUND

The COSAC chairpersons decided at their meeting in Lisbon on 12 July 2007 to conduct a subsidiarity check on the proposal for a Council Framework Decision on combating terrorism¹. This was confirmed in the Conclusions of the XXXVIII COSAC that took place from 14 to 16 October 2007 in Estoril². The COSAC Secretariat was asked to prepare the necessary arrangements for the subsidiarity check³.

The proposal for the Council Framework Decision on Combating Terrorism was adopted by the European Commission on 6 November 2007.

During the informal meeting of Heads of State and Government on 18-19 October 2007 a political consensus on the future Reform Treaty was reached. The Treaty was subsequently signed by the Heads of States and Governments on 13 December 2007 in Lisbon. In the remainder of this report the Reform Treaty referred to as the Lisbon Treaty.

In order to give national parliaments the opportunity to test the practical application of the new provisions on subsidiarity in the Lisbon Treaty, it was recommended that tests were conducted according to Protocol Nr. 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Lisbon Treaty (subsequently "the Protocol").

1.2 PROCEDURE OF THE SUBSIDIARITY CHECK

The check was carried out by national parliaments according to their own rules and procedures. However, the Protocol stipulates that a specific framework for the conduct of subsidiarity checks by national parliaments must be adhered to for a reasoned opinion to qualify for the mechanisms outlined in the Protocol.

1.2.1 Timing

The Protocol gives national parliaments eight weeks to examine proposals. The eight week clock starts on the date that a draft legislative act is transmitted by the Commission. The document was sent to national parliaments in all official languages 26 November 2007. The COSAC Secretariat informed national parliaments as soon as the document was available in all official languages and set the deadline for answers for eight weeks later: 21 January 2008.

¹ Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism COM(2007) 650 final

² See Conclusions of the XXXVIII COSAC, point 1.2.

<http://www.cosac.eu/en/meetings/Lisbon2007/plenary/>

³ See: <http://www.cosac.eu/en/info/earlywarning/Test/>

1.2.2 Reasoned opinions

Under Article 6 of the Protocol, any national parliament or any chamber of a national parliament may, within a period of eight weeks, submit a reasoned opinion to the presidents of the Commission, the European Parliament and the Council stating why it considers that the proposal in question does not comply with the principle of subsidiarity.

National parliaments taking part in the current subsidiarity check were asked to transmit their findings to those Institutions as well as to the COSAC Secretariat.

1.3 PARTICIPATION

The subsidiarity check on the proposal for a Council Framework Decision on combating terrorism was launched on 26 November 2008 with the aim of completing it by 21 January 2009. By the agreed deadline **24** parliamentary chambers from **19** Member States⁴ had concluded the check and sent a report to the secretariat answering the questions in the Secretariat's *aide mémoire*. By the end of January 2009, a total of 29 parliaments or parliamentary chambers from 23 Member States had concluded the check⁵. In some parliaments the check is still on-going. Some parliaments decided not to participate.

All participating parliaments sent a report to the COSAC secretariat summarising how they conducted the subsidiarity check and setting out lessons learned during the experiment. As requested, the COSAC secretariat has, on the basis of these replies from the national parliaments, compiled this report. It is hoped that this will facilitate an exchange of views and best practices between national delegations at the COSAC chairpersons' meeting on 18 February 2009 in Ljubljana.

The complete replies of the participating parliaments including the reasoned opinions are presented in the Annex, which is printed as a separate document.

1.4 PROCEDURES APPLIED

European Affairs Committees were involved in the check in 24 of the 29 participating parliamentary chambers. In 15 cases, sectoral committees participated in the examination of the proposal in addition to EU affairs committees. In Luxembourg, Sweden, and in the two chambers of the Belgian parliament the check was conducted solely by sectoral committees without the participation of the EU Affairs Committee. In the Netherlands the Joint Committee on the Subsidiarity coordinated the work of the specialised committees of the two Houses.

⁴ The Austrian Federal Council, The Belgian Chamber of Deputies, the Bulgarian parliament, the Czech Chamber of Deputies and Senate, the Danish *Folketinget*, the Finnish *Eduskunta*, the French *Assemblée nationale* and *Sénat*, The German *Bundesrat*, The Hellenic parliament, the Hungarian National Assembly, the Italian Senate, the Latvian *Saeima*, the Lithuanian *Seimas*, the Luxembourg *Chambre des Députés*, the Polish *Sejm* and Senate, the Portuguese *Assembleia da Republica*, The Slovakian National Council, the Slovenian National Assembly, The Swedish *Riksdagen*, the UK House of Commons and the UK House of Lords.

⁵ The secretariat also received information from the Belgian Senate, the German *Bundestag*, the Irish *Oireachtas* and (jointly) the States General of the Netherlands and the Romanian *Camera Deputatilor* and *Senat*.

Governments were involved in the process in almost all of the participating parliamentary chambers, either by providing written information in form of explanatory memoranda and/or by giving oral evidence to the committees scrutinising the proposal. In Member States with regional parliaments with legislative powers the subject was considered not to be within the remit of the regional parliaments.

In the case of bicameral parliaments, the two chambers cooperated formally only in the cases where there is a joint committee (Ireland and Netherlands). In some other bicameral parliaments cooperation took the form of an informal exchange of information between the officials.

In Austria, Hungary, Lithuania, the Netherlands, Portugal and the French *Assemblée nationale* the procedure used for this subsidiarity check is consistent with the requirements for a subsidiarity check under the Lisbon Treaty. In other parliaments the check was conducted either following the normal scrutiny mechanism or the applicable procedure has not formally been decided. In several parliaments the COSAC subsidiarity checks are used to test existing internal procedures or procedures for their suitability under the Lisbon Treaty.

2 Results of the Check

2.1 THE SUBSIDIARITY PRINCIPLE

The UK House of Commons was the only parliament or chamber to find the Commission proposal to be in breach of the subsidiarity principle. According to the EU Scrutiny Committee "the principle of subsidiarity permits the EU to take action only if the "objectives of the proposed action cannot be sufficiently achieved by the Member States"". Whilst it accepts that terrorist networks may operate across national borders and that, consequently, bilateral and collective cooperation between States is desirable, even essential, the Committee is not convinced by the Minister's explanations that it is essential for the EU to intervene by adopting this Framework Decision when the Council of Europe (CoE) has already adopted a Convention achieving the same result. In their view, to act in this way is not consistent with the principle of subsidiarity.

The Commons EU Scrutiny Committee questions their Government's acceptance of the Commission's reasoning for an EU Framework and asks their Minister to explain whether he considers the process of ratifying the CoE Convention inherently likely to be "lengthy" when compared with the process of implementing a Framework Decision. It also asks for an explanation of what is meant by a "proper follow-up mechanism"(as referred to in their government's EM to the Committee)⁶, given the difficulties which the Government has already had in explaining the UK's position on implementation of Framework Decision 2002/475/JHA on combating terrorism. The Commons EU Scrutiny Committee asks the Minister to explain his reference to "common interpretation" by the ECJ, when the UK (along with a number of other Member States) has not made a declaration under Article 35 EU conferring an interpretative jurisdiction on the ECJ.

⁶ <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmeuleg/16-v/16v19.htm>

2.2 JUSTIFICATION WITH REGARD TO THE SUBSIDIARITY PRINCIPLE

Five parliamentary chambers found the Commission justifications with regard to the subsidiarity principle were at least partly inadequate. Naturally, since the UK House of Commons was not convinced of the respect of the subsidiarity principle they also found the Commission's justification insufficient (see above).

The EU-Committee of the Austrian Federal Council states that substantial criminal law is a matter of national competence regardless of the aim or legal form of any proposed European legislation. Therefore European legislation in this field should only be passed exceptionally. Proposals for legally relevant acts concerning criminal law require in this regard a substantial qualitative and quantitative statement explaining why a European legislative act should be agreed and why the proposed legislation is in accordance with the principles of subsidiarity and proportionality, as compared with possible other choices of action. This statement is missing in the existing proposal or is restricted to general thoughts which would not be regarded as sufficient in the future.

The Belgian Senate asks that the European Commission shows in a more precise fashion why it finds that national legislations are inadequate fora to react to terrorist threats. The Belgian Chamber of Deputies asks the Commission to clarify the notion of the "public provocation" and to analyse what effects criminalising acts preparatory to "public provocation" would have with regard to freedom of expression and association and of the press (as protected by the European Convention of Human Rights). Furthermore the Commission should explain why its definition of public provocation differs from the Council of Europe's definition in the Convention on the prevention of terrorism; and it should demonstrate that such an extensive definition of a penal incrimination will still be readable and provident. The Commission is also asked to explain why it has been decided that public provocation will be considered to be an infraction which is distinct from criminal participation, rather than adding it to the Framework Decision's provision on modalities of incitement to commit terrorist offences. Finally, the Commission should also to determine who (either European organisations or others) will guarantee the enforcement of this regulation, especially when it comes to declarations made on the internet.

The Joint Committee on European Scrutiny (JCES) of the Irish *Oireachtas* also found the Commission's justification to be incomplete with regard to the subsidiarity principle. In their view the Commission did not complete all the elements of the detailed statement as required under the Protocol on the Principles of Subsidiarity and Proportionality. In particular information is lacking on the quantitative indicators to substantiate the proposal and a complete answer on whether the proposal takes account of the burden falling upon national authorities, economic operators and the citizen. The JCES is of the opinion that in order to comply with its obligations under the Protocol, the Commission should complete a detailed comparative analysis of how the objectives of the proposal could be effected at national level, outlining its possible advantages as well as shortcomings. There should be a comparison with other possible choices of actions at levels other than at Union level. The Commission should explain in greater detail why regional or national parliaments are not in a position to take similar effective action in a specific policy area.

Also a further study by both Houses of the States General of the Netherlands of the nature and scope of the proposed measures raised a number of questions that are as yet unanswered by the explanatory memorandum to the Commission proposal. For a better assessment of all measures mentioned in the proposal, both Houses of the States General request the European Commission to reply to the questions formulated in the reasoned opinion they have addressed to the Commission.

Even if the German *Bundestag's* Legal Affairs Committee found the reasoning satisfactory, the *Bundestag's* Committee on the Affairs of the European Union stressed in its advisory statement that the Commission did not demonstrate clearly enough that there are loopholes in the penal codes of the Member States regarding the fight against terrorism. This would seem necessary with respect to the first criterion of the subsidiarity principle, namely that the Community shall take action, “only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States”.

2.3 THE PROPORTIONALITY PRINCIPLE

A letter of the President of the German *Bundestag* was sent to the Presidents of the European Commission, the European Parliament and the Council, stating that there were no concerns regarding the respect of the principle of subsidiarity but that there were concerns with regard to the principle of proportionality. Both the Legal Affairs Committee and the Committee on the Affairs of the European Union of the German *Bundestag* – in full knowledge of the scope of the subsidiarity checking mechanism foreseen in the Treaty of Lisbon – decided however to include observations on proportionality in their statement. It was pointed out that the proposed framework decision duplicates, to a large extent, the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005; and that, with regard to the proportionality principle, due consideration should have been given on joint efforts, by all Member States, to ratify this convention, instead of proposing a new framework decision.

The justification with regard to the principle of proportionality could be more convincing according to some other national parliaments as well. According to the opinion of the majority of the Hellenic Parliament's Joint Committee members, an explicit reference to the respect for the Charter of Fundamental Rights and the European Convention of Human Rights should be embodied in the text of the Framework Decision, before final decision is reached at the Justice and Home Affairs Council.

The Hungarian parliament is convinced by the Commission's arguments justifying the subsidiarity principle, since the relevant part of the Explanatory Memorandum discusses the essential aspects of the subsidiarity principle and the attached exhaustive impact study adequately underlines these statements. Justification of the proportionality principle however, lacks reference to the human rights issues. Considering the delicate nature of the planned legislation, it would have been advisable to include the appropriate findings of the impact study in the Explanatory Memorandum.

The Swedish *Riksdag*, for its part, argues that even though proportionality was not an issue in this test, the fight against terrorism may only be conducted in a way that is appropriate in an open, democratic society governed by the rule of law; and that any measures must be taken with respect for human rights and in accordance with the rule

of law. The proposal concerns acts that lie in a grey area bordering on rights set out in the Swedish Constitution, such as freedoms of expression and association. In the opinion of the Committee, it is not clear from the Commission's proposal whether the proposed measures do respect these rights. The Committee is therefore, with respect to the current formulation of the proposal, doubtful as to whether measures that may be undertaken on the basis of the proposal are in proportion to the desired goals.

2.4 DIFFICULTIES ENCOUNTERED WHILE CONDUCTING THE CHECK

2.4.1 Problems with the scope of the new subsidiarity mechanism

As the Swedish *Riksdag* pointed out in their answer, it is difficult to define and separate the scrutiny of subsidiarity from the examination of the substance - it seems rather artificial and technical. They also found the preparations for the test confusing since the earlier COSAC Conclusions as well as the preparatory e-mail talked about subsidiarity and proportionality check. In the end it turned out to be a check according to the Lisbon Treaty, and hence only on subsidiarity. Nevertheless, several national parliaments did refer both to subsidiarity and proportionality in their answers. The scope of the new mechanism of the Lisbon Treaty - the so called "yellow" and "orange cards" - however only covers the subsidiarity aspect of the Commission's legislative proposals.

The Irish parliament noted that the COSAC exercise once again highlighted a need to develop among national parliaments an agreed definition and interpretation of the principle of subsidiarity. If the new provisions of the Lisbon Treaty are to be effective, national parliaments will need to work closely together and therefore they must work within agreed parameters and on the same premise. Otherwise, different interpretations of the principle of subsidiarity may lead to great disparities of opinion between each of the national parliaments with the result that the threshold will never be reached and the 'yellow card' or 'orange card' mechanism never triggered. The *Oireachtas'* JCES believes that there needs to be a focused, result orientated discussion at COSAC on the meaning of subsidiarity so that national parliaments can come to a common understanding.

2.4.2 Eight-week time limit

Some parliaments stated that the period of eight weeks is still a very short time in which to conduct a substantive study of the proposal. Quite a few also noted problems within their respective parliament regarding the way it can react in timely manner, especially when the eight week time limit extended over the Christmas holidays and coincided with several parliaments recesses. Some parliaments have used the current checks to test their respective scrutiny systems in order to identify the possible areas in need of improvement. The availability of all the official language versions continues to pose problems to some national parliaments. This time there were difference of 20 days from the adoption of the proposal by the College to it's transmission in all official languages to national parliaments.

2.4.3 Lack of interparliamentary cooperation

Some national parliaments reported that it was difficult to find about the position adopted by other national parliaments at the time their committees were considering the proposal. Information from other national parliaments was often not available even if several parliaments posted their findings on the IPEX database as requested by the secretariat. The German *Bundesrat* notes that the IPEX system was used but provided no information of substance on the findings of other parliaments when the committee's deliberations took place. On the other hand the Swedish *Riksdag* points out that more use of the IPEX-symbols earlier in the check would have been useful. However, they did get a quick answer from an official when the relevant IPEX-correspondent was contacted via e-mail.

3 Summary and Conclusions

The previous tests on subsidiarity (and proportionality) within the COSAC framework have shown that only a limited number of national parliaments were in a position to conduct proper scrutiny within the six week timeframe. However, the increase to eight weeks as foreseen in the Lisbon Treaty seems to have improved the capacity to react. Previously only around $\frac{1}{4}$ of the parliaments were able to react. This time the secretariat received answers from 24 parliamentary chambers from 19 Member States within the eight week deadline⁷.

The narrow scope of the new subsidiarity mechanism in the Lisbon Treaty is to be noted as well: parliaments will only be able to raise concerns with regard to subsidiarity but not regarding proportionality or the substance of a given proposal. It is doubtful whether concerns regarding the legal base of a proposal would fall within the scope of the mechanism. Some confusion appears to remain about the scope of the new mechanism, in particular since the title of the Protocol refers to both subsidiarity and proportionality.

Arguably, the scope for blocking a legislative draft on subsidiarity grounds is quite limited, since finally there was only one chamber that found a breach of the subsidiarity principle. It also became clear once again that parliaments seem to interpret the principles of subsidiarity and proportionality in very different ways. Naturally, the national parliaments' assessment whether new European legislation would bring added value is based on their domestic historical, political and social experience. At the very least, this would seem to limit seriously their capacity to act jointly in order to have EU legislative proposals reviewed by the Commission.

The coordination of the work of national parliaments in order to assure the necessary quota, especially the majority needed to produce the orange card, constitutes a challenge and will require the stepping up of interparliamentary cooperation. The

⁷ The check on Matrimonial matters Regulation produced 11 answers from 9 Member States within six weeks (See: <http://www.cosac.eu/en/info/earlywarning/doc/>) The Check on the Directive on Postal Services produced 10 answers from 9 Member States within six weeks time (See <http://www.cosac.eu/en/info/earlywarning/postal/>)

exchange of information between national parliaments and efforts to develop a common understanding of subsidiarity may need to be intensified.

National parliaments should therefore not concentrate their limited resources on subsidiarity only and risk being distracted from their original, constitutional role in controlling their governments. Stepping up parliamentary scrutiny of EU affairs at a national level might offer better chances to exert influence on Council decisions than subsidiarity control.

In addition, the direct dialogue with the Commission (the so called "Barroso initiative"⁸) can and should be continued regardless of the Lisbon Treaty. After all, it was established outside formal Treaty structures and endorsed by the European Council in June 2006. The Commission has repeatedly stressed the usefulness of this new tool and seems to be willing to continue with the practice.

The new subsidiarity mechanism foreseen by the Lisbon Treaty provides no miracle cure against over-regulation or the loss of decision making power national parliaments may have suffered in the course of European integration. But it might provide some national parliaments with an additional incentive to become more involved in EU affairs. This would in itself be an important contribution to meeting the democratic challenge facing the European Union.

⁸ Commission Communication from 10 May 2006: "*A Citizens' agenda - delivering results for Europe*" ((COM(2006) 211 final)

Chambers	Procedure used to conduct the check	Cooperation with other national parliaments?	Findings publication?	Adaptation of the procedure in accordance of the Lisbon Treaty?	Any breach found?	Reasoned opinion on the Framework decision	Were the Commission's justifications satisfactory?	Other observations.
Austria - Federal Council	The check was conducted by the EU-Committee of the Federal Council. Experts from ministries provide for answers and the expertise from the EU and international service was used.	Through IPEX	A summary of the proceedings, including the statement, will be published on the Internet.	The rules of procedure of the Federal Council already provide a valid basis for the subsidiarity checks.	No	Yes	No , because proposals for legally relevant acts concerning criminal law require a substantial qualitative and quantitative statement explaining why there is a need to create a legislative proposal in this area.	-
Belgium - Chamber of Deputies	The check was conducted by the Committee on Justice as decided by the Conference of the Presidents. There have been informal contacts between the chambers.	No	Discussions and conclusions are published as an official parliamentary document.	"The current procedure is based on the Barroso Initiative. There is no intention to review the system in line with the Lisbon Treaty because it concerns a more restrictive concept on subsidiarity and proportionality."	No	Yes	No , the reasoned opinion includes request for supplementary explanation.	-
Belgium - Senate	The check was conducted by the Committee on Justice	Used IPEX to read comments from other parliaments.	On the website of the Senate and on IPEX	The period of 6 weeks was extended to 8 weeks for the COSAC-test and internal procedure will be adapted the same way for all documents soon	No	Yes	No - The members of the Committee on Justice felt it could be more extensive.	-
Bulgaria	The check was done by the Committees on Juridical affairs; Internal Security and Public order; Human Rights and Religious Affairs; and The EAC. The government provided for an impact assessment and a Law Professor has been consulted	Yes, with the French parliament	The report has been published by the EAC on the parliament's website.	The parliament will review its procedure before ratification of the Lisbon Treaty.	No	No	Yes	The EAC thinks that the content of the framework-decision should correspond to the Council of Europe's convention on preventing terrorism.

Chambers	Procedure used to conduct the check	Cooperation with other national parliaments?	Findings publication?	Adaptation of the procedure in accordance of the Lisbon Treaty?	Any breach found?	Reasoned opinion on the Framework decision	Were the Commission's justifications satisfactory?	Other observations.
Czech Republic - Chamber of Deputies	The check was done by The EAC. The vice-minister of justice introduced the framework position of the government.	No	No, but they are available to the public.	No	No	Yes	Yes	-
Czech Republic - Senate	The check was done by the Committee on Foreign Affairs, Defence and Security as the committee responsible for matters of III-Pillar issues which requested the opinion of the EAC. Information was provided by the Ministry of Justice	No	Not particularly, the deliberations were publicized through standard means.	No, the Senate has not adapted its procedures to the Lisbon Treaty. This will be considered only after ratification of the Treaty in the Czech Republic	No	No	Yes	-
Denmark - Folketing	The check was done by the EAC. The Minister of Justice submitted a memorandum explaining the details of the proposal and its position as regards the compliance of the proposal with the subsidiarity principle	No	No	It is currently planning to do so	No	Yes	Yes (see annex)	-

Chambers	Procedure used to conduct the check	Cooperation with other national parliaments?	Findings publication?	Adaptation of the procedure in accordance of the Lisbon Treaty?	Any breach found?	Reasoned opinion on the Framework decision	Were the Commission's justifications satisfactory?	Other observations.
Finland - Eduskunta	The check will be done most likely by the Legal affairs Committee who give its opinion to the Grand Committee, which adopts the <i>Eduskunta's</i> position. The Government provided an extensive explanatory memorandum on the issue on 18.1.2008	No	The findings of the sectoral committees and the position of the Grand Committee will be published as parliamentary documents in due course. The press will be informed.	The necessary adaptations of the Eduskunta's rules of procedure will be adopted at the same time as the Lisbon Treaty is approved.	<i>No answer available yet.</i>	<i>No answer available yet.</i>	<i>No answer available yet.</i>	No answer available yet ⁹ .
France - <i>Assemblée nationale</i>	The <i>Délégation pour l'Union européenne</i> conducted the check. The government provided information as part of the scrutiny process.	No, but used IPEX to know other parliaments' decisions	The minutes of the meeting of the delegation are available online.	The procedure is the same but the period has been extended to 8 weeks.	No	No	Yes	-
France - <i>Sénat</i>	The <i>Délégation pour l'Union européenne</i> conducted the check.	No	On the Sénat's website. On IPEX. In the monthly journal of the Sénat.	No	No	No	Yes	-

⁹ No especial subsidiarity check has been initiated for the COSAC exercise. 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. Subsidiarity is examined but is, as a matter of historical experience, of minor interest. Due to fact that the explanatory memorandum from the Government on this specific proposal was sent to the Eduskunta only on 18th of January 2008 the handling is still on-going in the sectoral committees and the final position of the Eduskunta is not yet known.

Chambers	Procedure used to conduct the check	Cooperation with other national parliaments?	Findings publication?	Adaptation of the procedure in accordance of the Lisbon Treaty?	Any breach found?	Reasoned opinion on the Framework decision	Were the Commission's justifications satisfactory?	Other observations.
Germany - Bundestag	Involved were the Legal Affairs and the Foreign Affairs Committee, the Internal Affairs Committee, the Committee on Human Rights and Humanitarian Affairs and the EAC in an advisory capacity. The Government has provided a short description of the proposal and a comprehensive assessment by the Ministry of Justice.	No. However, a short summary of the report of the Legal Affairs Committee and the decision of the Bundestag will be published on the IPEX website.	The report of the Legal Affairs Committee and the decision of the Bundestag are both publicly available on the Bundestag website.	Deliberations on adapting the Rules of Procedure are currently under way.	No	No. A letter of the Speaker was sent to the Presidents of the EU institutions stating that there were no concerns regarding the principle of subsidiarity but there were concerns with regard to the principle of proportionality.	Yes	¹⁰
Germany - Bundesrat	In addition of the EAC the Committee on legal affairs and the Committee on internal affairs deliberated the proposal. The Federal Government sent three reports on the results of the ongoing negotiations on EU-level. A mutual exchange with the German Bundestag on the stage of proceedings took place.	No. The IPEX system was used but provided no sufficient information on the findings of other parliaments when the committee deliberations took place.	No	At present the Bundesrat checks whether adaptations of its proceedings to the subsidiarity check mechanism foreseen in the Lisbon Treaty are necessary.	No	No	Yes	No

¹⁰ Both the Legal Affairs Committee and the Committee on the Affairs of the European Union – in full knowledge of the scope of the subsidiarity checking mechanism foreseen in the Treaty of Lisbon – decided to include observations on proportionality in their statement. It was pointed out that the proposed framework decision duplicates to a large extent the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 and that, with regard to the proportionality principle, due consideration should have been given on joint efforts, by all Member States, to ratify this convention, instead of proposing a new framework decision. These observations will also be communicated to the Federal Chancellor.

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Greece	The check was conducted through a joint meeting of the Standing Committee for Public Administration, Public Order and Justice and the Special Standing Committee for European Affairs, according to the Parliament's Standing Orders.	Contacted the French National Assembly and used IPEX to check the other parliaments' decision.	Press release on the website of the Parliament.	There is a plan for a wide range of modifications in the parliament's Standing Orders, in order to adapt the regulatory framework of EU legislation scrutiny to the new circumstances.	No	No	The justifications could have been more convincing (with a more explicit reference to the Charter of Fundamental Rights, and the European Convention of Human Rights)	-
Hungary - National Assembly.	The check was conducted by the EAC. Lawyer experts at the secretariat of the EAC examined the proposal and presented their findings to the committee members. No further external expertise were used.	None, since the Hungarian version arrived quite late (11/26).	The minutes of the meeting of the committee are available online.	The changes in the subsidiarity check mechanism the Lisbon Treaty have not brought changes in the existing procedure	No	No	Yes (However, justification regarding the proportionality check lack reference to the human rights issue)	The availability of the Hungarian version continues to pose problems (published three weeks later). The starting date of the check period should be clarified.
Ireland - Houses of the Oireachtas	The subsidiarity check was conducted by the Joint Committee on European Scrutiny (JCES). It decided to refer to the Department of Justice, Equality and Law Reform of the government. Government provided an information note.	There was limited consultation with the UK House of Commons and the Austrian <i>Bundesrat</i> .	On the website	Under the subsidiarity check mechanism of the Lisbon Treaty, each House of the Oireachtas will have an independent vote. Both Houses of the Oireachtas have yet to decide how it wishes to carry out the subsidiarity monitoring function.	No	Yes	No , The JCES found the Commission's justification to be incomplete with regard to the subsidiarity principle. For more detailed opinion see annexe.	¹¹

¹¹ The JCES have found that the COSAC exercise once again highlighted a need to develop among national parliaments an agreed definition and interpretation of the principle of subsidiarity. If the new provisions of the Lisbon Reform Treaty are to be effective, national parliaments will need to work closely together and therefore they must work within agreed parameters and on the same premise. Otherwise, different interpretations of the principle of subsidiarity 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

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Italy - Senate	The EAC	No	No	No	No	Yes	Yes	-
Latvia - Saeima	The EAC together with the Ministry of the Interior prepared a statement, where the latter gave its opinion on the subsidiarity and proportionality of the proposal. The Defence, Internal Affairs and Corruption Prevention Committee consulted the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs and presented to the EAC its opinion on the subsidiarity and proportionality of the proposal.	No	No	No	No	No	Yes	The EU member states need to have common coordinated actions aimed at efficient and prompt international cooperation that addresses public incitements to perform terrorist attacks, recruitment of terrorists, as well as training of terrorists.
Lithuania - Seimas	The check was done by the EAC and the Committee on Legal Affairs and the Committee on National Security and Defence. The Ministry of Justice was commissioned to draft the Governments' position on the proposal. External expertise was conducted by The Institute of Law.	No. However, the information on the decision taken by the Austrian Parliament was distributed among the members of the Committee.	The decision of the Committee was issued in the form of a press release.	Current provisions of the Statute do not prohibit a proper subsidiarity check.	No	No	Yes	The Lithuanian version of the Impact Assessment was a 5-page summary of the 107 pages in the English language
Luxembourg: - Chambre des députés	The juridical Committee conducted the check	No	No	The <i>chambre des députés</i> will soon adapt its procedures to the Lisbon Treaty.	No	No	Yes	-

Chambers	Procedure used to conduct the check	Cooperation with other national parliaments?	Findings publication?	Adaptation of the procedure in accordance of the Lisbon Treaty?	Any breach found?	Reasoned opinion on the Framework decision	Were the Commission's justifications satisfactory?	Other observations.
Netherlands - Senate and House of Representatives	The check was done by the committees on the JHA-council of the Senate and the committee on Justice of the House of Representatives. The Government provided for a preliminary position. While the joint committee on the subsidiarity has a coordinating role; the committees on the JHA-Council and the committee of Justice remain responsible for conducting the material subsidiarity check	No	Yes, findings were sent to the government, the Commission, the European Parliament and the Cosac-secretariat. It is also registered and published as a regular parliamentary document	The parliament has adapted a specific procedure with regard to the subsidiarity check and it has installed a specific committee for it: the (temporary) joint committee on the subsidiarity check. These provisions do not need to be changed as a result of the Lisbon Treaty.	No	Yes	Further study of proposed measures raised a number of questions that are unanswered by the explanatory memorandum. For a better assessment of all measures mentioned the Houses request the Commission to reply to the questions formulated in the reasoned opinion.	-
Poland - <i>Sejm</i>	The EAC conducted the check. An undersecretary of State from the Ministry of Justice presented the government's position. Also the Legal Team of the Sejm Research Bureau presented their opinion on conformity to the principle of subsidiarity.	No	The opinion of the EAC is sent to the government is available on the web-site. The meeting was open for the media	Polish Sejm has not adopted any changes in the Rules of Procedure in regard to the changes implemented by the Lisbon Treaty but the discussion on this issues is scheduled for the nearest future	No	Yes	Yes	¹²

¹² During the discussion on the Commission Proposal for a Council Framework Decision on combating terrorism members of the EUAC were interested in the necessary changes in the Polish law assuming the Proposal is adopted in the presented version. Part of the discussion was dedicated to the issues connected to the civil liberties in the framework of combating terrorism.

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Poland - <i>Senate</i>	The EAC with the cooperation of the Human Rights and the Rule of Law Committee conducted the check. A government's written position was submitted to the parliament. A government's official took part in the Committee's sitting and provided for additional information. The EAC has also commissioned an outside expert opinion.	No	No	This subsidiarity check was based on the existing procedures. This year, before the Lisbon Treaty comes into force, the Committee is planning to work out and establish a routine cooperation with Government in terms of subsidiarity and proportionality checks.	No	No	Yes	¹³
Portugal - Assembleia da República	The check was done Committee on constitutional affairs and The EAC	No	No, only on IPEX	Yes, with Law 43/2006 on subsidiarity mechanism.	No	Yes	Yes	None
Slovakia	The check was done by the EAC and committee on constitutional and legal affairs. The minister of justice referred the preliminary position of the government.	No	Yes, the minutes of the meeting were published on the website.	No	No	No	Yes	There were some problems regarding the short time limit due to the Christmas Holidays and some terminological inexactitudes in the Slovak translation

¹³ The Committee pointed out a major discrepancy, namely under the Council of Europe Convention on the Prevention of Terrorism of May 16 2005 States-Parties to the convention are obliged to establish, implement and apply criminalisation of attempted offences of “recruitment for terrorism” and “training for terrorism”, while the proposed Council framework decision does not stipulate any such obligation for EU members, which may create problems in relations between members of those two organisations. The government official present at the Committee meeting promised to take into consideration the above mentioned opinion while further working on the proposal of the Council Framework decision.

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Slovenia - National Assembly	Committee on Domestic Policy, Public Administration and Justice and The EAC. The State Secretary at the Ministry of Justice attended the meeting of the working body responsible and presented the Government position.	No	The findings will be released on the web page of the National Assembly as part of the minutes of the EAC meeting. There is still a discussion on other possibilities how to make these findings public.	No	No	Yes	Yes	-
Sweden - Riksdagen	Committee on Justice; Oral and written information as well as an explanatory memorandum.	The IPEX was used to obtain information on the other parliaments. Also e-mail correspondence with the Dutch parliament was very useful.	The findings were noted in the record from the Committee meeting and the findings were published on IPEX.	No	No	No, but a text on the scrutiny was approved by the committee.	Yes	¹⁴

¹⁴ Even though proportionality was not an issue in this test the Committee notes that the fight against terrorism may only be conducted in a way that is appropriate in an open, democratic society governed by the rule of law, and that any measures must be taken with respect for human rights and in accordance with the rule of law. The proposal concerns acts that lie in a grey area bordering on rights set out in the Swedish Constitution, such as the freedoms of expression and association. In the opinion of the Committee, it is not clear from the Commission's proposal whether the proposed measures do respect these rights. The Committee is therefore, with respect to the current formulation of the proposal, doubtful as to whether measures that may be undertaken on the basis of the proposal are in proportion to the desired goals. More use of the IPEX-symbols already earlier during the check would have been useful. However, it was valuable with a quick answer from an involved official when the relevant IPEX-correspondent was contacted. There was also a shortage of time. In general it is difficult to define and separate the scrutiny of subsidiarity from the examination in substance - it seems rather artificial and technical. Also the preparations for the test were a bit confusing. COSAC-conclusions as well as the preparatory e-mail talked about subsidiarity and proportionality check. In the end it turned out to be a check according to the Lisbon Treaty, which is only a subsidiarity check.

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Romania - Camera Deputatilor and Senat	The check was done by The EAC. The Government provided for a written opinion ¹⁵ .	No	A press release was issued concerning the EAC sitting	The draft Rules of Procedure of the EAC will be amended to the Lisbon Treaty.	No	No	Yes	
UK - House of Commons	The European Scrutiny Committee conducted the check. The government provided information in the form of an Explanatory Memorandum from the Home Office. The EAC challenged the Government's assertion that the devolved administrations had no interest in the matter.	No	No. The report was published as a chapter of the Committee's weekly report on the documents it scrutinizes.	The House of Commons has not adapted its procedures. This is a matter yet to be addressed.	Yes (See the Annexe)	Yes. Report chapter attached to annexe 2. See in particular para 8.16	No	-
UK - House of Lords	The proposal was examined in a meeting of the EU Select Committee's Sub-Committee E (Law and Institutions). The Government provided an explanatory memorandum on the framework decision. The scrutiny conducted by the two Houses is independent, but there was informal discussion between legal advisers of the two Houses.	No	The Committee wrote to the Minister with its conclusions. That letter was published in the Committee's regular compilation of letters to the Government, and has been published on the UK Parliament website. IPEX has been updated.	The House of Lords will review its procedure with regard to the effects of the Lisbon Treaty in the course of 2008.	No	No. The Committee agreed on a letter addressed to the Minister and released the document from scrutiny.	Yes	-

¹⁵ The Romanian Parliament's scrutiny system is under construction. The draft Rules of Procedure of the EAC shows a slight difference between the regular scrutiny procedure and the subsidiarity check. The EAC is empowered to check subsidiarity. Only in case of subsidiarity infringement, the motivated opinion will be voted in the plenary session, based on a proposal of the EAC.

