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Scrutiny of Subsidiarity: Follow up Report

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Scrutiny of Subsidiarity: Follow up Report

Our Previous Work on Subsidiarity

1. In April 2005 the European Union Select Committee published a Report entitled *Strengthening national parliamentary scrutiny of the EU—the Constitution’s subsidiarity early warning mechanism*¹.
2. The Government response to our Report was received on 20 July 2005 and is published here as Appendix 1.
3. The response makes clear that “the thorough investigation and research that has gone into the report will prove valuable, whether or not the Treaty comes into force”².

Recent Developments

4. Since the Report was published, circumstances surrounding the EU Constitutional Treaty have significantly changed. However, subsidiarity is a topic of interest to Member States and was a major item on the agenda at the recent COSAC³ meeting held in London on 9-11 October 2005.
5. Moreover, national parliaments already have a role to play in the scrutiny of EU legislation which is recognised in the Amsterdam Treaty’s Protocol on the Role of National Parliaments. The principle of subsidiarity is set out in Article 5 of the EC Treaty and supplemented by a Protocol to the Amsterdam Treaty (see Appendix 2). More than half of Member State’s national parliaments already monitor whether EU legislation complies with the principle of subsidiarity⁴.

COSAC and our Report

6. The COSAC U.K. Presidency⁵ proposed to COSAC (see Appendix 3) that it was important for COSAC to discuss how scrutiny of subsidiarity and proportionality in national parliaments might be improved and how those

¹ 14th Report of Session 2004-05, HL Paper 101

² Paragraph 1 of the Government Response.

³ COSAC is a forum for co-operation between Committees of the national parliaments dealing with European Affairs as well as representatives from the European Parliament. At the biannual meetings of COSAC, six members represent each parliament. In addition, the national parliaments from the Candidate countries are invited to participate with three observers each.

⁴ Responses to the questionnaire for COSAC’s 4th biannual report (available online at: <http://www.cosac.org/en/documents/biannual/>) show that the following national parliaments monitor subsidiarity compliance: Austria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Portugal and the UK. In addition, the Latvian Parliament is currently considering a mechanism for monitoring subsidiarity; the Slovakian Parliament is expecting to do so in the future; and the Joint Committee on EU Affairs of the Spanish Parliament intends to set up a working group to consider the issue.

⁵ The COSAC Presidency comprises the delegation of the Parliament of the State holding the EU Presidency and usually operates through the Chairs of the Committees concerned, i.e. the chairs of our Committee and the Commons European Scrutiny Committee.

national parliaments who wished to do so could coordinate that scrutiny amongst themselves to heighten its impact.

7. The Presidency therefore proposed that COSAC should select a specific Commission proposal or proposals in order that those national parliaments who wanted to could co-ordinate their efforts and so that individual parliaments or chambers could test their internal procedures for scrutinising a proposal within a defined period of time (six weeks⁶). Such an exercise would be called a “subsidiarity and proportionality check”.
8. COSAC agreed that those national parliaments which wish to will conduct a subsidiarity and proportionality check on forthcoming EU proposals as a development of their existing scrutiny role as recognised in the Protocol on the Role of National Parliaments attached to the Treaty of Amsterdam.
9. COSAC agreed that within two weeks after national parliaments’ examination of the Commission’s Annual Work Programme parliaments will inform the COSAC Presidency of the proposals they wish to be subject to the subsidiarity and proportionality check. The Presidential Troika⁷ will then designate the most frequently mentioned proposal(s) to be subject to the check. Participating national parliaments would seek to complete their scrutiny of the proposal(s) within a six week period. Participating national parliaments or chambers would then send any comments on subsidiarity or proportionality directly to the Commission, European Parliament and Council within the six week period, copying those comments to the COSAC presidency.
10. Our Committee has agreed to participate in the subsidiarity and proportionality check and has agreed that all Sub-Committees will be particularly vigilant in keeping an eye out for suitable proposals for the check as they go about their normal scrutiny work over the coming months.
11. We have also agreed, with reference to Regional Parliaments and Assemblies, that the relevant committees in Scotland and Wales (and when the Assembly reconvenes, Northern Ireland) should be invited to inform us of any suggestions they might have for suitable proposals for subsidiarity and proportionality monitoring; and that we should inform Regional Parliaments and Assemblies when the COSAC mechanism is triggered and what the results are.
12. We make this report to the House for debate with our earlier report.

⁶ The existing Protocol on the Role of National Parliaments provides that six weeks should elapse between a proposal being made available in all languages to the European Parliament and the Council and being place on a Council agenda for decision.

⁷ i.e. the chairs of the current previous and next Presidency delegations, and a representative of the European Parliament.

APPENDIX 1: GOVERNMENT RESPONSE TO PREVIOUS SUBSIDIARITY EARLY WARNING MECHANISM REPORT

Introduction

1. The Government welcomes the Committee's Report "Strengthening national parliamentary scrutiny of the EU—the Constitution's subsidiarity early warning mechanism". The Government believes that the thorough investigation and research that has gone into the report will prove valuable, whether or not the Treaty comes into force. The Government has always pushed for the role of national Parliaments to be strengthened in the EU legislative process and was pleased with the final result agreed by the Inter Governmental Conference.

2. As the Committee will fully appreciate, the circumstances surrounding the Treaty have significantly changed since the Committee's Report was first published. The recent referendums in France and the Netherlands resulted in majority votes against ratification of the Treaty. Austria, Cyprus, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Slovakia, Slovenia, Spain and Luxembourg have already approved the Treaty, but for it to come into force, all Member States must ratify it. In the UK, this will involve approval first by Parliament (through the EU Bill) and then by a nation-wide referendum. However, the Foreign Secretary announced on 6 June that until the consequences of the French and Dutch votes were clarified, the Government did not intend to proceed with the Bill's parliamentary process.

3. At the European Council on 16/17 June, Heads of State and Government recognised the need for a period of reflection to consider the outcomes of the referendums in France and the Netherlands. They said that they would come back to the matter in the first half of 2006 to agree on how to proceed. However as the Prime Minister said to the House of Commons on 20 June, under the current circumstances, the Treaty cannot proceed.

4. In other Member States, Belgium and Estonia are proceeding with parliamentary ratification of the Treaty. The Czech Republic intends to proceed with their ratification process by referendum, although the requisite enabling legislation has yet to be passed and the government has announced that any ratification is unlikely before mid 2006. The Irish Government have announced that they will not set a date for their referendum. Poland has not decided how, if at all, to proceed with ratification and the Polish President has said that a referendum in 2005 looks "unrealistic". The Swedish Government has announced that it will seek to postpone its parliamentary ratification process and the Finnish Government has postponed parliamentary ratification. The Danish and Portuguese Governments have postponed their referendums.

5. Irrespective of whether the Constitutional Treaty comes into force, the Government believes that strengthening the role of national parliaments in the making of EU legislation should continue to be pursued. The Foreign Secretary made this clear in a statement made to the House of Commons on 6 June: "The issue of subsidiarity—of decisions being made at the lowest level possible—has been a long-standing concern of the Government and is one that we shall pursue". The Government has therefore attempted to answer the questions posed by the Committee as fully as possible. It is also giving active consideration to whether it would be possible, by agreement in the European Council and Commission, to implement the spirit of the Subsidiarity Protocol.

Responses to Committee Recommendations and Questions

6. The passages in bold are the Committee's own.

In view of the political significance of the exercise of a vote under the early warning mechanism, we recommend that the House itself should cast the vote (subject to our conclusion in paragraph 99). (para 95)

We recommend that in this House the trigger for a debate and decision on whether to cast a vote under the early warning mechanism should be a report from our Committee. (para 96)

7. These are matters for the House. We would observe only that if the Committee were unanimous and no party disagreed with them, the motion to exercise the vote might go through "on the nod".

The House could agree that the exercise of its vote on any legislative proposal would be delegated to the EU Select Committee in the event of a six week period expiring during a recess, unless the House had already come to a decision on the proposal in question. (para 99)

8. This is a matter for the House to decide but it is important, as the Committee recognises, that alternative arrangements are made for the long recesses.

We recommend to the House that the operation of the early warning mechanism should be kept separate from the House's current Scrutiny Reserve under which we currently operate. (para 100)

9. This is a matter for the House.

We recommend that the Government should not support a proposal in Council which has been the subject of a subsidiarity yellow card in either House of Parliament without first further explaining to Parliament its reasons for doing so. (para 101)

10. The Government values the contribution of Parliament on EU questions and takes seriously its responsibility to keep Parliament informed. Therefore, the Government agrees in principle with the Committee's recommendation, that the Government should not agree to proposals which have been the subject of a yellow card in either House without first explaining to Parliament its reasons for doing so. The Government would aim to do this at the earliest possible point at which such a decision was taken. This approach would be consistent with the Government's undertakings embodied in the House's Scrutiny Reserve Resolution of 6 December 1999. However, given the often fast moving pace of negotiations, and periods of parliamentary recess, it may not be possible for the Committee to consider the Government's position further before decisions are reached in the Council of Ministers. The Government is of course ready to work with the Committee to ensure that appropriate procedures are put in place to respond to such instances if they arise.

We disagree with the suggestion that the two Houses must co-ordinate their response in individual cases. However, we recognise that although each chamber has its own vote it will be desirable for the House to work with the Commons on subsidiarity issues and, where possible, for the two Houses to support each other when submitting reasoned opinions. In spite of this, it is important to note that if the two Houses do reach a different view on whether a yellow card should be raised in a particular case their votes would not cancel each other out—it will just be that the threshold is not one step closer to being reached. (paras 107-108)

11. The Government welcomes the commitment to work with the Commons on subsidiarity issues, although we acknowledge the right of the two Houses to exercise their votes independently.

The Treaty stresses that “Before proposing European legislative acts, the Commission shall consult widely”. We recommend that the Commission should inform national parliaments when consultation on a legislative act is launched. (Para 115)

12. We support the Committee’s recommendation that the Commission should inform national Parliaments as soon as consultation on a legislative Act is launched. We would also encourage the Committee to continue its practice of keeping up to date with future Commission activity through the Commission’s Annual Legislative Programme and Five Year Strategic Objectives.

We welcome this commitment by the Government to assist parliament during the six week period. We expect the Government to assist parliament as early as possible in the six week period and to provide a detailed analysis in each case of the application of the subsidiarity principle. Such an analysis should take the form of the quantitative and qualitative analysis the Commission would be required to produce by Article 5 of the Protocol. (Para 134)

13. As the Government set out in its Memorandum by the Minister for Europe in February this year, the EU Bill includes a provision to impose a duty on the relevant Minister of the Crown to lay a statement before Parliament about whether, in his or her opinion, the draft legislative act complies with the principle of subsidiarity. In cases where the Government believes that subsidiarity is an issue, such a statement would be sufficiently detailed and thorough to aid the Committee in their consideration of the proposal in question.

We conclude that the Treaty does not clearly provide whether or not the early warning mechanism applies again in the case of a legislative proposal amended during negotiations in the Council and the Parliament, and we would welcome clarification from the Government on this point. (Para 141)

14. The Government agrees with the Committee’s view that the Treaty does not offer clarity on this point. The Government’s interpretation of the Protocol however is that that national parliaments will only be able to express a reasoned opinion on subsidiarity in the 6 weeks following the publication of the legislative proposal. The Government notes the Committee’s concerns that national parliaments will not be able to comment on amended proposals, and recognises that proposals may be amended to the extent that a national parliament may wish to subsequently submit a reasoned opinion. However, it also recognises that it would be impractical for national parliaments to be able to express opinions after every stage of the legislative process.

Subsidiarity checks by the Government, and the assessments promised under Clause 3 of the European Union Bill, should be rigorous and detailed whether or not the Protocol comes into force. The Government’s subsidiarity assessment should, as now, be part of the explanatory memoranda furnished by the government on each legislative proposal. (Para 180)

We expect, given the short time frame allowed, that these documents should not be presented by the Government any later than two weeks after submission of the draft legislative proposal. This is the timetable to which the Government currently works. In the event of a delay in preparation of an Explanatory Memorandum, the subsidiarity analysis should if necessary be presented separately to avoid delay. (Para 181)

15. As acknowledged by the Committee, the Government already provides subsidiarity assessments on legislative proposals in the form of Explanatory Memoranda. This will continue to be the case whether or not Protocol comes into force. Although the EU Bill stipulates that the statement should be laid “Before the end of six weeks from the date of transmission” in practice the Government would endeavour to lay the statement as early as possible.

The reference to the national “legal order” seems intended to go primarily to the relationship between the national parliaments and the executive within Member States. This, as we will explain below, raises a number of questions. We first, however, ask the Government to clarify whether Article III-365 would apply to an action notified under Article 8 by a Member State on behalf of a national parliament (or a chamber thereof). (Para 227)

We do not accept that it is in accordance with the letter and the spirit of Article 8 that “careful consideration” by the executive of a request from our Parliament (or a chamber of our Parliament) would suffice. We are also not clear what the legal or political justification of the Government’s interpretation is. (Para 234)

We accordingly ask the Government to clarify first what the position would be in the United Kingdom. Given our national “legal order” would the executive be required to act if either House of our parliament resolved that a challenge be notified under Article 8? If not why not and is this interpretation in accordance with the provisions of Article 8? (Para 235)

We also ask the Government to set out in full to Parliament how other Member States interpret the effect of this provision. (Para 236)

In particular we ask the Government what their interpretation is of the changes recently made to the French Constitution. A new Article 88-5 provides that each chamber can bring an action in the ECJ against a European legislative act on the grounds of subsidiarity. It appears that the French Government would be obliged to notify the action to the ECJ: “*Chaque assemblée peut former un recours devant la Cour de justice de l’Union européenne contre un acte législatif européen pour violation du principe de subsidiarité. Ce recours est transmis à la Cour de justice de l’Union européenne par le Gouvernement*”. (Para 237)

We accordingly ask the Government to confirm that the national parliament (or chamber) should remain in control of any application. It would clearly not be acceptable if the executive could, for example, discontinue the proceedings without the consent of the national parliament or chamber, as the case may be. (Para 239)

As noted above, Article 8 only comes in to play when a European legislative act has been adopted. As a consequence, the circumstances in which a national parliament (or a chamber of a national parliament) is likely to raise an objection would seem to us to be:

- **If that national parliament does not agree with their Member State's government's decision to support a proposal in Council and maintains a subsidiarity objection;**
- **If that national parliament wishes to raise a subsidiarity objection, the Member State's government having been outvoted in the Council;**
- **If a European legislative act as adopted is in a form different from that examined by a national parliament at an earlier stage, a new issue of subsidiarity arising as a result of changes made during the passage of the legislative act. (Para 246)**

Given these factors, it is our preliminary conclusion that the number of occasions on which national parliaments would be likely to make use of the recourse to the Court under Article 8 would be very few. We recommend that the Government make it their practice, if the Constitutional Treaty comes into force, to keep Parliament fully informed of any changes to a European legislative act during its passage that might give rise to a subsidiarity objection after adoption. (Para 248)

Government's general comment on Article 8

16. Article 8 as drafted is, as the Committee have pointed out, imprecise in certain respects. In broad terms, Article 8 is intended to provide a mechanism by which national parliament can present their views on subsidiarity to the ECJ. The precise legal process for achieving that aim is not fully set out in the Article and will therefore require to be elaborated in further discussion among the Member States and the Institutions (including of course the Court of Justice itself).

17. Informal consultations earlier this year suggested that the preliminary views of other Member States were generally consistent with the UK's initial thinking. Had the process of ratification of the Treaty continued as originally expected, the Government would have engaged in more in depth discussions with partners (and the relevant institutions) to try to work out exactly how to give practical effect to Article 8. In the current circumstances, there are no immediate plans to continue that discussion and given the current uncertainty over the future of the Constitutional Treaty, it is unlikely that other Member States will set out their positions in more detail at this stage.

Other

18. For information, we note that paragraph 3 of the Committee's report states that **"The threshold to trigger a review is one third of the votes allocated or one quarter in cases of proposals in the field of justice and home affairs; that is 13 and 10 votes respectively."** We believe that since there are a total of 50 votes awarded to Member States national parliaments, the actual numbers of votes needed to trigger a review would be 17, and 13 in respect of Justice and Home Affairs issues.

FCO, July 2005

APPENDIX 2: TEXT OF THE TREATY ARTICLE AND THE AMSTERDAM PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

ARTICLE 5 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

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.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

AMSTERDAM PROTOCOL

THE HIGH CONTRACTING PARTIES,

DETERMINED to establish the conditions for the application of the principles of subsidiarity and proportionality enshrined in Article 3b of the Treaty establishing the European Community with a view to defining more precisely the criteria for applying them and to ensure their strict observance and consistent implementation by all institutions;

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union;

TAKING ACCOUNT of the Inter-institutional Agreement of 25 October 1993 between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity;

HAVE CONFIRMED that the conclusions of the Birmingham European Council on 16 October 1992 and the overall approach to the application of the subsidiarity principle agreed by the European Council meeting in Edinburgh on 11-12 December 1992 will continue to guide the action of the Union's institutions as well as the development of the application of the principle of subsidiarity, and, for this purpose,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community:

(1) 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.

(2) 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, and it should take into account Article F(4) of the Treaty on European Union, according to

which “the Union shall provide itself with the means necessary to attain its objectives and carry through its policies”.

(3) 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 3b 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.

(4) For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators.

(5) For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States’ action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States’ interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

(6) The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives as provided for in Article 189 of the Treaty, while binding upon each Member State to which they are addressed as to the result to be achieved, shall leave to the national authorities the choice of form and methods.

(7) Regarding the nature and the extent of Community action, Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Community law, care should be taken to respect well established national arrangements and the organisation and working of Member States’ legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.

(8) Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are required in their action to comply

with the general rules laid down in Article 5 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardise the attainment of the objectives of the Treaty.

(9) Without prejudice to its right of initiative, the Commission should:

- except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents;
- justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of Community action in whole or in part from the Community budget shall require an explanation;
- take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved;
- submit an annual report to the European Council, the European Parliament and the Council on the application of Article 3b of the Treaty. This annual report shall also be sent to the Committee of the Regions and to the Economic and Social Committee.

(10) The European Council shall take account of the Commission report referred to in the fourth indent of point 9 within the report on the progress achieved by the Union which it is required to submit to the European Parliament in accordance with Article D of the Treaty on European Union.

(11) While fully observing the procedures applicable, the European Parliament and the Council shall, as an integral part of the overall examination of Commission proposals, consider their consistency with Article 3b of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal.

(12) In the course of the procedures referred to in Articles 189b and 189c of the Treaty, the European Parliament shall be informed of the Council's position on the application of Article 3b of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 3b of the Treaty.

(13) Compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty.

APPENDIX 3: COSAC UK PRESIDENCY NOTE ON SUBSIDIARITY

The European Council has called for “a period of reflection ... to enable a broad debate to take place” concerning the future of the European Union and the Constitutional Treaty. It is therefore important that COSAC should not at this stage make assumptions about whether the Treaty will be ratified. Commissioner Wallström told the Chairpersons in July that the Commission would find it difficult at present to respond to anything described as a “pilot project” for the Treaty’s subsidiarity early-warning mechanism, since this could be seen as anticipating ratification of the Treaty, but that it would be willing to cooperate with national parliaments as regards their scrutiny of subsidiarity more generally.

For these reasons the Presidency considers that it would not be appropriate at present to conduct a second pilot project based on the subsidiarity early-warning mechanism set out in the Constitutional Treaty, as called for at the XXXIII COSAC in Luxembourg in May. On the other hand, the Presidency notes that national parliaments already have a role in scrutiny of EU legislation, recognised in the Amsterdam Treaty’s Protocol on the Role of National Parliaments. The principle of subsidiarity is already set out in Article 5 of the EC Treaty, supplemented by a Protocol to the Amsterdam Treaty. More than half of the national parliaments already monitor whether EU legislation complies with the principle of subsidiarity.⁸

It would therefore be important for COSAC to discuss how scrutiny of subsidiarity by national parliaments could be improved, and how national parliaments which wish to do so could coordinate that scrutiny among themselves to increase its impact. The balance of opinion among the COSAC chairpersons in July appeared to be in favour of such an approach, which could not be regarded as anticipating the provisions of the Constitutional Treaty. **It is in this spirit that the Presidency hopes COSAC will debate the issue of subsidiarity.**

The questions which arise for debate therefore include:

1. Does COSAC agree that national parliaments should seek to improve their scrutiny of subsidiarity on the basis of their existing powers and role?
2. Does COSAC agree that this should be done by selecting a specific Commission proposal or proposals in order that those national parliaments which wish to do so should be able to co-ordinate their efforts and so that individual parliaments or chambers can test their internal procedures for scrutinising proposals within a defined period of time?
3. If so, how should such an exercise be organised? In particular, what should the timing be?

Should proportionality be covered as well as subsidiarity?

4. What proposal, or proposals, should be selected?

The UK Presidency’s views on these questions are as follows:

⁸ Responses to the questionnaire for COSAC’s 4th biannual report show that the following national parliaments already do so: Austria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy (when considering the Commission’s Annual Work Programme), Lithuania, Malta, the Netherlands, Portugal and the UK. In addition, the Latvian Parliament is currently considering a mechanism for monitoring subsidiarity; the Slovakian Parliament is expecting to do so in the future; and the Joint Committee on EU Affairs of the Spanish Parliament intends to set up a working group to consider the issue.

- Procedures which help national parliaments to voice any concerns about subsidiarity and to coordinate their activities in this respect would be a logical extension of the provisions of the Amsterdam Protocols and would provide national parliaments with a more effective collective voice in European affairs. National parliaments already have the power to scrutinise legislation for compliance with the principles of proportionality and subsidiarity, and, as indicated above, more than half of the national parliaments already have procedures for doing so. No treaty change is required, either for national parliaments to present their views to the Commission or for the Commission to respond to such views, and no anticipation of the Constitutional Treaty is involved.
- Selecting a specific Commission proposal or proposals will enable national parliaments and chambers which wish to participate in the exercise to test their systems for reaching decisions on subsidiarity and proportionality.
- The exercise should be carried out with due respect for national parliaments' internal work programmes, legal frameworks and traditions.
- The exercise should be called a "subsidiarity and proportionality check" rather than a pilot project.
- The existing Protocol on the Role of National Parliaments provides that six weeks should elapse between a proposal being made available in all languages to the European Parliament and the Council and being placed on a Council agenda for decision. The Presidency believes that national parliaments should seek to comply with this timescale when submitting their views on subsidiarity and proportionality, and that the following procedure should apply:
 - i) After consulting the Troika, the Presidency should designate a proposal as the subject of the check at the time of its publication by the Commission, if possible having identified it in advance on the basis of the Commission's annual work programme;
 - ii) the six-week period should begin when the proposal has been published in all languages;
 - iii) the COSAC secretariat should circulate the English and French versions to all national parliaments immediately and the other language versions to the relevant national parliaments as they appear, and should inform all national parliaments in due course of when the six-week period will end; and
 - iv) national parliaments or chambers should send any comments on subsidiarity or proportionality directly to the Commission within the six-week period, copying those comments to the COSAC secretariat for onward transmission to all national parliaments; the exercise would therefore involve an exchange of information between parliaments as well as allowing parliaments to test their own procedures.
 - v) Alternatively, comments could be sent first to the COSAC secretariat for immediate distribution to national parliaments and for forwarding with a summary to the Commission at the end of the six-week period. Any summary document produced by the COSAC secretariat would in no way bind national parliaments or prejudice their position.
- The Presidency believes that monitoring proportionality is as much a part of national parliaments' role as monitoring subsidiarity, and that both should be covered in the subsidiarity and proportionality check, but that national parliaments

should distinguish clearly whether their comments relate to subsidiarity or proportionality.

- It follows from the suggestion made above that a proposal can be selected only at the time of its publication by the Commission. However, it may be possible to identify potentially suitable proposals in advance (e.g. by using the Commission's work programme or other planning documents such as the Hague Programme). The UK Presidency would welcome suggestions of proposals that could provide a suitable basis for the check outlined above.

The UK Presidency accordingly invites COSAC to consider whether a test of procedures for monitoring subsidiarity and proportionality should be undertaken along the lines proposed above.

JIMMY HOOD MP, Chairman European Scrutiny Committee House of Commons

LORD GRENFELL, Chairman European Union Committee House of Lords

28 September 2005

APPENDIX 3: RECENT REPORTS FROM THE SELECT COMMITTEE

Recent Reports from the Select Committee

Session 2003-04

Proposed Constitutional Treaty: Outcome of the Irish Presidency and the Subsidiarity Early Warning Mechanism (22nd Report Session 2003-04, HL Paper 137)

Annual Report 2004 (32nd Report Session 2003-04, HL Paper 186)

Session 2004-05

Developments in the European Union: Evidence from the Ambassador of the Grand Duchy of Luxembourg and the European Parliament's Constitutional Affairs Committee (3rd Report Session 2004-05, HL Paper 51)

Strengthening national parliamentary scrutiny of the EU – the Constitution's subsidiarity early warning mechanism (14th Report Session 2004-05, HL Paper 101)

Finland's National Parliamentary Scrutiny of the EU (16th Report, Session 2004-05, HL Paper 103)

Session 2005-06

Evidence by Commissioner Franco Frattini, Commissioner for Justice, Freedom and Security on Justice and Home Affairs Matters (1st Report, Session 2005-06, HL Paper 5)

Ensuring Effective Regulation in the EU (9th Report, Session 2005-06, HL Paper 33)

Evidence from the Minister for Europe—the European Council and the United Kingdom Presidency (10th report, Session 2005-06, HL Paper 34)