

THE LISBON TREATY – APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY

Research and Library Service

INTRODUCTION

1. This briefing note, which supplements a previous research briefing on legislative scrutiny arrangements for European Union matters in the UK and other member states,¹ highlights a number of potential issues for the Assembly which result from the provisions contained in the Protocol on the Application of the Principles of Subsidiarity and Proportionality which forms part of the Lisbon Treaty (the Subsidiarity and Proportionality Protocol). The briefing note is not intended, however, to provide detailed background to the wider provisions of the Lisbon Treaty.
2. A House of Commons Research Paper, which does contain detailed analysis of the Lisbon Treaty, provides this short description of its development.

The *Treaty of Lisbon*, also referred to as the 'Reform Treaty', was concluded in Lisbon on 19 October 2007 by EU Member State governments meeting as an informal European Council and signed on 13 December 2007. The reform came about as a result of the perceived need for institutional amendments to cope with successive EU enlargements. It aimed to resolve the constitutional reform process that had been stalled since France and the Netherlands voted against the *Treaty Establishing a Constitution for Europe* in 2005, by means of amendments to the present Treaties.

The Lisbon Treaty amends the *Treaty on European Union* (TEU) and the *Treaty Establishing the European Community* (TEC). The former retains its title, while the latter becomes the *Treaty on the Functioning of the European Union* (TFEU). The revised TEU contains provisions which apply intergovernmentally, that is to say, by Member State governments acting together according to the principles of international law and largely without the involvement of the EU institutions (e.g. the Common Foreign and Security Policy). It also contains articles on general principles, institutional arrangements, treaty ratification, amendment and withdrawal from the EU.²

3. A general overview of the content of the Lisbon Treaty is provided in the following resolution,³ which was adopted (525 votes for, 115 against and 29 abstentions) by

¹ Briefing Note 27/08 <http://www.niassembly.gov.uk/io/research/2008/2708.pdf>

² The Treaty of Lisbon: amendments to the Treaty on European Union. House of Commons Research Paper 08/09 p1 <http://www.parliament.uk/commons/lib/research/rp2008/rp08-009.pdf>

³ Based on the own-initiative report drafted by Iñigo Mendex de Vigo (EPP-ED, ES) and Richard Corbett (PES, UK)

the European Parliament on the 20th February 2008. ⁴

20/02/2008 - EP: non-legislative resolution

Parliament concludes that, taken as a whole, the Treaty of Lisbon is a substantial improvement on the existing Treaties, which will bring more democratic accountability to the Union (through a strengthening of the roles of the European Parliament and the national parliaments), enhance the rights of European citizens vis-à-vis the Union and improve the effective functioning of the Union's institutions

More democratic accountability: Members welcome the fact that democratic accountability and decision-making powers will be enhanced, allowing citizens to have greater control over the Union's action, notably due to the following improvements: a) all European legislation will, with a few exceptions, be submitted to the dual approval, in equal terms, of the Council and of the European Parliament; b) the prior scrutiny by national parliaments of all legislation of the Union will be reinforced; c) a simpler and more democratic budgetary procedure with a single reading is established: the distinction between compulsory and non-compulsory expenditure is abolished, thus ensuring full parity between Parliament and Council as regards approval of the whole annual budget, while Parliament is also granted the right of consent to the legally binding Multiannual Financial Framework; d) the President of the Commission shall be elected by the European Parliament, on the proposal of the European Council, bearing in mind the elections to the European Parliament; e) the Council will meet in public when deliberating or voting on draft legislative acts, thus allowing citizens to see how their governments act in the Council; f) agencies, notably Europol and Eurojust, will be subject to greater parliamentary scrutiny.

Strengthening rights of citizens and improving clarity: Parliament welcomes the fact that the rights of citizens will be strengthened, as a result of the following improvements: a) the EU Charter of Fundamental Rights, setting out a complete list of up-to-date civil, political, economic and social rights, will become legally binding; b) the Union is to apply to accede to the European Convention on Human Rights; c) new provisions will facilitate participation by citizens and representative associations of civil society in the deliberations of the Union; d) the introduction of an EU citizens' initiative; e) judicial protection of citizens will be enhanced, since the jurisdiction of the Court of Justice will extend to matters relating to freedom, security and justice as well as to acts of the European Council, the European Central Bank and agencies of the Union, while provision will also be made to facilitate access for natural and legal persons to proceedings of the Court.

The confusion between the "European Community" and "European Union" will end as the EU becomes one single legal entity and structure, and a solidarity clause between Member States provides citizens with an expectation of receiving support from all parts of the Union in the event of a terrorist attack or a natural or man-made disaster

⁴ 20/02/2008 - EP: non-legislative resolution (Reference : INI/2007/2286)
<http://www.europarl.europa.eu/oeil/file.jsp?id=5572292>

20/02/2008 - EP: non-legislative resolution

Greater effectiveness: Members highlight: a) the increased use of qualified majority voting rather than unanimity; b) a new system of double majority voting, which will facilitate reaching decisions in the Council; c) that the six-month rotating presidency of the Council will be replaced by a President elected by its members for a two-and-a-half-year term; d) the enhanced visibility of the Union and its capacity as a global actor, notably due to: i) the creation of a Vice President of the Commission/High Representative for Foreign Affairs and Security Policy who will chair the Foreign Affairs Council, and be able to speak for the Union on those subjects where the latter has a common position; ii) the reinforcement of the Union's capacity to develop common structures in the field of security and defence policy.

Parliament also highlights that action in the area of justice and home affairs will have more ambitious goals and more effective procedures, no longer using separate intergovernmental instruments and procedures, and will be subject to judicial review, thus promising tangible progress with regard to justice, security and immigration issues. Lastly, the Union's objectives and competencies in the fields of climate change, children's rights, European Neighbourhood Policy, humanitarian aid, energy (including a reference in the Treaty to solidarity between Member States in this domain), space, research, tourism, sport, public health and civil protection are defined more clearly. Common commercial policy is recognised as an exclusive competence of the Union.

Concerns: Members are aware of the widespread regrets that, following the results of the referendums in France and the Netherlands, it was necessary, in order to secure a fresh agreement amongst the 27 Member States, to: a) abandon the constitutional approach and certain of its features, such as a single and structured text; b) postpone the entry into force of the new voting system in the Council; c) incorporate into the Treaty, measures specific to particular individual Member States, in relation to cooperation in police and criminal matters and the Charter of Fundamental Rights; d) modify the wording of several passages of the Treaty entailing an unjustified shift to a negative tone, which gives an impression of mistrust vis-à-vis the Union and its institutions and thus sends a wrong signal to the public.

Conclusions: Members endorse the Treaty and stress the need to achieve its ratification in good time for its entry into force on 1 January 2009. Parliament believes that the Treaty of Lisbon will provide a stable framework which will allow further development of the Union in future. It is aware that an amending treaty is inevitably less clear and readable than a codified treaty, and calls, therefore, for the immediate publication of the consolidated Treaties as revised by the Treaty of Lisbon, which would provide citizens with a clearer basic text of the Union.

LISBON TREATY RATIFICATION IN THE UNITED KINGDOM

4. The European Union (Amendment) Bill 2007-08,⁵ which paves the way for UK ratification of the Treaty of Lisbon, was introduced into Parliament on 17th December 2007. An amendment to the Bill which would have required a referendum and positive outcome before other provisions of the Bill could come into force was rejected by 311 votes to 248 in the Commons on the 5th March 2008.⁶ The Bill is currently continuing its legislative passage in the House of Lords.
5. International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations are excepted matters under the provisions of the Northern Ireland Act 1998.⁷ On the 8th October 2007, however, the Assembly, acting within its legislative competence, supported a motion which *called on the United Kingdom Government* to hold a referendum on the 'new European Union treaty'.⁸
6. In addition to the legislative passage of the European Union (Amendment) Bill, a number of Committees of the UK Parliament have undertaken or are currently undertaking inquiries related to the Treaty of Lisbon.

House of Lords European Union Committee: 10th Report of Session 2007–08 The Treaty of Lisbon: an impact assessment (published 13th March)

House of Lords Constitution Committee: 6th Report of Session 2007-08 European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution (published 28th March)

On the 20th March 2008, the House of Commons European Scrutiny Committee announced that it was to conduct an inquiry into the role of National Parliaments under the Lisbon Treaty.

7. The House of Commons European Scrutiny Committee inquiry will, amongst other things, focus on how the new provisions for national parliaments relating to the subsidiarity early-warning mechanism will work in practice. This will include considering cooperation with the House of Lords, Devolved Assemblies, Departmental Select Committees and inter-parliamentary coordination.⁹

⁵ For information on the Bill and its passage through Parliament visit <http://services.parliament.uk/bills/2007-08/europeanunionamendment.html>

⁶ House of Commons Votes and Proceedings: Wednesday 5th March 2008
<http://www.publications.parliament.uk/pa/cm200708/cmvote/80305v01.htm>

⁷ Paragraph 3 of schedule 2 to the Northern Ireland Act 1998

⁸ <http://www.niassembly.gov.uk/record/reports2007/071008.htm#11>

⁹ House of Commons European Committee Press Release (20th March 2008)
http://www.parliament.uk/parliamentary_committees/european_scrutiny/escpn20032008.cfm

**PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND
PROPORTIONALITY**

8. Subsidiarity and proportionality, which are key principles of the Community legal framework, were introduced into the Treaties in 1992 by the Maastricht Treaty (Article 5 of the Treaty establishing the European Community (TEC) and Article 2 of the Treaty on European Union (TEU)). In 1997, the concepts were further developed by the protocol on the application of the principles of subsidiarity and proportionality which was appended to the Amsterdam Treaty.
9. The Lisbon Treaty clarifies the distribution of competences between the European Union and Member States and underlines the importance of the principle of subsidiarity in relation to the work of the institutions of the EU. It also introduces reference to the regional and local level into the main provisions of the treaties for the first time. Specifically the Lisbon Treaty provides that Article 5 of the Treaty establishing the European Community is replaced with the following Article (3b)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.'

10. The Protocol on the Application of the Principles of Subsidiarity and Proportionality which is referred to above is attached as Appendix 1 to this paper. This briefing note does not, however, provide a detailed article by article description of the protocol but rather focuses on the following 3 key areas which have potential implications for the Assembly.

- Duties on the Commission to consult and justify.
- Role for national parliaments in monitoring the application of the principle of subsidiarity.
- New rights of the Committee of the Regions.

DUTIES ON THE COMMISSION TO CONSULT AND JUSTIFY

11. The Subsidiarity and Proportionality Protocol places duties relating to subsidiarity on the Commission and these may impact on consideration of EU issues by both the Assembly and the Executive. A duty to consult is contained in Article 2 which states that:

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

12. Another duty is contained in Article 5 which, amongst other things, states that *'Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality' and that '...any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality'*.
13. It is not known how narrowly or widely the Commission will interpret the term appropriate and the form that consultation will take. Nevertheless, Articles 2 and 5 have the potential to facilitate enhanced regional involvement in the development of legislative acts.

ROLE FOR NATIONAL PARLIAMENTS IN MONITORING THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY

14. The protocol on subsidiarity and proportionality which formed part of the now defunct constitutional treaty provided for the introduction of a system which, for the first time, gave national parliaments a role in monitoring the application of the principle of subsidiarity. This included a parliament's right to challenge a draft legislative Act if it believed that it did not comply with the principle of subsidiarity. This so-called yellow card system, which is included in the current Subsidiarity and Proportionality Protocol, means in general terms that if a sufficient proportion of chambers of national parliaments¹⁰ raise concerns with a proposal it will need to be reviewed by the appropriate EU institution (usually the Commission). Following this review, the institution can decide to maintain, amend or withdraw the draft but must provide reasons for its decision.
15. In comparison with the protocol which formed part of the constitutional treaty, the Subsidiarity and Proportionality Protocol contained in the Lisbon Treaty enhances the role given to national parliaments in two important ways. Firstly, it extends the period of time national parliaments have to examine draft legislative texts and to give a reasoned opinion on subsidiarity from 6 to 8 weeks.

¹⁰ One third of all votes allocated to national parliaments

Secondly, the protocol adds an additional mechanism for the control of subsidiarity by allowing a simple majority of votes allocated to national parliaments to trigger a procedure which is different from the yellow card procedure. This so called orange card system is more limited in application than the yellow card system but is similar in that the Commission can maintain, amend or withdraw the proposal following review. The system differs from the yellow card system, however, in that the Commission, if it chooses to maintain the proposal, must send reasons for this as well as the reasoned opinions of the objecting Parliaments to the Council and the European Parliament. Either of these institutions may kill off the measure, by a majority of 55 per cent (Members of the Council or votes cast in the European Parliament).

16. The potential role of regional parliaments with legislative power in these processes is provided for in Article 6, which states that:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers. If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States. If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

17. Article 6, however, does not prescribe how national parliaments should engage with regional assemblies or local government in relation to monitoring subsidiarity. In this context, it is worth noting the comments of the House of Lords European Union Committee in a 2005 report which, whilst being made in relation to the defunct constitutional treaty provisions on subsidiarity, nevertheless remain valid.

If national parliaments are to define the role regional assemblies play in monitoring subsidiarity compliance it will be necessary to detail exactly what will be expected of them and what they can expect from the national parliament.

The Federal Trust believes that:

"The role of regional legislative assemblies can be both to hold governments to account in respect of their assessments of the question of subsidiarity and to produce their own independent assessments of compliance with subsidiarity".

In producing their own assessment of subsidiarity compliance regional assemblies can also scrutinise the assessment made by the Government. The two roles are necessarily entwined and complementary.¹¹

¹¹ HoL European Union Committee 14th Report 2004–05 strengthening national parliamentary scrutiny of the EU—the Constitution's subsidiarity early warning mechanism.

18. The Committee report also posed the question as to how the views of regional assemblies with legislative powers could best be presented to the national parliament. The report concluded that regional assemblies should be consulted at both the pre-legislative phase of lawmaking and when potential breaches of subsidiarity are noted. For the former to happen the report highlighted the need for regional parliaments to have early knowledge of forthcoming legislation. Early involvement would also be key to regional assemblies playing a role in monitoring legislative proposals and scrutinising them for breaches of subsidiarity. The Committee noted the importance of 'sustained dialogue' and sharing of information between Parliament and regional assemblies but added that *'For their part regional assemblies should actively seek out information and gather opinions'*.¹²
19. The need for cooperation between UK Parliament and devolved legislatures was also highlighted in the recently published House of Lords Constitution Committee Report on the implications for the UK Constitution of the European Union (Amendment) Bill and the Lisbon Treaty.

There is a clear need for cooperation between the United Kingdom Parliament and the devolved legislatures on European Union matters, particularly the 'yellow card' procedure for policing the principle of subsidiarity. We therefore suggest that the respective legislatures give further consideration to a formal mechanism for improved cooperation on these issues.¹³

20. On the 13th March 2008, the House of Lords European Union Committee published an impact assessment of the Treaty of Lisbon. Amongst other things the report concluded that:

The Lisbon Treaty will have consequences for the procedures of this House and our Committee. The Committee's terms of reference and the Scrutiny Reserve Resolution will require amendment; the House will need to decide whether to delegate its vote in the yellow and orange card procedures to the Committee; and a solution will be needed to the problem which will arise if most of the time allowed by those procedures for parliamentary scrutiny falls in recess. More broadly, we will need instructions from the House as to how far and how formally we should widen our focus, from the traditional dialogue with UK Ministers in Whitehall, to engagement with other national parliaments, EU institutions and the UK's devolved assemblies. There may be resource implications; and it will be desirable to consult the House of Commons. If the European Union (Amendment) Bill is passed, we will put these matters to the Procedure Committee.¹⁴

¹² As above paragraph 204

¹³ House of Lords Constitution Committee: 6th Report of Session 2007-08 European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution (published 28th March 2008) paragraph 144
<http://www.parliament.the-stationery-office.co.uk/pa/ld200708/ldselect/ldconst/84/84.pdf>

¹⁴ House of Lords European Union Committee: 10th Report of Session 2007-08 The Treaty of Lisbon: an impact assessment para 11.59. (published 13th March 2008)
<http://www.publications.parliament.uk/pa/ld200708/ldselect/lducom/62/62.pdf>

21. In its 2005 report on subsidiarity, the House of Lords European Union Committee raised the question as to how to resolve discrepancies between state and devolved chambers in the event that a regional parliament decides to raise an objection and the Member State Parliament disagrees with the views of a regional parliament. The report, referring to evidence which it had received on this issue, stated that:

The Federal Trust suggests that "a framework for the management and individuality of each parliament would need to be agreed possibly based on the form of the existing Concordats between state and devolved authorities in the exercise of concurrent powers in the UK".¹⁵

NEW RIGHTS OF THE COMMITTEE OF THE REGIONS

22. Set up in 1994 under the Treaty on the European Union, the Committee of the Regions is an advisory political assembly representing local and regional authorities in the European Union. The European Commission and the Council of Ministers must consult the Committee whenever new proposals are made in policy areas that affect local or regional government. Northern Ireland has two full and two alternate seats in the Committee with delegates serving on four sectoral commissions. Committee of the Regions members must hold a local or regional authority mandate or be accountable to an elected assembly.¹⁶
23. Article 8 of the Subsidiarity and Proportionality Protocol enhances the status of the Committee of the Regions by providing it with right to bring an action before the European Court of Justice in relation to infringement of the principle of subsidiarity by a legislative act. Furthermore, unlike national parliaments, it is not bound by a deadline for lodging complaints about non-compliance.
24. Mr Delearre, President of the Committee of the Regions, in a speech made at the 8th Conference of Presidents of Regions with legislative power (REGLEG), in November 2008, commented in relation to the Reform Treaty, as the Lisbon Treaty was at then known, that:

The Committee of the Regions also welcomes the Treaty as it relates to its own status...

Since the CoR's creation in 1994, each revision of the Treaties has strengthened its powers and enhanced its political role. This revision is no exception to the rule. It is true that the Committee is still... a committee; it will not become an EU institution in the legal meaning of the term. However, it does obtain new rights, notably the right of direct recourse to the European Court of Justice in the event of a breach of the principle of subsidiarity and the right to appeal to the Court to defend its own prerogatives. Since recourse to the Court of Justice has hitherto been the sole preserve of the EU institutions, in practice, as Antonio Vitorino, former

¹⁵ HoL European Union Committee 14th Report 2004–05 Strengthening national parliamentary scrutiny of the EU—the Constitution's subsidiarity early warning mechanism. para 211

¹⁶ <http://www.ofmdfmi.gov.uk/committee-of-the-regions>

Commission representative on the Convention, currently acting as special advisor to the Portuguese presidency for the IGC, stated before the CoR Bureau, the CoR can now be put in the same category as the other institutions, having become more than a simple advisory body...

Lastly, the protocol on the application of the principles of subsidiarity and proportionality has been included in the Reform Treaty as Protocol no. 2, immediately after Protocol no. 1 on the role of national parliaments. As you note in your draft declaration, the implementation of this protocol will ensure that local and regional authorities are more closely involved in drawing up, implementing and evaluating Community policies. In this context, the monitoring of subsidiarity through the subsidiarity network established within the CoR, opens new possibilities for involving the local and regional tier in multi-level governance.¹⁷

25. The Committee of the Regions created the Subsidiarity Monitoring Network in 2005 in order to facilitate the exchange of information between local and regional authorities of the European Union as regards the various policy documents and proposals of the European Commission.¹⁸ Linkages to networks such as this will be important for the Assembly, as they present an opportunity to share information, views and experiences. This point that was underlined by the European Union Committee of the House of Lords which concluded in its 2005 report on subsidiarity that '*Communication between local and regional authorities across Europe would be just as important as communication between authorities in individual member states and that Regional and local authorities would have to put procedures in place to ensure opinions and ideas were exchanged amongst themselves effectively*'.¹⁹

¹⁷ Speech by Mr Delebarre, president of the Committee of the Regions
8th Conference of Presidents of Regions with legislative power (REGLEG),
Barcelona, 16 November 2007

¹⁸ http://cor.europa.eu/en/activities/sub_mon.htm

¹⁹ HoL European Union Committee 14th Report 2004–05 Strengthening national
parliamentary scrutiny of the EU—the Constitution's subsidiarity early warning mechanism.
para 213

Appendix 1

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES, WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union, RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 3b of the Treaty on European Union, and to establish a system for monitoring the application of those principles, HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 3b of the Treaty on European Union.

Article 2

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

Article 3

For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Article 4

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator. The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments. Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

Article 5

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by

qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Article 6

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers. If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States. If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

Article 7

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament. Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 61 I of the Treaty on the Functioning of the European Union on the area of freedom, security and justice. After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal. If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments will have to be submitted to the Union legislator, for consideration in the procedure:

(a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the

principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;

(b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

Article 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 230 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof. In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 3b of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

Source:

C 306/150 EN Official Journal of the European Union 17.12.2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0150:0152:EN:PDF>