

REPORT TO COSAC

BY THE COMMITTEE ON EUROPEAN AFFAIRS OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA

ON THE SUBSIDIARITY CHECK OF THE COMMISSION PROPOSAL FOR A COUNCIL FRAMEWORK DECISION ON THE RIGHT TO INTERPRETATION AND TO TRANSLATION IN CRIMINAL PROCEEDINGS

17 September 2009

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

Two parliamentary committees were involved: the Committee on European Affairs and one specialised committee, the Committee on Legal Affairs. The specialised committee submitted its expert conclusions to the Committee on European Affairs, which made the final decision.

2. Was the plenary involved?

No.

In accordance with the provisions of the Statute (Rules of Procedure) of the Seimas, reasoned opinions are subject to adoption at the plenary in cases where the Committee on European Affairs has established non-compliance with the principle of subsidiarity. In cases where the European Affairs Committee, having obtained an opinion of the specialised committee, concludes that draft legislative proposal does not violate the principle of subsidiarity, the matter is completed without involvement of the plenary.

3. At which level the final decision was taken and who signed it?

The final decision was taken by the Committee on European Affairs and signed by the Chairman of the Committee.

4. Which administrative services of your parliament were involved and how (please specify)?

The Legal Department of the Office of the Seimas was asked to submit its conclusion on the compliance of the Proposal with the principle of subsidiarity.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

Not relevant.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

Yes.

The Ministry of Justice of the Republic of Lithuania was commissioned to draft, in cooperation with other authorised institutions, the Government's position on the

Proposal for the Council Framework Decision. The position also contains the primary opinion on whether the Proposal for Framework Decision of the European Union is in conformity with the principle of subsidiarity.

The Ministry of the Interior and the Prosecution Service of the Republic of Lithuania were invited to submit their opinion on the compliance of the Proposal with the principle of subsidiarity.

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

7. Did you consult your regional parliaments with legislative powers?

Not relevant.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

Yes. The Institute of Law, a public research institution established by the Government of the Republic of Lithuania and designed to coordinate the reform of the legal system and legal institutions as well as harmonize the process with the economic and social reform of the state was asked to submit its opinion. According to the Institute of Law, the Proposal complies with the principle of subsidiarity.

9. What was the chronology of events? Please specify the dates.

The subsidiarity check organised 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 one exception: the procedure is initiated by the Committee on European Affairs rather than by a specialised committee, which is normally responsible, within its competence, for proper and timely control of the principle of subsidiarity, as generally provided in 180⁶(1) of the Seimas Statute.

22 July 2009

The Committee on European Affairs initiated the subsidiarity check at the Seimas. The Committee informed the responsible specialised committee (Committee on Legal Affairs) in writing and requested its conclusion. The Committee also sent a written request to the Legal Department of the Seimas and the European Law Department under the Ministry of Justice to present their expert opinion on the compliance of the Commission Proposal with the principle of subsidiarity. Two members of the Committee on European Affairs were nominated as reporters.

End of August 2009

The Ministry of Justice presented the position of the Government on the Proposal for the Council Framework Decision. The position also contained the primary conclusion that the Proposal for the legal act of the European Union is in conformity with the principle of subsidiarity.

The European Law Department under the Ministry of Justice submitted its opinion to the Committee on European Affairs. In the opinion of the Law Department, there are doubts as to whether the conditions of the subsidiarity principle are met due

to the fact that the proposed EU actions do not create, or in any case the EC Commission has not proved them to create any added value compared to the guarantees under the European Convention on Human Rights as interpreted by the European Court of Human Rights.

The Legal Department of the Office of the Seimas issued its legal conclusion. It claims that even though it is important to ensure the implementation of the suspects' right to translation and interpretation, yet the enforcement of this right through a Framework Decision may conflict with the principle of subsidiarity insofar as this legal provision does not relate to international criminal acts.

The Ministry of the Interior and the Prosecution Service of the Republic of Lithuania in their conclusions say there is no obvious conflict with the principle of subsidiarity.

16 September 2009

The Committee on Legal Affairs held a meeting and issued its conclusion. The specialised committee supports the initiative of the Commission to set common minimum standards as regards the right to interpretation and translation in criminal proceedings in order to facilitate the enforcement of the principles of mutual recognition of judicial measures and enhance mutual trust of member states, which is particularly important for EU in the area of justice and internal affairs. Nevertheless, the Committee notes that the provisions of the Proposal which provide the suspects with the right to interpretation and translation in all criminal proceedings raise certain doubts as to compliance with the subsidiarity principle, therefore, they need to be clarified (for instance, through finding ways to regulate by the framework decision exclusively those criminal proceedings that involve an EU element).

The Committee on European Affairs debated the issue at its meeting. No possible breach of the principle of subsidiarity was found.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

The Committee on European Affairs followed subsidiarity checks in other EU national parliaments through IPEX and Permanent Representative to the EU of the Seimas of Lithuania.

11. Did you publicise your findings? If so, by what means?

No.

Findings:

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

No. Subsequent to its initial assessment, the Committee on European Affairs adopted the conclusion that it has found no possible breach of the principle of subsidiarity.

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

No.

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

Yes.

15. Did you encounter any specific difficulties during this subsidiarity check?

Yes, we had timing difficulties. The subsidiarity check coincided with the summer recess period of Seimas. With the opening of Parliament for the autumn session in September, an examination of the matter was immediately conducted by the specialised committee and then by the Committee on European Affairs at the same day.

17. Any other comments?

At its meeting of 16th September 2009 the Committee on European Affairs adopted the following conclusion.

In view of the facts, that

- upholding and enhancing the principles of international cooperation and mutual recognition is the cornerstone of the EU policy in the areas of justice and internal affairs,

- the right of suspects to fair trial belongs to fundamental human rights and the EU considers it to be a general principle established under Paragraph 2 Article 6 of the Treaty on European Union. The enforcement of this right and its effective implementation in criminal proceedings is deemed to be the key precondition for mutual trust of the EU member states,

- according to the information from the European Commission, the EU member states are implementing their commitments on fair trial to a differing extent, in view of the specificity of their national legislation and on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms, therefore these member states have in place different levels of provision of this type of guarantees,

- the Proposal is aimed at guaranteeing internationally effective protection of the rights of suspects by providing linguistic aid to any suspect in the cases where it is established that the suspect does not speak and does not understand the language of the criminal proceedings; this will enhance mutual trust of member states and cooperation in criminal investigations and criminal proceedings,

- the adoption of the judicial measures under the Proposal would improve the quality of interpretation and translation and ensure the implementation of guarantees of this nature in criminal proceedings,

- the Proposal does not aim at making uniform the criminal proceedings of the member states, yet is designed to detail the rules of provision of linguistic aid, the Committee considers that the Commission Proposal does not breach the subsidiarity principle.

Noting, that

1) the Commission Proposal establishes the minimum judicial measures and the minimally harmonised procedural law standards that are not excessive for the purpose of reaching the aim of the Proposal for a Council Framework Decision;

2) the Framework Decision binds the member states only insofar as the results are concerned, therefore, the member states are free to chose the implementation measures;

3) the Framework Decision needs to be adopted by acclamation in the Council; this will ensure that the measure adopted at the EU level will not interfere more than necessary with the area that is under the competence of the member states;

4) the Framework Decision is one of the instruments under the third pillar, which promotes the harmonisation of national legislation and other legal acts,

the Committee considers the Proposal to essentially comply with the requirements of the principle of proportionality.

Nevertheless, the Committee notes that negotiations in the EU institutions should aim for more explicitness and provide the full justification for certain particular provisions of the EC Proposal. For instance, the provision under Paragraph 1 of Article 2, to the extent it foresees the implementation of the right of the suspect to interpretation and translation during all the meetings of the suspect with the lawyer, should be revised and made more explicit. The same recommendation is applicable to the term “essential documents” in paragraph 1 Article 3. The revision should be done in view of the financial burden associated with the implementation of the aforementioned provisions and the preconditions for abuse of the aforementioned provisions to delay the criminal proceedings. In an effort to avoid the creation of a system that would be alternative to the standards established by the European Convention on Human Rights, the Committee highlights the need to ensure that the provisions under the Proposal are in conformity with the rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the associated case law of the European Court of Human Rights.