

Reasoned Opinion for COM (2009) 338

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

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

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

1. The draft Framework Decision was originally part of a 2004 proposal which was opposed by a number of Member States on the grounds of its legal basis, and some doubts as to its compliance with the principles of subsidiarity and proportionality. Given that the new proposal is quite similar to what went before and is using the same legal basis (ie Article 31(1)c of the TEU), further clarification is needed from the Commission as to how these matters are addressed in the context of the new proposal.
2. There may be certain aspects of the scope of the proposal that may be best left to Member States, while others have clear advantages if action is taken at Community level. For example, the test of subsidiarity (necessity and clear benefit) would need to be assessed to see whether it would be best applied to “all persons” as proposed (which was a mix of options (b) and (e) in the proposal, or just cross border cases (option d)). The Community may have competence to legislate for cross border cases but due regard has to be had to national competence if the proposal is to apply to all criminal offence cases.

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

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

The Committee also recommends that COSAC consider in its final report

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