This briefing provides an overview of the provisions contained in the Treaty of Lisbon (2007) on the principle of subsidiarity. It also provides an analysis of what the subsidiarity protocol means for national and regional parliaments across the European Union and gives details of the reaction of parliamentarians to the proposals.
BACKGROUND

The Treaty of Lisbon was signed by the Heads of State and Government of the European Union’s 27 Member States on December 12, 2007. The Treaty was negotiated following the failure to ratify the Treaty Establishing a Constitution for Europe (TEC) which had been agreed by European Union Member States in 2004. The TEC would have repealed and replaced the Treaty on European Union and the Treaty establishing the European Community. In contrast, the Treaty of Lisbon has been presented as an amending Treaty by the European Union institutions and Member States. Principally it will amend the Treaty on European Union and the Treaty establishing the European Community which will be re-named the Treaty on the Functioning of the European Union.

Following agreement of the Treaty of Lisbon, it is now the responsibility of each Member State Government to ensure ratification of the Treaty. This is currently taking place across the European Union; the aim is to have the Treaty ratified by all 27 Member States by the beginning of 2009. If any Member State fails to ratify the Treaty it will not enter into force. This briefing provides an overview of the significance for Member State and regional Parliaments of the principle of subsidiarity as contained in the Treaty on the basis that it is ratified by all 27 Member States.
WHAT IS SUBSIDIARITY?

From the point of view of national and regional parliaments across the European Union one of the most significant aspects of the Treaty of Lisbon is the inclusion of new strengthened provisions on the principle of subsidiarity. These provisions provide national parliaments and, where appropriate, regional parliaments with a stronger role in the European Union legislative process.

For regional and sub-national governments and parliaments across the European Union, the issue of subsidiarity has been viewed as a key way in which regional influence can be exerted on the European Union. The Committee of the Regions has, since its inception in 1994, “made explicit and constant political requests for the subsidiarity and proportionality principles to be better applied in the Community decision-making process”. (Committee of the Regions 2008)

The Oxford English Dictionary (2008) defines subsidiarity as:

“noun (in politics) the principle that a central authority should perform only those tasks which cannot be performed at a more local level.”

According to the Committee of the Regions (2008) subsidiarity is intended to:

“ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at Community level is justified in the light of the possibilities available within Member States. Specifically, it is the principle whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken by Member States.”

The European Parliament (2008) describes the objective of subsidiarity as:

“The subsidiarity principle pursues two opposing aims. On the one hand, it allows the Community to act if a problem cannot be adequately settled by the Member States acting on their own. On the other, it seeks to uphold the authority of the Member States in those areas that cannot be dealt with more effectively by Community action. The purpose of including this principle in the European Treaties is to bring decision-making within the Community as close to the citizen as possible.”
SUBSIDIARITY IN THE EUROPEAN UNION TREATIES

BEFORE THE TREATY OF LISBON

The Treaty of Maastricht (Official Journal of the European Union, 2006) was the first EU Treaty to include a specific article referring to the principle of subsidiarity. Following Maastricht, Article 3b of the Treaty Establishing the European Community stated:

“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 objective 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.”

Following the Amsterdam Treaty signed in 1997 this became article 5 of the Treaty Establishing the European Community (Official Journal of the European Union 2006). This commitment to subsidiarity was made more explicit in the Amsterdam Treaty when, for the first time, a protocol (number 30) on the application of the principles of subsidiarity and proportionality was included in the Treaty. The Amsterdam Treaty protocol was replaced by a new “Protocol on the Application of the Principles of Subsidiarity and Proportionality” in the Treaty of Lisbon.

THE TREATY OF LISBON

UNION COMPETENCE

Article 5 of the Treaty on European Union sets out the limits on Union competencies in a way which had not been done before. (Official Journal of the European Union 2007)

Article 5

1. The limits of Union competencies are governed by the principal of conferral. The use of Union competencies 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.

According to Miller (2007a):

"Article 5 on "Fundamental principles relating to competence" explicitly defines the limits of Union competencies, which are conferred by the Member States on the basis of subsidiarity and proportionality. The Article stipulates that competences not conferred upon the Union remain with the Member States. In other words, there is a statement, rather than just a presumption, in favour of Member State competence.

Defining the broad areas of competence should help to clarify the subsidiarity principle, which has sometimes been difficult to argue, and will also influence ECJ rulings on questions of competence. As in the Constitution, the Reform Treaty gives an explicit Treaty base to the method of applying the principles of subsidiarity and proportionality via the two protocols mentioned in this Article."

The significant factor in the new subsidiarity protocol is contained in Article 5.3. For the first time this extends the sphere of subsidiarity to regional and local government. As a result of this, regions such as Scotland are explicitly recognised as having a role in the application of subsidiarity in the European Union.

**THE ROLE OF NATIONAL PARLIAMENTS IN APPLYING THE SUBSIDIARITY PRINCIPLE**

Article 12 of the Treaty on European Union sets out the role of national parliaments in the "good functioning of the Union" (Official Journal of the European Union 2007).

Article 12(b) states that:

"National Parliaments contribute actively to the good functioning of the Union:

(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality."

In addition, article 69 of the Treaty on the Functioning of the European Union states that:

"National Parliaments ensure that that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality."
In article 69 the reference to Chapter 4 relates to provisions on Judicial Cooperation in Criminal Matters whilst the reference to Chapter 5 relates to measures for Police Cooperation.

These articles are significant because they explicitly recognise that national parliaments have a role in the operation of the European Union and the Treaty of Lisbon has then provided them with specific powers to influence the EU legislative process. According to Miller (2007a):

“Successive Treaty amendments have tried to tackle the problems raised by national parliamentarians dissatisfied with the failure of the EC legislative process to take their views into account. The problem lies to some extent in the way that national governments inform their own parliaments about EU matters, while the lack of national parliamentary representation at EU level has led to a feeling of alienation and the criticism of a lack of democratic legitimacy in the EU.”

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

The Protocol (Official Journal of the European Union 2007) sets out how the principles of subsidiarity and proportionality will be administered under the Lisbon Treaty. The Protocol is set out in full at Annex A.

Under Article 2 of the Protocol, the European Commission is required to consult widely before proposing legislative acts. Significantly this consultation should “where appropriate, take into account the regional and local dimension of the action envisaged”. The European Commission need not conduct consultations in cases of “exceptional urgency”, though it has to provide reasons for doing this within its proposal.

The Protocol states that the principles of subsidiarity and proportionality will apply to all draft legislative acts from the European Union institutions. Article 3 defines these as:

- Commission proposals
- Initiatives of groups of Member States
- Initiatives of the European Parliament
- Requests from the Court of Justice
- Recommendations from the European Central Bank, and
- Requests from the European Investment Bank.

Article 4 of the Protocol obliges the European Commission to forward all its draft legislative acts and amended drafts to national parliaments at the same time as it sends them to the European Parliament and the European Council. It also obliges the European Parliament to forward all its draft legislative acts and amended drafts to national parliaments, and the European Council to forward draft legislative acts originating from Member States, the Court of Justice, the European Central Bank or the European Investment Bank along with amended drafts to national parliaments.

This Article effectively sets out the first stage in the subsidiarity monitoring procedure in that it ensures that the European institutions must share legislative drafts with national parliaments allowing them to consider the subsidiarity implications of each draft.

Article 5 places a requirement on the European institution drafting or amending a legislative proposal to ensure that it is justified “with regard to the principles of subsidiarity and proportionality”. According to Article 5, this should be done by including in all legislative acts
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.”

Article 5 also requires that the European institution drafting the legislation must be able to substantiate with “qualitative and where possible quantitative indicators” why a Union objective can be better achieved at Union level. To achieve this, “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.”

From the perspective of regional parliaments, Article 6 provides the substantive powers in the Protocol. It provides national parliaments with eight weeks (this is an increase from the six weeks proposed in the failed European Constitutional Treaty) to send a reasoned opinion to the Presidents of the European Parliament, Council and Commission “stating why it considers that the draft in question does not comply with the principle of subsidiarity”. Significantly, for the Scottish Parliament it then adds that “it will be for each national parliament or each chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers”.

This provision in Article 6 appears to give regional parliaments an opportunity to provide an opinion on whether a draft legislative proposal might breach subsidiarity principles from the point of view of the region. It appears clear from the wording of the Protocol that national parliaments are not obliged to consult with regional parliaments even where a proposal relates to a matter devolved to the regional parliament.

Article 7 sets out the way in which the opinions of national parliaments on subsidiarity must be considered by the European institutions. It says that the institution from whom the draft legislative act originates “shall take account of the reasoned opinions issued by national parliaments or by a chamber of a national parliament”. Each national parliament is allocated two votes except where a bicameral Parliamentary system exists where each chamber shall have one vote each.

The number of votes each Parliament has is important because according to Article 7:

“Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all votes allocated to the national parliaments…….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.”

The Article goes on to explain what would happen after the review has taken place:

“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.”

This procedure is often referred to as the yellow card mechanism (House of Lords European Union Committee 2008)
There is also an orange card mechanism. This applies to all legislation made under the co-decision procedure (this has been renamed the ordinary legislative procedure in the Treaty of Lisbon and more information is available on it in SPICe subject map SP 07-03 The European Union - The Legislative Process). If by a simple majority of the votes allocated (currently 28), national parliaments object to a Commission proposal on the grounds that it does not comply with the principle of subsidiarity the Commission must reconsider its approach. If it chooses to maintain its proposal the legislator (the European Council and European Parliament) must consider whether the proposal is compliant with the principle of subsidiarity. According to Article 7:

"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 provides the European Court of Justice with jurisdiction in actions on grounds of infringement of the principle of subsidiarity. The Article also provides for the Committee of the Regions to bring an action before the Court of Justice on the principle of subsidiarity in legislative areas on which it must be consulted under the terms of the Treaty on the Functioning of the European Union.

Article 9 places an obligation on the European Commission to 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. The report will also be forwarded to the Economic and Social Committee and the Committee of the Regions.
REACTION TO THE PROTOCOL ON SUBSIDIARITY

Legislative regions across the European Union have welcomed the Protocol on subsidiarity as a major advance in the role of regions in the European Union (Conference of Presidents of Regions with Legislative Powers 2007).

“The Presidents welcome the new Treaty’s reinforcement of the regional dimension in the EU; the Treaty will allow greater participation by regions in policy formation and decision making. In particular, they welcome the following aspects:

- The new definition of the principle of subsidiarity which recognizes, for the first time, the regional and local dimension;
- The involvement of regions in the drafting of the legislative proposals as foreseen in the Protocol on the application of the principles of subsidiarity and proportionality; (Article 2)
- The reinforcement of the early warning mechanism which will allow national parliaments and regional parliaments – who should be adequately involved in the mechanism - to have an ex ante political control of the compliance of legislative proposals with the principle of subsidiarity;
- The ability of national Parliaments (through their Member State) and the Committee of the Regions to take legal action in the event of infringement of the principle of subsidiarity.“

At its meeting on 5 February 2008, the Scottish Parliament’s European and External Relations Committee (2008) took evidence on the Treaty of Lisbon from Andrew Duff MEP. In relation to the subsidiarity protocol Andrew Duff said:

“The protocol on application of the principles of subsidiarity and proportionality contains the provision that the European Commission must consult at regional level and include the regional dimension in its assessments of draft law. Article 6 of the protocol on the application of the principles of subsidiarity and proportionality is crucial…

The changes that are being wrought by the Lisbon Treaty will have an extensive impact – that should be the primary concern to the Scottish Parliament, especially this committee, in its future work.”

The duty placed on the European Commission to consult widely before proposing legislative acts includes, in Article 2 of the subsidiarity protocol taking “into account the regional and local dimension of the action envisaged” (Official Journal of the European Union 2007). This provides regional governments and parliaments across the European Union with recognition that their views are relevant in the EU policy process. However, in an EU of 27 member states those consultations may only rarely bring benefits to individual regions.

Where it provides national parliaments with a direct role in the policy making process under Articles 6 and 7 of the Subsidiary Protocol, it only provides them with the opportunity to provide an opinion on the subsidiarity principles of a legislative proposal. As such, it does not give them a direct role in influencing the specific policy addressed by a proposal and the European Commission is not immediately obliged to withdraw a proposal if a sufficient number of national parliaments oppose it on subsidiarity grounds.
The House of Commons European Scrutiny Committee (2007) cast doubt on the role of national parliaments in its report on the European Union Intergovernmental Conference which was published on 9 October 2007.

“We doubt the significance of the “greater opportunities” for national parliaments to be involved in any meaningful manner in the workings of the EU without independence from Government whipping systems on subsidiarity and a “red card” system that compels the Commission to withdraw any proposal which threatens to breach the subsidiarity principle.”

The Committee also commented on the required threshold for a Commission proposal to be discontinued if a majority of national parliaments and then more than 55% of the European Council or a majority of MEPs agree with the objections. The Committee said:

“We note the new provisions on the role of national parliaments. In our view, these mark only a minor improvement on the proposals contained in the Constitutional Treaty. If these are to have any real utility, the threshold for discontinuing a proposal which has been objected to on subsidiarity grounds must be made lower than 55% of the members of the Council or a majority of votes in the European Parliament.”

Whilst the Treaty of Lisbon strengthens the powers of national parliaments, it does not directly strengthen the powers of regional parliaments. On this issue at article 6 of the subsidiarity protocol leaves it to national parliaments “to consult, where appropriate, regional parliaments with legislative powers” (Official Journal of the European Union 2007). During his evidence session with the Scottish Parliament European and External Relations Committee (2008), Andrew Duff MEP suggested:

“A formal agreement between the Edinburgh and Westminster Parliaments is now essential. Among the 26 other member states, plenty of examples exist of agreements between regional parliaments with legislative powers and their national parliaments.”

In response to this, Iain Smith MSP asked about the issue of the UK parliament ignoring the interests of the devolved Parliament and Assemblies across the United Kingdom.

“Obviously, the question whether the UK Parliament pays attention to any consultation responses that it receives from the regional Parliaments – the Scottish Parliament, National Assembly for Wales, and Northern Ireland Assembly – is a matter for itself. However, is there any comeback for the Scottish Parliament if the UK Parliament were to fail to consult the regional Parliaments on a matter on which it is obliged by the treaty to consult them?”

In response Andrew Duff MEP said;

“Yes. My answer is straightforward: a Scottish Parliament that found itself neglected by London could make a complaint to the European Court of Justice in Luxembourg. Several clauses in the protocol on subsidiarity could be deployed towards that end. I have no idea how far the case would travel through the court or whether it would be successful, but one of the big issues would be whether the Parliament was a privileged litigant. That said, if the Parliament could expose a failure to have been consulted, in time on key issues that it had identified in advance as being important, it would at least have a sympathetic hearing.

The Scottish Parliament could also deploy the resources of the European Parliament, which is on the side of parliamentary democracy. If the European Parliament saw that the
spirit of the treaty – which was so tortuous to negotiate – was not being respected properly, it would express itself on the matter.”

Another issue which may present problems for regional parliaments is presented by the eight week time period given to national parliaments to present a reasoned opinion on the issue of subsidiarity. Although this is actually an increase of two weeks on the time given in the EU Constitutional Treaty, it still presents regional parliaments with a very tight time-frame to agree an opinion and then transmit it to the national parliament in enough time for it to be included in the overall consideration of a national parliament response.

The House of Lords European Union Committee (2008) concluded that:

“The extension of the period allowed for scrutiny from six to eight weeks makes the yellow and orange card procedures significantly easier for national parliaments to operate than would otherwise be the case. In practice this Parliament may have even longer, since English is usually the first language to emerge from the Commission translators, and it is typically another month before the last language emerges and the formal scrutiny period begins. Nonetheless it will be challenging even for this Committee to reach a considered view on subsidiarity within this time, particularly if, in the case of an adverse opinion, time needs to be factored in to put a motion to the House, and particularly if much of the period falls in recess.”

Whilst the House of Lords’ European Union Committee was commenting on the eight week timescale from the point of view of national parliaments, this problem will be exacerbated for regional parliaments. This is because they will be required to transmit a reasoned opinion to the national parliament in enough time for it to be considered during the national parliament’s formulation of its reasoned opinion to be sent to the European Commission. In effect this probably means the opinion must be developed in much less than eight weeks.
CONCLUSION

The provisions in the Treaty of Lisbon with regard to subsidiarity go much further than any previous European Union Treaty. The requirement placed on the European Commission to “where appropriate, take into account the regional and local dimension” when consulting on a particular proposal is the first time that the regional viewpoint has been acknowledged in an EU Treaty. In addition, the yellow and orange card mechanisms gives national parliaments an opportunity to directly influence the European legislative process on matters of subsidiarity and asks them to consult where appropriate with regional parliaments with legislative powers.

These provisions have been requested by both national and regional parliaments for some time, the challenge for them now will be to make them work. Meeting the eight week timescale given to national parliaments to produce a reasoned opinion objecting to a proposal on subsidiarity grounds will be challenging, and it will be important for regional parliaments such as the Scottish Parliament to put in place mechanisms for closer working with Westminster to ensure the Scottish viewpoint is taken into account when the proposal relates to devolved matters.

Therefore, whilst the provisions relating to subsidiarity have been welcomed by parliaments across the European Union, the challenge that now faces them will be to ensure that they can take advantage of them.
SOURCES


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 5 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 5 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 an objective of the Union can be better achieved at the level of the Union 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 76 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’s 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 263 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 5 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.