



Interview with Mr Jan Jacob van Dijk, Chairman of the joint Subsidiarity Committee of the Dutch Parliament

1. *Could you tell us why the joint Subsidiarity Committee was established? Was it inspired in any way by the provisions of protocols attached to the Constitutional Treaty?*

The wish to establish a committee, specifically for scrutinizing European legislative proposals was originally inspired by the provisions of the protocols attached to the Constitutional Treaty. To that purpose, both Houses established a joint committee in November 2003. Its task was to formulate a working method for the application of the procedure that arose from the protocols. An important motive for establishing a joint committee was to increase the involvement of all MP's, not only the EU-spokesmen and experts in the European legislation-process, thus enlarging European expertise in parliament. The latter was also the basic idea behind the Declaration Raising European awareness, submitted by the Dutch parliamentarian members of the European Convention. Another motive was to find ways to involve both Houses in the European decision-making-process at a moment that it is still possible to influence that process. Furthermore, Dutch society should be involved in the subsidiarity check, both individual civilians as civil society.

The joint committee has indeed formulated a procedure to conduct the subsidiarity-check by both Houses of the States-General. The above mentioned elements are also dealt with. The Committee proposed to establish a new joint committee on Subsidiarity to carry out this procedure.

In springtime this year, the new joint committee was installed for the period of one year after which its work will be evaluated.

The "no" as a result of the referendum did not lead to a decrease of the national wish to establish a parliamentary scrutiny on the principles of subsidiarity and proportionality. On the contrary, it has led to a broad discussion. It was felt that more political involvement in EU-matters is needed and that both Houses of parliament should be more

involved in the European decision-making process in an early stage.

At the same time it was broadly felt that it would be inappropriate to "cherry-pick" some suitable elements from the protocols. Strictly spoken, the protocols provided a procedure for the scrutiny of proposals to the principles of subsidiarity and proportionality. The material scrutiny is already possible under the current regime of the existing Treaties; after all they are governed by these principles. Nevertheless, the first joint committee proposed a procedure in which the subsidiarity check should be conducted within a period of six weeks.

2. *Why did both Houses decide to work together on the issue of subsidiarity check?*

The coordination of positions of both Houses was considered desirable, because opposite voting behaviour of both Houses of Parliament would have a neutralising, if not emasculate, effect. However, although a unanimous outcome should be preferred and aimed for, both Houses kept their own authority to formulate a specific final judgment.

3. *What has been your experience with scrutiny of Commission's proposals so far?*

Off course the States-General took part in the interparliamentary experiment with the Third railway package, conducted by Cosac in 2005.

More recently, the committee on European cooperation organisations of the Senate and the committee on European affairs of the House of Representatives have fixed a list of eleven proposals, to be subjected to the subsidiarity test. The basis of this so-called "list of 11" was the annual legislation and working programme of the European Commission 2006. It also resulted from a thorough discussion in the political fractions and representatives of civil society.

The proposals were:

- Green paper on drugs and civil society in the EU,
- Commission Communication on a coordinated approach in Europe to tackle alcohol,
- Communication from the Commission on a new Community strategy on health and safety at work 2007-2012,
- Green Paper on the evolution of labour law,
- Commission White Paper on the Integration of the EU Mortgage Credit Market,
- Revision of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings (NEC) for certain atmospheric pollutants,
- Proposal for a Council Regulation establishing the European Institute of Technology (EIT),
- Proposal for the full accomplishment of the Internal Market for Postal Services,
- Communication on the demographic future of Europe,
- Proposal for a Regulation on the applicable law and jurisdiction in divorce matters,
- Soil Framework directive.

Two of these proposals were also taken up in the framework of Cosac (Postal Services and divorce matters).

Apart from these proposals the joint committee has also conducted the subsidiarity check to the directive-proposal on criminal measures aimed at ensuring the enforcement of intellectual property rights and the (expected) proposal for a European programme aiming at the protection of the critical infrastructure.

So far, three conducted subsidiarity tests have led to (negative) reactions from the States-General to the European Committee. It concerned the proposals on the enforcement of intellectual property rights, on the applicable law and jurisdiction in divorce matters and the proposal on establishing the European Institute of Technology.

The States-General were happy to receive a material reaction of Commissioner Frattini on the subsidiarity check on the proposal on ensuring the enforcement of intellectual property rights. This was sent to the responsible committees in both Houses to further handling. Commissioner Frattini's letter can help MP's to better formulate their position towards the responsible minister in the Council.

All and all, conducting the subsidiarity test has led to a broader parliamentary involvement in the European policymaking-process.

4. *Could you tell us something more about your participation in the subsidiarity test organized by COSAC on the proposal of the European Commission for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM(2006)399? (*)*

As indicated above, the proposal was already appointed to be submitted to the subsidiarity test in Dutch parliament. Both Houses concluded that the Community is not competent in this matter and that action in this field belongs to the competence of the individual Member States.

The Houses reasoned that neither House has seen evidence that the nature and scope of the problems concerned constitute such a serious obstacle to the proper functioning of the internal market that they warrant the proposed measures. In the opinion of both Houses, this removes the competence of the Community to take the proposed measures.

Additionally, both Houses wish to observe that even if the outlined problems already occur, they can in essence be attributed to differences in the substantive divorce law of the Member States and that it would therefore be logical for any solutions to concern substantive divorce law rather than the national conflict-of-law rules. However, the Community is not competent to take measures that address this matter directly and the present proposal for a Regulation does not therefore affect the substantive divorce law of the Member States.

However, according to both Houses, even if there were any competence it would still have to be concluded on the basis of the above considerations that the proposal is contrary to the principle of subsidiarity and the principle of proportionality.

Jan Jacob van Dijk

() 27 parliamentary chambers from 20 Members States conducted a subsidiarity and proportionality check on the Commission proposal. A clear majority of parliamentary chambers did not find any breach of the subsidiarity or proportionality principles. By letter dated 07.12.2006, Ms Margot WALLSTRÖM transmitted the EC comments on the opinion of the Dutch parliament.*