

Report issued by the European Affairs Committee on 9 April 2010

European Affairs Committee 2009-10
EUU alm. del – Bilag 460 (annex 460)
Public

Report

On

Consideration of EU matters by the Folketing in relation to subsidiarity checks

Introduction

The Lisbon Treaty makes national Parliaments the guardians of the principle of subsidiarity with responsibility for monitoring that EU institutions do not adopt legislative acts in areas which are better left to member states to regulate themselves.

The aim of this report is to adapt the Folketing's procedures for consideration of EU matters to allow the Folketing to play its part in ensuring EU institutions comply with the principle of subsidiarity.

Subsidiarity checks

Under Article 5 (3) and Article 12b of the Treaty on the Functioning of the European Union member states' national Parliaments may admonish non-compliance with the principle of subsidiarity directly with EU institutions at an early stage of the legislative process.

Under Protocol No. 2 of the Treaty any national Parliament may, within 8 weeks from the date of transmission of a draft legislative act in the official languages of the Union, send a reasoned opinion to the European Institutions if it considers that the proposal does not comply with the principle of subsidiarity. This opinion should be sent to the Presidents of the Commission, the Council and the European Parliament.

If several Parliaments send reasoned opinions on the non-compliance of a draft, the provisions of the Treaty stipulate that the proposal must *be reviewed* by the EU institutions or, in particular circumstances, that the legislative proposal *be given no further consideration*.

Depending on the number of Parliaments sending opinions and the legal basis of the draft, the matter will be dealt with under one of the following two procedures.

If at least one third of Parliaments send reasoned opinions on draft legislation (yellow card), the proposing institution must *review* the proposal, while reasoned opinions from half the Parliaments (orange card) may lead to the Commission withdrawing its proposal completely. However, the latter procedure only applies to proposals falling under the ordinary legislative procedure.

Finally, the Treaty also offers national Parliaments an indirect possibility of bringing an action for non-compliance with the principle of subsidiarity before the European Court of Justice (Protocol No. 2, Article 8). If a national Parliament is of the opinion that an EU legislative proposal does not comply with the principle of subsidiarity, a member state may bring an action pursuant to Article 263 of the TFEU or by presenting the case in accordance with its internal legal system on behalf of its national Parliament.

The relevant provisions of the Treaty can be found in Annex 3 of this report.

Subsidiarity checks by the Folketing

The purpose of subsidiarity checks is thus to allow the Folketing to complete effective scrutiny of EU legislative proposals for compliance with the principle of subsidiarity within 8 weeks and to enable the Folketing to adopt a reasoned opinion on the proposal if it is found to be non-compliant.

Cooperation between the European Affairs Committee and sectoral committees

Folketinget's subsidiarity checks are based on close cooperation between the European Affairs Committee and the sectoral committees, cf. the European Affairs Committee report dated 10 December 2004.

Checks are conducted on the basic principle that the sectoral committees are responsible for the initial consideration of proposed legislation while the European Affairs Committee adopts the final recommendation to the EU institutions.

The European Affairs Committee will forward all relevant proposals for legislation to the relevant sectoral committee(s) without delay. The sectoral committees have 5 weeks from the proposal being available in Danish to report their preliminary recommendation to the European Affairs Committee if, in their opinion, the principle of subsidiarity has not been complied with. Against this background the European Affairs Committee will adopt its final reasoned opinion no later than 8 weeks after the proposal has been made available in Danish. The reasoned opinion is sent immediately thereafter to the Presidents of the Commission, the Council and the European Parliament.

In case of discrepancy between the recommendations of the sectoral committee and the European Affairs Committee, a joint meeting will be called.

See Annex 1 of this report for a more detailed description of this procedure and the timetable for the consideration of proposals in the sectoral committees and in the European Affairs Committee.

Basic-cum-subsidiarity memoranda from the Government

In support of Folketinget's subsidiarity checks the Secretariat of the European Affairs Committee will draw up an overview of prioritized new proposals for the coming year comprising around 5-10 proposals. The overview will be sent to the members of the European Affairs Committee, to the

sectoral committees and to the Government at the beginning of each year, serving as a starting point for Folketinget's subsidiarity checks. At the same time, the previously existing biannual overviews from the Government will be abolished.

As regards the prioritized new proposals included in the overview the Government will send a basic-cum-subsidiarity memorandum to the European Affairs Committee and to the relevant sectoral committee as soon as possible and at any rate no later than 3 weeks after it has been forwarded to the Council in a Danish language version. As regards Commission proposals, the month of August does not count when setting the deadline.

This 3-week basic-cum-subsidiarity memorandum must contain a description of the background to the proposal, its legal basis, purpose and content, consultation participants and deadlines and the involvement of the European Parliament. The memorandum should furthermore contain the proposer's own assessment of why the principle of subsidiarity has been complied with. On this preliminary basis the Government shall carry out its own independent evaluation of whether the principle of subsidiarity has been complied with. In addition, the memorandum should contain a preliminary indication of whether the proposal is expected to have an impact on Danish law, public finances, the economy in general or protection levels while indicating the Government's preliminary general position on the proposal. A final basic-cum-subsidiarity memorandum shall follow from the Government as soon as possible.

For all other proposals for directives and other major legislative proposals and Commission decisions the Government shall draw up a basic-cum-subsidiarity memorandum. The Government shall send its basic-cum-subsidiarity memorandum to the European Affairs Committee and the relevant sectoral committee as soon as possible and no later than 4 weeks after it has been forwarded to the Council in a Danish language version. As regards Commission proposals, the month of August does not count when setting the deadline.

The basic-cum-subsidiarity memorandum shall meet the conditions laid down in previous reports; this combined memorandum thus replaces the previously existing individual basic memorandum and subsidiarity memorandum.

Bringing actions before the European Court of Justice

Under Article 8 of Protocol No. 2 a member state may bring an action relating to non-compliance with the principle of subsidiarity on the basis of Article 263 of the TFEU or by instituting proceedings on behalf of its national Parliament in accordance with its national legal system.

In those cases where, following a recommendation by the European Affairs Committee, a majority in the Folketing decide to bring an action before the European Court of Justice under Article 263 of the TFEU concerning the non-compliance of a legislative proposal with the principle of subsidiarity, the Government shall present the case on behalf of the Folketing.

In principle, the action is pursued in accordance with the usual Government procedure for pursuing actions in the European Court of Justice. It entails setting up a legal delegation with participants from the Folketing, the Government departments concerned and the Ministry of Foreign Affairs (chairing).

Cooperation with the Parliaments of other EU countries

Finally, the European Affairs Committee considers the development of close cooperation between national Parliaments on subsidiarity checks crucial to ensuring the effectiveness of these checks. The European Affairs Committee will therefore work actively for a strengthening of the cooperation between national Parliaments in the EU in this matter.

Entry into force

This report will enter into force on 15 April 2010 and be evaluated in the second half of 2012.

On behalf of the Committee
ANNE-MARIE MELDGAARD
Chair

The involvement of the Folketing and the sectoral committees in subsidiarity checks

The common procedure for the subsidiarity checks performed by the sectoral committees and the European Affairs Committee within the 8-week deadline stipulated in Protocol No. 2 of the Treaty is set out in tabular form below.

Please note that the President of the Commission, in his letter to the national Parliaments dated 1 December 2009, has indicated that, in view of the parliamentary summer recess, the month of August will not count when determining the expiry of the 8-week deadline.

In practice this means Parliaments are allowed up to 12 weeks for the consideration of proposals which are put forward just before the recess in June or July.

Unless they make exceptions to the rule, the European Affairs Committee and the sectoral committees have agreed to allocate the entire extra month to the initial consideration of proposals in the sectoral committees if 1 August falls within the first 5 weeks of the proposal becoming available in a Danish language version.

Reciprocally, the entire extra month will be allocated to the European Affairs Committee's consideration of the proposal if 1 August falls more than 5 weeks after the proposal becoming available in a Danish language version.

Step	Procedure	
(1)	The Commission or a group of member states proposes a legislative act	
(2)	No later than 3 weeks after the proposal becoming available in a Danish language version	<p>The European Affairs Committee considers the legislative proposal, forwarding relevant proposals for consultation in the relevant sectoral committee(s) without delay.</p> <p>As regards the prioritized new proposals included in the overview, the Government will send a preliminary basic-cum-subsidiarity memorandum to the relevant sectoral committees and the European Affairs Committee within 3 weeks of the proposal having been forwarded to the Council in a Danish language version.</p> <p>The Government's evaluation of whether the principle of subsidiarity has been complied with has been incorporated into the basic-cum-subsidiarity memorandum.</p> <p>The European Affairs Committee's secretariat will publish the basic-cum-subsidiarity memorandum and the related proposal for electronic consultation on the EU Information Centre website.</p> <p>The relevant sectoral committee(s) is/are notified of any replies to the web consultation.</p>
(3)	No later than 5 weeks after the proposal becoming available in a Danish language	The relevant sectoral committee(s) has/have considered the proposal, following which they may have formulated and submitted an opinion to the European Affairs Committee.

	version.	Sectoral committee opinions are published on IPEX without delay while COSAC is notified in case the sectoral committee is of the opinion that there are problems in relation to the principle of subsidiarity.
(4)	No later than 8 weeks after the proposal becoming available in a Danish language version	<p>The European Affairs Committee considers the proposal on the basis of the sectoral committee opinion, the Government basic-cum-subsidiarity memorandum, any replies to the web consultation and opinions from other parliaments/COSAC, if any.</p> <p>In case the opinions from the sectoral committee and the European Affairs Committee differ, a joint meeting is called.</p> <p>The European Affairs Committee's reasoned opinion is signed by its Chair. It is then sent to the Government, the Commission, the Council, the European Parliament and the other national Parliaments in the EU.</p>