PARLIAMENTARY SCRUTINY OF THE EU AFFAIRS IN THE SENATE

The Parliament of the Czech Republic
The Senate
EU Affairs Committee

Contents:

Dear readers,

This text presents an overview of the Senate most important EU-related work since the Czech accession to the Union. In order to facilitate the orientation, we have decided to include some analytical texts in the introductory parts of this paper to set parliamentary scrutiny of the European agenda in a wider context of parliamentary procedure.

Let me start by sharing a personal experience. To this day, I have a clear recollection of being warned by my parents and grandparents when I was four years old not to touch the electric burner once the teakettle has been removed. I did not obey them, perhaps out of curiosity, and put my hand on the burner. I realized they had a point. I still remember the burning pain, my mother's dismayed expression, my father's anger, and my grandfather's slap coming in a succession as quick as first aid allowed. Thirty years later, my younger son Peter and I went on a winter vacation to the Sumava Mountains. I remembered my childhood experience, and soon after we unpacked, I warned Peter to be very careful around hot tea. He was careless, and toppled a cup of hot tea on himself. Instead of skiing, we spent the week commuting to Zelezna Ruda to have his burns re-dressed. Luckily, his burns healed. You may be wondering why I am sharing these personal stories. I am sharing them to show that experience does not internalize by being transferred from one individual to another. Institutions and their Rules of Procedure have been put in place, among others, to prevent our society from "getting burnt."

Since our accession to the EU, the Senate and its EU Affairs Committee have been monitoring the process of European decision making by scrutinizing the work of the Czech government. I owe many thanks to Mr. Jiri Skalicky, who preceded me as chairman of the EU Affairs Committee, for paying so much attention to the selection of his staff – that I have inherited – and for anchoring the emerging European committee of the Senate in the institutional system. Without him laying such a solid foundation, it would have been hard for us to delve so quickly into the European agenda.

We certainly do not expect all our committee members to keep contributing new individual visions of the EU future to the already ample and passionate discussion. We feel our task is to listen attentively to the views of our citizens, and confront them with our government's positions on draft legislative acts of the European Union. Does that seem too little? Our daily workload indicates the opposite. In any case, we have been asked to do just that, and not create social constructs and attractive social symmetries that are removed from reality. We have been given a direct mandate by the people, and have to handle that mandate with the utmost care.

Dear reader, this paper presents the work of many Senators who are assisted in their efforts by the services of the Senate Office. They all deserve my sincere thanks and deep appreciation.

Ludek Sefzig
EU Affairs Committee chairman
The Czech Senate

The role of national parliaments in European affairs

The belief that parliaments must be involved more deeply in the EU decision-making process is certainly not new. It has featured in various debates for many years, particularly due to the deepening integration and the efforts to translate the principles of parliamentary democracy into EU decision-making. Parliamentary involvement in European decision-making is often seen as an effective remedy for the "democratic deficit" of the EU. Joint efforts of the European Parliament (EP) and national parliaments lend greater legitimacy to decisions made by European institutions than singular involvement of the EP would.

While severing the umbilical cord between the European Parliament and national parliaments by introducing direct elections into the European Parliament in 1979, Act No. 278/1976 allowed, in article 5, Members of the European Parliament to serve concurrently as representatives in a national legislature. Most Member States have decided not to use this option. In the Czech Republic, the Act on European Parliament Elections No. 62/2003 Coll. explicitly mentions in article 53 paragraph 2 that mandates in the European Parliament and the Chamber of Deputies or the Senate of the Czech Parliament are mutually exclusive. Since the 2004 European Parliament elections, the mandates in national parliaments and the European Parliament have been made mutually exclusive across the EU. However, pursuant to its Rules of Procedure, the European Parliament has been regularly informing national parliaments of its activities.

Mutual ties between these two parliamentary levels have also been made possible through joint parliamentary committees or European committees in national parliaments. Joint committees of the European Parliament and a particular national parliament have been established in Belgium and Greece. In a significant number of Member States, Members of the European Parliament may attend and address meetings of European committees of national parliaments.

Regular exchange of views among parliaments has taken place since 1981 through Conferences of Parliament Presidents. COSAC, the Conference of Community and European Affairs Committees of Parliaments of the European Union, was established in May 1989. Through COSAC, representatives of national parliaments and the European Parliament have been meeting twice a year in the Member State that holds the presidency on the Council. COSAC was initially designed to improve exchange of information among stakeholders. COSAC role was enhanced in 1999, when it received a mandate to review those legislative proposals and initiatives related to the establishment of the area of freedom, security and justice that have a direct bearing on the rights and freedoms of individuals. At the same time, COSAC may adopt resolutions and contributions regarding the application of the principle of subsidiarity, fundamental rights, the establishment of the area of freedom, security and justice, as well as other legislative issues. Still, COSAC contributions are not binding on Union bodies or national parliaments.

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This brings us to the fundamental issue of the involvement of national parliaments in the European decision-making process. Apart from cooperation with other parliaments, which we have just covered, national parliaments get involved in decision-making processes through various avenues that depend on the constitutional and legal

rules or practices in various Member States.[1] In principle, there are currently two basic options through which national parliaments get involved in the EU decision-making:

I) the adoption and implementation of EU law
II) the scrutiny of positions taken by governments in Council meetings

Ad I) This area includes, first and foremost, direct involvement in the **adoption of primary law,** namely amendments to the Founding Treaties (article 48 of the EU Treaty) and the adoption of Treaties on the Accession of countries to the Union (article 49 of the EU Treaty). As these Treaties are part of international law affecting the sovereignty of national states, the role of national parliaments is irreplaceable. This option however also comprises **adoption of secondary law**, so long as such involvement has been foreseen in EU primary law. Although the European legislative process in EC affairs has been limited to the Union bodies (the European Commission, the Council of Ministers, and the European Parliament), there are cases in which the Founding Treaties foresee or at least allow direct involvement of Member State institutions. It applies in particular to those decisions of the Council that concern issues in which Member States insisted, with a view to protecting their sovereignty or sensitive interests, on a direct involvement of national bodies in the European legislative process.

This case has been envisaged already in the Treaty establishing the European Communities concerning the Council Act on direct elections into the European Parliament pursuant to article 190 paragraph 4 or concerning citizenship of the Union pursuant to article 22. Other instances may be found in the European Union Treaty (TEU), such as common defense or the integration of Western European Union structures into the EU (article 17 paragraph 1 of the TEU) in the sphere of Common Foreign and Security Policy. Another case is the possibility of transferring measures in police and judicial cooperation in criminal affairs from the third to the first pillar (article 42 of the TEU). National parliaments have also been involved in this area thanks to conventions established pursuant to article 34 paragraph 2d of the TEU. These conventions are considered agreements under international public law, although in the context of European law they serve as secondary legislation implementing provisions of primary law. We also ought to mention international treaties pursuant to articles 24 and 38 of the European Union Treaty, though they are usually not given enough attention in national parliaments.

Apart from these cases of direct involvement of national parliaments in the adoption of European law, we also need to mention their indirect involvement by **implementing community law** into the legal systems of Member States. Procedures laid down in domestic legislation of Member States foresee various ways of carrying out the duty of taking appropriate measures in order to fulfill obligations arising from the Founding Treaties or other Acts adopted by Union bodies. These procedures determine when obligations arising from European law must be met jointly by legislative or

[1] Concerning the involvement of national parliaments in Member States in the European agenda, see in particular: L. Pítrová et al.: Úloha národních parlamentů v legislativním procesu v Evropské unii [The Role of National Parliaments in the Legislative Process of the European Union]. In: Právník 10/2002, p. 1013-1070, and monographs P.A.Weber-Panariello: Nationale Parlamente in der Europäischen Union. Baden-Baden 1995, P. Norton (ed.): National Parliaments and the European Union. London 1996, A.Maurer, W. Wessels (eds.): National Parliaments on their Ways to Europe: Losers or Latecomers? Baden-Baden 2001, or M. Zier: Nationale Parlamente in der EU. Göttingen 2005.

executive bodies, and when the legislature may delegate such powers to executive bodies. Powers of direct implementation may also be conferred on regional administration (such as in Belgium and Italy.)

Ad II) Day-to-day involvement of legislatures in the EU decision-making process is guaranteed by the division of responsibilities between the government and the parliament, which is a basic attribute of parliamentary democracy. Whether the minister that makes decisions in Council meetings on behalf of the Member State is bound by the position of his/her Parliament is decisive for the relationship between legislative and executive bodies in EU affairs. Effective parliamentary scrutiny of governments in EU affairs will depend on constitutional limits and procedural provisions, and those tend to differ significantly among Member States. At a basic level, the parliament or its committee may request **a consultation with cabinet ministers** on a particular legislative proposal, or may at least comment on such a proposal before the meeting of the Council. **The parliament's position** may be either non-binding (such as in Belgium, France, Spain and the UK) or at least politically binding (in some Scandinavian countries).

Denmark has created a specific concept of a **negotiation mandate**. This mandate lends the legislative assembly very significant power. The Danish government must inform the EU committee of the *Folketing* in advance of any acts proposed in the Council of Ministers that would be directly applicable in Denmark upon approval by the Council or whose implementation requires parliamentary ascent. The minister who attended the relevant meeting in the Council must inform the committee about the course and the results of the meeting within a week. In case of wider decisions, the government also asks the committee for a negotiation mandate before the Council meeting. There is no formal vote on the execution of the mandate. In the absence of significant reservations during the debate, the chairman announces at the end of the meeting that the majority of the committee does not object to the representative of the government carrying out the mandate. Refusal to debate the mandate has been quite rare in Denmark. Disputes are resolved by consensus.

Although the Danish model is rather exceptional in Europe, there has been a general tendency to enhance the position of parliaments vis-à-vis governments of Member States. Pursuant to the adoption of the Maastricht Treaty, parliamentary scrutiny of the government in Council meetings has been enhanced in Germany. In light of article 23 paragraph 3 of the German Basic Law and articles 2 and 5 of the Act on the Cooperation between the Federal Government and the Federal Assembly (*Bundestag*), a German cabinet minister must take into account the position of the Federal Assembly, and in certain issues pertaining to federal states he has to take particular account (*maßgebliche Berücksichtigung*) of the position of the Federal Council (*Bundesrat*). In connection with debates on the adoption of the EU Constitutional Treaty, legislation was drafted in Germany to further enhance the powers of national parliaments particularly with regard to subsidiarity check.

Parliamentary reserve is another tool that can further enhance the position of the parliament by making it impossible for a cabinet minister to take a position on a proposal debated in the Council of Ministers if the legislature has not presented their position. In United Kingdom, parliamentary reserve is grounded in the House of Commons 1990 resolution based on which the government may not adopt a final position in Council meetings so long as:

- the Select Committee on European Legislation has not completed their review of the draft legislative act or

- the draft legislative act has been referred by the committee to the agenda of the House, but the House has not adopted a resolution in the matter. There are some exceptions. The House of Lords has been given the same right of applying a parliamentary reserve to a particular draft legislative act.

Despite all this clear success in enhancing the role of national parliaments in European decision-making through national legislation, there are still critical voices pointing out that real practical opportunities for national parliaments to act remain limited. Professor Peter M. Huber[2] of the Jena University sees the principle obstacle to stronger scrutiny of the Council by national parliaments in short deadlines for the review of a particular legislation by a relevant committee, in communication problems with other authorities, and in the need to deal within one session with „packages" of unrelated proposals that had not been pre-selected. Parliaments are regularly being overextended, as exemplified by Belgium, Austria and the United Kingdom. Furthermore, Reinhard Stutz criticizes the German government for presenting outdated reports to the Federal Assembly, and for sending junior officers to present reports. He also mentions that the Ministry of Foreign Affairs fails to present to the parliament strategic documents that serve as background for Council meetings.[3]

Certain voices have even called for amendments to the Founding Treaties that would unify divergent ways of scrutiny in Member States and define priority areas in which ministers would be obliged to consult with parliaments before Council meetings. Parliamentary debates could then focus on pre-defined sensitive areas, such as the second and third pillars of European law, certain appointments arising from the EC Treaty, regulations issued without a specific mandate anchored in the Treaties in order to achieve the objectives of the Communities (see article 308 of the EC Treaty)[4], acts that are controversial with regard to subsidiarity, and – if a clear hierarchy of legislation is introduced – also fundamental legislative acts. Of course, these proposals could materialize through a certain degree of self-regulation in legislatures; they could achieve broader implementation through exchange of experience among national parliaments.

The adoption of the Declaration No. 13 on the role of national parliaments in the EU as annex to the Maastricht Treaty, following UK and French initiative, marks the first step toward creating a European framework for sharing best practices. The Declaration highlighted the importance of involving national parliaments in the "European agenda," and appealed to the governments to secure "timely submission of Commission proposals to national parliaments for information and possible debate." This document has started the process of "re-parlamentarizing" European politics. Occasional thought seemed to have been given in the UK and France to the possibility of establishing a second house of the European Parliament, composed of representatives of national parliaments, but they failed to win sufficient support even among Members of national parliaments.

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[2] P.M. Huber: Die Rolle der nationalen Parlamente bei der Rechtssetzung der Europäischen Union. Zur Sicherung und zum Ausbau der Mitwirkungsrechte des Deutschen Bundestages. Hanns-Seidel-Stiftung Aktuelle Analysen 24. München 2001, p. 39.

[3] R. Stutz: Účast Spolkového sněmu na záležitostech Evropské unie [The Involvement of the Federal Assembly in EU Affairs]. In: Mezinárodní politika 10/2000, p. 12ff.

[4] Compare L. Dini's contribution to the debate at the Convention on the Future of Europe (document CONV 32/02).

On the other hand, a different set of proposals aimed at satisfying the need for an increased role of national parliaments, received a warmer welcome. A Protocol on the role of national parliaments in the EU was attached to the Amsterdam Treaty of 1997, regulating interparliamentary cooperation (see points regarding the COSAC reform of 1999) and parliamentary scrutiny of governments' actions regarding European issues. The Protocol stipulated that

- All consultation documents issued by the European Commission (white and green papers and communications) shall be immediately sent to national parliaments of Member States;
- Commission's draft legislative acts designated by the EU Council Rules of Procedure pursuant to article 207 paragraph 3 of the Treaty establishing the European Communities (therefore not applying to Common Foreign and Security Policy documents, Member State proposals and Schengen regulations unless they have been incorporated into community law) shall be made available in time to national governments who shall forward them to national parliaments;
- At least six weeks must elapse between forwarding a draft legislative act or a proposal pursuant to article VIII of the Treaty establishing the EU (enhanced cooperation) to the Council and the European Parliament, and deliberation on such a proposal in the Council. It is in this time period that national parliaments may deliberate on the draft European act within constraints set by national legislation.

As recalled in the preamble to the Protocol, the extent to which legislative and other legal acts of the Communities will be debated there is determined by the constitutional system of every Member State. The Protocol ensures a minimum protection of national parliaments' interests by requiring that they be informed. It is then up to national parliaments to seize this opportunity.

The Nice summit of 2000 did not leave the position of national parliaments unattended. Declaration No. 23 attached to the Nice Treaty contains an appeal to interested parties to deepen their debate on the future of the EU while giving space to national parliaments in that debate. The Laeken Declaration explored the issue of the EU's democratic legitimacy, and asked three specific questions to be answered by the Convention on the Future of Europe:

1) Should national parliaments be represented in a new institution that will serve alongside the Council of the EU and the European Parliament?

2) Should they have a role in areas of European action in which the European Parliament has no competence?

3) Should they focus on the division of competence between the Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?

It is worth noting that unlike previous EU documents, these questions are not concerned with *national* roles of parliaments but open the way for a direct involvement of national legislatures in decision-making at *European* level. The first "Laeken question" responds to the idea of creating another legislative body in the Union by establishing the second chamber of the European Parliament (the European Senate) or a Congress of Parliaments. The second question indicates the possibility of involving national parliaments in the sensitive issues of foreign and security policy or common defense,

while the third question raises the issue of parliamentary check of subsidiarity in the distribution of competences. Subsidiarity checks have gradually become the most prominent issue in debates about the future role of national parliaments in the European agenda.

The check of subsidiarity principle in the EU

Subsidiarity has featured prominently among the fundamental principles of the European legislative process. The importance of subsidiarity is not only mentioned in the political concepts of further European integration but has also been translated into current European law through regular assessment of the need to adopt newly proposed legislation at a European level.

The need to assess compliance of community legislation with the principle of subsidiarity has been highlighted since the 1980's or early 1990's. The reason can be found in greater numbers of European legal standards affecting people's everyday lives and in the transformation of what used to be a predominantly economic community into a union that has set out a number of primarily political objectives related to sensitive areas of state sovereignty.

The principle of subsidiarity therefore serves as a useful tool in that it helps review the need and effectiveness of European decision-making on two levels. First of all, it does so in defining competences entrusted to the European Union in the Founding Treaties ratified by all Member States, and secondly in deciding whether the Union ought to use those powers in particular cases and adopt community legislation that will replace national standards applicable in Member States. As much as the answer to this question may differ due to divergent circumstances in Member States or beliefs held by centers of power, the important thing is that the question has been raised and thoroughly explored in the legislative process.

Having been coined in classical treatises on political philosophy and Catholic social teaching, the principle of subsidiarity found its way into European law already at a relatively early stage. Article 5 of the 1951 Treaty establishing the European Coal and Steel Community foresaw the power of subsidiary intervention through the "limited intervention" by Community bodies. In article 94, the 1957 Treaty establishing the European Community (TEC) empowers the Council to issue directives in order to harmonize national regulation in the common market, while making it possible through article 308 to adopt directives even outside of areas explicitly mentioned as community competence. However, these directives must be necessary to achieve one of the objectives of the Community. Before the adoption of the Treaty on EU, additional space for the application of subsidiarity was created by article 86 paragraph 3 of the Treaty establishing the EC.[5]

The principle of subsidiarity has not been, however, explicitly anchored in the legislation of the European Community until the adoption of the Single European Act in 1986, and even then it applied only to environmental protection. The principle of subsidiarity was genuinely incorporated into European law in 1992 with the adoption of the EU Treaty. The Treaty establishing the EC referred to the principle of subsidiarity in its Preamble[6], and incorporated it in the text of article 5. The provision reads: "In areas

[5] See also R. Arnold: K zásadám subsidiarity a proporcionality v komunitárním právu [On the principles of subsidiarity and proportionality in community law]. In: Právní rozhledy 12/2000, p. 9-11, P. Běhan: Princip subsidiarity a proporcionality v tvorbě komunitárního práva [The principle of subsidiarity and proportionality in the creation of community law]. In: Právník 2/2002, p. 179-206, and J. Georgiev, Princip subsidiarity a jeho pojetí v evropském právu [The principle of subsidiarity and its concept in European law]. In: Justiční praxe 7/2002, p. 74-77.

[6] The sentence reads: „The decision to continue the process of fostering an ever closer union among the nations of Europe, in which the decisions are made, in compliance with the principle of subsidiarity, as close as possible to the citizen." The text of the Preamble is further elaborated through Articles 1 and 2 of the Treaty on the EU.

which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community." This rendition of subsidiarity has been criticized for being rather vague and lacking specific control mechanisms.[7]

The principle of proportionality has entered European law alongside the principle of subsidiarity. The principle of proportionality has been expressed in the same article 5 of the Treaty establishing the EC in the following words: "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty." The European Community may therefore act in areas of competence shared by the EC and Member States only if the objective cannot be reached more effectively by legislating in Member States and if it can be reached more effectively by Community action. At the same time, consideration should be given to what means are adequate to reach the objective.[8]

Practical details of the application of these two principles were laid down in the 13 points of the Protocol on the application of the principles of subsidiarity and proportionality adopted in 1997 in connection with the conclusions of the European Council in Birmingham (October 1992) and Edinburgh (December 1992). The Protocol is an inseparable part of the Treaty Establishing the EC. The Protocol obliges all bodies to ensure compliance with both principles, while respecting the balance between the institutions of the Community, by adopting only necessary measures that are as simple as possible. Each legislative proposal of the Community must contain quantitative and qualitative justifications of the need to adopt it through community law.[9]

According to the Protocol, as much space as possible should be left for decision-making in Member States, as long as it is compatible with the objectives of EC measures. Attention should be paid to respecting established national mechanisms and organizations as well as the functioning of legal systems in Member States. The following criteria should be used according to the Protocol in determining whether Community action is justified:

- the issue in question has supranational aspects that do not lend to acceptable regulation through actions by Member States,
- actions carried out only by Member States or inaction of the EC would run counter to the requirements of the Treaty (e.g. enhancing economic and social cohesion or the need to rectify distorted competition),
- given its scope and effects, EC action has clear advantages over action by Member States.

The principle of subsidiarity and proportionality limits excessive red tape in the process of adopting decisions concerning the free movement of goods and services at European level. The principle of mutual recognition of national standards, confirmed by

[7] Compare K. Hailbronner, Das Subsidiaritätsprinzip als Rechtsbegriff nach dem Maastrichter Vertrag. In: K. Hailbronner (ed.), Europa der Zukunft – Zentrale und dezentrale Lösungsansätze. Köln 1994, p. 49ff.

[8] See also the document of the Convention on the Future of Europe (CONV 47/02), p. 7.

[9] In this context, the Protocol sets out a number of tasks for the European Commission, starting with the obligation to consult broadly its proposals and justify them with a view to the principle of subsidiarity. The Commission also has to consider the impacts of the measures on states, local authorities, natural persons and legal entities, and shall submit an annual report on the application of these principles to the European Council, the Council of Ministers, and the European Parliament. This report is also sent to the Committee of the Regions, and the Economic and Social Committee.

the European Court of Justice, prevents excessively detailed harmonization and ineffective unification of requirements for the production of goods.

In view of article 6 of the Protocol, we may conclude that of the legal instruments available to the EC, directives are ideal from the point of view of subsidiarity and proportionality, in that they set out a required outcome while leaving ways of achieving this outcome to Member States and their specific legal systems.

The Protocol contains safeguards that prevent the use of the principle of subsidiarity as a means of challenging the competence of the Community and rejecting the primacy of European law. Subsidiarity and proportionality thus do not apply to principles established by the European Court of Justice to govern the relationship between national law and EC law. The principle of subsidiarity therefore may not be used as a pretext to challenge EC powers as interpreted by the ECJ.[10]

The European Constitutional Treaty drafted by the Convention on the Future of Europe initiated new debates on the principle of subsidiarity. It was meant to include a Protocol on the application of subsidiarity and proportionality envisaging a two-stage subsidiarity check. The first phase was tentatively called the *early warning system*. The early warning system dovetailed in the model that we described when we spoke about the scrutiny of national governments by national parliaments. Having received a draft legislative act from the European Commission[11], national parliaments may communicate with the government, whose representatives will decide on the fate of the draft legislative act in the Council, as well as send a justified objection to the European Commission, European Council, and European Parliament if they believe the adoption of such a draft legislative act counters the principle of subsidiarity. The deadline for sending such an objection is 6 weeks after the receipt of the draft legislative act.

To forego frequent objections, the draft Protocol made it incumbent on all Union bodies to observe the principle of subsidiarity, and required the European Commission to carry out sufficient consultations of their legislative intentions. Each proposed legislative act also must have a "subsidiarity clause" justifying why it is more effective to adopt the measure on a European rather than national level. The clause was expected to draw on qualitative as well as quantitative indicators (including financial analysis). While the procedural definition of subsidiarity checks is among the strong sides of the Protocol, its weakness lies in the absence of relevant substantive and legal yardsticks of compliance with the principle of subsidiarity, even in comparison with the existing Protocol that contains such criteria, as shown above.

Let us raise another question that is significant for the Senate: How did the Protocol deal with the issue of bicameral parliaments? How did it provide for cases when the opinions of two houses of one legislature diverge? The solution outlined in the new Protocol corresponded to the proposal submitted at the Convention by the chairwoman of the working group for national parliaments Gisela Stuart[12], and was in line with the model supported by the Czech Senate in its Resolution on the draft Constitutional Treaty of the EU from 17 April 2003.[13] Each national parliament would have two votes, of

[10] Unlike the review of proportionality, the principle of subsidiarity has so far not played an important role in the decisions of the European Court of Justice. See L. Thorlakson, Building Firewalls or Floodgates? Constitutional Design for the European Union. In: Journal of Common Market Studies 44/2006, p. 139-159, here p. 151ff.

[11] Similarly, the European Parliament and Council are obliged to send legislative resolutions and common positions to national parliaments.

[12] See the document CONV 540/03 of 6 February 2003.

[13] The resolution features on the Senate's website at www.senat.cz/evropa.

which one vote would go to each House of a bicameral Parliament. If one third of votes object based on breech of subsidiarity, the European Commission would have a statutory duty to review the proposal; it would be in a position to amend it, withdraw it, or insist on its previous position. Be it as it may, it would always have to justify its position.

If the approved draft legislative act[14] is adopted despite lasting doubts as to its compliance with subsidiarity, any Member State may, on the initiative of its national parliament or one of its houses, bring an action to the European Court of Justice within the intentions of the current article 230 of the Treaty establishing the EC. The Constitutional Treaty would give competence to the European Court of Justice to review the legality of European legal acts on grounds of lack of competence on the part of an EU body, infringement of an essential procedural requirement, infringement of the Founding Treaty or of any rule of law relating to its application, or misuse of powers.

The report issued by the European Integration Committee of the Senate on 30 September 2003 noticed a problem in the mechanism proposed by the EU Constitutional Treaty for ex-post subsidiarity check of already approved community legal acts. Leaving aside the nebulous language of the Protocol annexed to the Constitutional Treaty that did not clearly imply how parliaments (mostly bicameral) and governments were to communicate in bringing an action to the ECJ, there were two noteworthy issues. First of all: breeches of subsidiarity are possibly a political issue, yet they should be decided by a court. Furthermore, the court being the European Court of Justice that has traditionally followed the rule that if there is doubt (and the principle of solidarity presumes the existence of such a doubt!) the competence dispute ought to be interpreted with a view to the interests of the whole Community. That is why we have heard, mostly from the German Federal Constitutional Court, calls to establish a special competence tribunal that would decide these issues independently of European and national courts.

During the period of reflection following the failed ratification of the European Constitutional Treaty, thought has been given to the possibility of implementing certain non-controversial concepts contained in the draft Constitutional Treaty without its formal ratification, based on current Founding Treaties. Subsidiarity checks were one of them. That is why the UK proposed during its Presidency in the second half of 2005 to introduce a new mechanism inspired by what the Constitutional Treaty called the early warning system under the conditions compliant with the currently applicable Protocol annexed to the Amsterdam Treaty. After all, more than a half of Member States follows this principle through parliamentary scrutiny of the government, among them new Member States such as Czech Republic, Estonia, Lithuania, Hungary, and Malta. The British idea was that the Member State holding EU presidency would identify, upon suggestion of national parliaments, problematic legal acts[15] and national parliaments would have a choice whether they want to adopt positions on compliance with the principle of subsidiarity and proportionality. They would send these positions within the already applicable six-week deadline to the European Commission as well as to the COSAC Secretariat, who would dissipate such information among parliaments.

The proposal made by the British presidency followed the basic lines of a proposal raised, independently of the British proposal, in COSAC by Senator Ludek Sefzig, Chairman of the EU Affairs Committee of the Czech Senate. His proposal also

[14] Let us not forget that even if the European Commission does not accept the objections of breech of subsidiarity, legislative assemblies in member states may influence the adoption of the contested draft legislative acts via the ministers who make decisions in the Council of the EU.

[15] Posibly relevant legislative acts can be incurred in advance from the Commission Annual Legislative Plan.

recommended the use of the IPEX database, currently under development, to share information among legislatures. The Estates-General of the Netherlands responded positively to the British and Czech proposals. Moreover, representatives of the French Senate and the Portuguese Parliament joined with a similar proposal. As of 2006, a new system has been put in place to check compliance with the principles of subsidiarity and proportionality with the intention of helping bring the European decision-making process closer to citizens of Member States while providing space for a more active mediating role of national parliaments. Direct involvement of national parliaments in the EU legislative process may be considered a response to complaints that the Union's democratic deficit has grown deeper as decision-making powers moved beyond the reach of direct parliamentary oversight.[16]

[16] D. Beetham, Ch. Lord: Legitimacy and the European Union. London 1998, p. 25: „At the same time, taking more policy areas out of the hands of national parliaments accentuates the EU´s democratic deficit in respect of popular authorisation and accountability."

National parliaments and the draft Reform Treaty of EU

Within the context of the shifts in the debate to be heard from both political representatives and academic circles during the years following the rejection of the draft EU constitution in France and the Netherlands in 2005, calls have grown louder for national parliaments to play a more distinct role in the EU's decision-making process. Legislatures in Member States began to find that they had been assigned a key mediating role in bringing the European agenda closer to citizens in a way that was more distinct than before. Of course, the success of this process depends significantly on the other side of the coin, meaning how much significance the legislatures of Member States give to draft EU legislation being debated at the EU Council of Ministers. This emphasis understandably relates to the degree of influence which parliamentary bodies have on national governments, each one of which is guaranteed by national constitutional order, standing rules of parliamentary chambers or by habits which have progressively taken hold, or which continue to be formed, especially in the case of new accession Member States.

The involvement of the legislature in Member States will have this desired effect on the condition that they see the role of approving primary legislation (Founding Treaties) as being a relevant one, as well as having considerable participation in decision-making about the form of secondary legislation (draft legislative acts of EU bodies). This issue was the subject of much discussion during the course of preparation of the new EU Reform Treaty (the Lisbon Treaty), which was designed to amend the existing Founding Treaties in a way that can replace the project for an EU constitution.

As regards anchoring the position of national parliaments in EU primary legislation, the provisions of Art. 8c of the Lisbon Treaty represent a systematic overview of methods, by which "National Parliaments contribute actively to the good functioning of the Union":

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European 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;
(c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 61c of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 69g and 69d of that Treaty;
(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
(e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
(f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

The competence of national parliaments to act in EU matters is subsequently further elaborated in sections of the Treaty on European Union and the Treaty on the

Functioning of the European Union[17], as in the Protocols on the role of National Parliaments in the European Union and on the application of the principles of subsidiarity and proportionality, attached to the draft Reform Treaty.

Arts. 48 and 49 of the Treaty on EU deal with the process of adopting primary law, during which Member States' legislatures occupy the position of "lords of the treaties". Both in accordance with the concept of delegated authority (Art. 3b) and in terms of formal procedure, Member States retain their "jurisdictional competence".[18] From the point of view of European law, national parliaments retain the right to decide about the **accession of new Member States** (in the case that a referendum is not called, in accordance with domestic practice. This is required, for example, by the French constitution). Art. 49 states that national parliaments should be informed about applications for membership of the EU submitted by applicant states.

Art. 48, however, brings a more significant shift. Under paragraph 1 of this article, proposals for **amendments to Founding Treaties** can "lead to either extension or limitation of the powers entrusted to the Union in the treaties" (known as the principle of two-way flexibility). In order to justify the "scope of proposed amendments", a convention should be called to debate this, comprising representatives of national parliaments, heads of state or prime ministers of Member States, as well as representatives from the European Parliament and Commission. It provides a basis in primary legislation for the convention model which was used during the course of debating the Charter of Fundamental Rights, the draft Constitution and the draft Reform Treaty. On the other hand, it is clear that the future standard ratification in accordance with the constitutional order of Member States – whether this uses the convention model or merely the simplified form of intergovernmental conferences – would concentrate mainly on changes to the institutional architecture of the Union.

Through the relatively broad circle of powers shared by the EU and Member States on individual Union policies, together with the flexibility clause (Art. 308 of the Treaty on the Functioning of the EU)[19], which according to the Reform Treaty should no longer be limited to regulation of the internal market, and through "simplified procedure" for adoption of amendments to European law (Art. 48 pars. 6-8), it can be often possible to find a rapid solution for jurisdictional questions without the need for ratification of such amendments by national parliaments. In the field of secondary legislation, these and other measures function in the spirit of improving the decision-making process and provide an overall "simplification" of the Union law-making process, which on the other hand logically emphasises the need for its increased legitimacy.

For national parliaments which might feel harmed by this tendency, the draft Reform Treaty provides a remedial instrument in the form of a **right of veto on the**

[17] The Treaty on the Functioning of the EU is a new title for the former Treaty on the Founding of the EC which is introduced by the draft Reform Treaty. Concerning the methodology and content of the document in overview L. Pítrová *et al*, Lisabonská smlouva. Co nového by měla přinést? [The Lisbon Treaty. What new should be introduced?]. Parlamentní institut 2008.

[18] For a definition of the term *Kompetenz-Kompetenz*, in particular C. Schmitt, Verfassungslehre. Berlin 2003, p. 386-387.

[19] This clause enables the Council of Ministers to adopt unanimously suitable provisions in cases when "in order to achieve certain of the objectives set in the Treaties a particular activity is required by the Union as part of the policies defined by the Treaties, which do not however grant the necessary authority for such an activity". The area of the common foreign and security policy of the EU is explicitly excluded from application of these provisions. For interpretation of the provisions, account should also be taken of Declarations Nos. 41 and 42, which are attached to the draft Reform Treaty.

bridging clause in a general format which is expressed in Art. 48 para. 6.[20] This empowers the European Council to adopt a decision unanimously which in turn enables the voting on decisions at the Council of Ministers in certain areas or in certain cases to be made by a qualified majority instead of unanimity, or via the regular legislative procedure which replaces a special legislative procedure, i.e. the change to the customary procedure under EU law in the realm of *acquis communautaire*. A change in the decision-making process which takes the form of loss of the right of veto would implicitly mean a weakening of a national parliament's mandate (the opinion held by a national parliament could be outvoted following such a change), and therefore it is logical that the Treaty on EU enables the use of the right of veto not only for the above-mentioned general bridging clause, but also for the sectional bridging clause in matters relating to family law with an international element. Art. 65 para. 3 of the Treaty on the Functioning of the EU introduces the right of national parliaments to veto transition to a regular legislative procedure for those matters in which the Council of Ministers currently decides unanimously following consultation with the European Parliament.

The draft Reform Treaty does not however introduce a similar mechanism for the above-mentioned flexibility clause, and even in the case of the other particular empowering clause, which is provided for in the draft Art. 69b para. 1 of the Treaty on the Functioning of the EU, where the Sector Council would decide on whether to include further areas of criminal activity into the realm of Union regulation, there is no opportunity for Parliament to express its disapproval. This is the case even despite the fact that overall introduction of Community method in the sphere of the current third pillar of European law (police and judicial co-operation in criminal matters), which the Reform Treaty provides, is a sensitive matter with regard to the standing of national parliaments for three reasons.

Firstly, as has already been mentioned, loss of the right of veto affects the strength of a parliamentary negotiating mandate, which a government is granted prior to its participation in the Council of Ministers. Secondly, the course of subsequent implementation of the directive, when adopted, would differ from the procedure for framework decisions practiced until now in that non-fulfilment of transposition obligations can be penalised directly by the European Commission or the European Court. The undeniable authority of EU institutions hence supports the obligation of national parliaments to implement EU directives within national legislation.

The third reason is the abolition of the instrument of treaties which become valid after ratification by the legislative bodies of Member States. The status of, for example, Europol[21] has been established on the basis of such a treaty. Compensation for changes in the realm of the "third pillar" should, in addition to special regulation of control of adherence to the principal of subsidiarity (Art. 61b), provide national parliaments in primary legislation with the possibility, which is not specified further, of delivering **information on developments in co-operation** in the sphere of freedom, security and justice in accordance with Art. 61c and 61d of the Treaty on the Functioning of the EU

[20] National parliaments can express their disapproval during a period of 6 months following the announcement of such an intention by the Council of Europe. If disapproval is not expressed within this period, the Council of Europe may adopt this decision.

[21] Not given consideration here is Art. 188l of the Treaty on the Functioning of the EU, which enables the Council of Ministers to conclude international contracts with a qualified majority without the regular ratification process in Member States and with relatively broad scope.

and on **involvement in evaluation of the activities of Eurojust** (Art. 69d para.1) and similarly also in **monitoring the activities of Europol** (Art. 69g para. 1).

The greatest attention, however, concerning the standing of national parliaments, has been attracted by the Protocol on the application of the principles of subsidiarity and proportionality, which is intended to replace the existing Protocol on the application of the principles of subsidiarity and proportionality attached to the Treaty of Amsterdam from 1997. Despite the fact that every EU body has a duty to insist on adherence to both of these sets of principles, and even though the European Commission is additionally tasked with carrying out "extensive consultation" (Art. 2 of the Protocol) prior to presentation of a draft legislative act, national parliaments would have a special level of accountability through what is called an **early warning system**.[22] This arrangement differs from the Convention system proposed in the EU Constitutional Treaty in the fact that it includes not only yellow, but also orange cards. After drafts of legislative acts have been sent to national parliaments, which is concurrent with their formal submission, national parliaments should have an eight-week period available to them for review. With the aid of in-depth information containing both qualitative and quantitative data on the need for the adoption of the new regulation, national parliaments should reach a conclusion as to whether the regulation either conforms to or contravenes the principle of subsidiarity.

In two-chamber parliamentary systems, each chamber should have one vote (for single-chamber systems, each parliament as a whole has two votes) and each chamber should send its standpoint separately to the body which submitted the EU legislative act. EU bodies would be obliged to take account of standpoints which give a reason of documented non-conformity with the principle of subsidiarity. If at least a third of the votes[23] from national parliaments express the opinion that the submitted legislative act does not conform to the principle of subsidiarity, the submitting body should review it. Following this review, the body submitting the draft would decide whether to retain, amend or withdraw the draft, while stating its justification for this. If, however, the number of justified parliamentary standpoints not approving adoption of a regulation in its submitted form exceeds a simple majority in those votes granted to national parliaments, the "orange card" procedure is then employed.[24] This states that if the Commission decides to retain the draft, even despite the reservations expressed, it has to present both its standpoint and the standpoints of national parliaments for consideration by legislators (the Council of Ministers and the European Parliament). These legislators would subsequently assess the degree of conformity between the draft legislative act and the principle of subsidiarity, while taking into account the submitted standpoints. In the case that a majority of 55% of the members of the Council or a majority of the votes in the European Parliament would decide that the draft does not conform to the principle of subsidiarity, the draft would be withdrawn. In contrast to the discussions in the working groups for national parliaments and subsidiarity at the Convention, national parliaments

[22] On the prospects of the functioning of this system comp. I. Cooper, The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU. In: Journal of Common Market Studies 2/2006, p. 281-304.

[23] For drafts submitted as part of regulation of the area of freedom, security and justice under Art. 61i of the Treaty on the Functioning of the EU, a quorum of 1/4 of the votes is sufficient.

[24] G. Barrett considers in detail the orange card, and in particular its relationship to the yellow card (an alternative or cumulative form of conditions?) in "The king is dead, long live the king": the recasting by the Treaty of Lisbon of the provisions of the Constitutional Treaty concerning national parliaments. In: European Law Review 33/2008, p. 66-84, here p. 76

are not therefore entrusted with a "red card", which would enable 2/3 of the votes of national legislatures to reject an EU legislative proposal.[25]

In place of the original "Amsterdam" Protocol on the application of the principles of subsidiarity and proportionality, this draft Protocol does not contain a guiding rule for reviewing adherence to the principle of subsidiarity, which was contained Art. 5 of the old one. This fact could have particular relevance, especially for proceedings on **complaints relating to a breach of the principle of subsidiarity** within an EU legislative act, which Member States would be able to submit to the European Court on behalf of their national parliament under Art. 230 of the Treaty on the Functioning of the EU.[26] The wording of the Protocol is otherwise quite modest on the matter of judicial control of adherence to the principle of subsidiarity. Regarding the procedural aspects of this ex-post control, the process followed by Member States would differ depending on arrangements determined by custom, the debating order in parliamentary chambers and other legal regulations at the national level.

It is precisely changes to the rules of procedure in parliamentary chambers or the adoption of completely new legislative acts that strengthen the relationship between government and legislature (especially with regard to the strength of a parliamentary negotiating mandate granted to a government to participate in debating at the Council of Europe or the Council of Ministers) which can be the reaction from national parliaments at the time when some of the above mentioned changes were to occur, following adoption of the Reform Treaty. Not only the Czech legislature, but also its Polish and German counterparts have made evident steps towards rearranging the relationship between executive and legislative bodies with regard to the European agenda.[27] Clarification using this route would also be needed for the above-mentioned possibility of submitting a complaint to the European Court, as well as for the term "parliament", which the Reform Treaty uses, for example, in connection with exercise of the right of veto for the bridging clause.

Respect towards national differences in forms of parliamentary control of government in European affairs, which will doubtless even in the future form the core of the debate on European matters in national parliaments, merges content-wise into the second of the Protocols to the Reform Treaty, which focuses on the influence of Member States' legislatures. This Protocol on the role of national parliaments in the European Union would replace the existing "Amsterdam" Protocol in the same way (the Protocol on the role of national parliaments in the European Union from 1997) and would legislate a kind of "communicational minimum" between national parliaments and EU bodies. Primarily and formally it introduces the **direct sending of drafts of legislative acts of the Union to national parliaments,** while the same procedure is also used in the case of

[25] A model for red cards was not even presented in the conclusions of Convention working group for national parliaments – see document CONV 353/02 dated 22.10.2002.

[26] On the practice until now of the European Court in controlling adherence to the principle of subsidiarity comp. most recently J. Tlamych, Soudní přezkoumatelnost principu subsidiarity v EU [The Judicial Review Capability of Subsidiarity Principle in the EU]. In: J. Georgiev (ed.), Princip subsidiarity v právní teorii a praxi. Praha 2007, pp. 91-105, and T. Břicháček, Přístup Evropského soudního dvora k principu subsidiarity [The Attitude of the European Court of Justice towards the Principle of Subsidiarity]. In: Právník 2/2008, pp. 145-159.

[27] Preparatory work is most advanced in Germany where, in tandem with ratification of the Reform Treaty, an "accompanying act" (*Begleitgesetz*) was promulgated; in the Czech Republic this can be expected via an amendment to the Rules of Procedure or through the adoption of the Relation Act to legislate for the procedure for granting parliamentary approval for application of the flexibility clause and the bridging clause in such a way that would satisfy the tension between the definition of these provisions in the Reform Treaty and the wording of Art. 10a of the Constitution of the Czech Republic.

consultation documents. An eight week period is expressly confirmed here as being the time between a draft being made available to Member States' legislatures in the official languages of the EU, and the moment of its inclusion in the preliminary debating order of the Council of Ministers. Urgent cases can form an exception to this procedure. The Protocol also introduces an obligation for the results of Council meetings, including meeting minutes, when the Council is debating draft legislation, to be sent directly to national parliaments, as well as to the Council.

Stronger direct involvement of national parliaments in European matters, which should help to bring EU affairs closer to citizens, clearly requires more intensive co-operation and collaboration by legislatures. Section II of the Protocol on the role of national parliaments in the European Union, which is for this reason devoted to **inter-parliamentary co-operation,** covers the issue of co-operation between national parliaments and the European Parliament, particularly in connection with the work of Conference of Community and European Affairs Committees (COSAC), which "supports exchanges of information and proven processes" between legislatures. In the context of the expected need for working exchanges of information between national parliaments in order to review subsidiarity, which is called into being by the high thresholds needed to exercise the above-mentioned yellow and orange cards, COSAC is considering the use not only of closer co-operation with the administration system IPEX[28], but also instituting special working groups and formations which would continue to focus on matters connected with control of adherence to the principle of subsidiarity.[29]

Even taking a comprehensive view that captures the procedural mechanisms legislated to enable national parliaments to influence the EU decision making process, we are still not able at this time to go beyond the realm of theoretical analysis. However, even from this viewpoint, it is nonetheless possible even now to state that the draft Reform Treaty, apart from its final destiny, represents a shift in the standing of legislatures away from being the representatives of the "lords of the treaties" (meaning the Member States), which approve jurisdictional changes in primary legislation as well as certain serious amendments in secondary legislation (treaties and other selected acts), towards being bodies whose possibility of influencing the decision making process is more concentrated in the sphere of secondary legislation and has a *de facto* corrective character[30], as is testified to by the mechanism for control of the principle of subsidiarity proposed by the Reform Treaty.

The Czech Senate and the European agenda:

[28] The IPEX system (www.ipex.eu) enables monitoring of the course of debating of EU legislative acts in the parliaments of individual member states of the EU.

[29] Comp. conclusions from the XXXIXth meeting of COSAC on 7.-8.5.2008 (www.cosac.eu).

[30] The right to initiate legislation, which was discussed during the course of an intergovernmental conference preparing the draft reform treaty, was in the end not granted to national parliaments. Further information in T. König, S. Daimer, D. Finke, The Treaty Reform of the EU: Constitutional Agenda-Setting, Intergovernmental Bargains and the Presidency´s Crisis Management of Ratification Failure. In: Journal of Common Market Studies 2/2008, pp. 337-363, here p. 360.

experience and perspectives

As we can see from bilateral relations to various bodies of European countries and permanent delegations in parliamentary assemblies in various international organizations, the European agenda of the Czech Senate reaches beyond the framework of the European Union institutions. Having said that, the Senate nevertheless attaches primary importance to EU-related activities, given the Czech Republic's foreign policy priorities. This is also reflected in the institutional and other resources devoted to the European agenda in the Czech Parliament, which is what we will explore in greater detail in this chapter.

Parliamentary bodies devoted to European integration were being set up gradually as a logical response to the emergence of relevant executive bodies. The European Agreement of October 1993 on the Association of the Czech Republic with EU and the prospect of accession to the EU envisaged in articles 110-112 the joint Czech Republic and European Parliament association committee with equal representation of Czech Senators and Deputies and representatives of the European Parliament. The Joint **Parliamentary Association Committee** received a specific mandate vis-à-vis the Association Council, and created a platform for the exchange of opinions among national and European legislators on issues related to accession negotiations. The Czech delegation in this Committee was composed of 15 Deputies and 5 Senators, and formed the **Permanent Delegation of the Czech Parliament for Cooperation with the European Parliament**.

The core of the Senate European activities later concentrated in the **European Integration Committee** established after by-elections in the autumn of 1998. The committee took over the work of the Sub-committee for European Integration that worked within the Committee for Foreign Affairs, Defense, and Security of the Senate. The European Integration Committee, composed of 11 members and chaired by Senator Jarmila Filipova, defined its priorities on 13 January 1999 in "The focus of the Committee's work." Based on this resolution, the Committee started dealing with domestic and foreign policy aspects of European integration.

Although the Senate committee was not - unlike its counterpart the European Integration Committee in the Chamber of Deputies – involved in prior consultations between executive and legislative bodies pursuant to the Government's resolution No. 257/2000, the main bulk of their activities focused on reviewing the compatibility of legislative proposals with the community *acquis*. In this respect, the Senate Committee may be considered a significant safeguard in the legislative process.

In the first stages of its work, the Committee assessed the current status of accession negotiations by reviewing the already closed chapters. The committee continued devoting an important part of its agenda to monitoring Czech preparations for EU accession, and received many top representatives of the executive power, experts in various fields, members of the diplomatic community, and visitors from abroad. The growing agenda kept the Committee very busy. While in 1999, the Committee met 21 times to debate 31 bills and 7 international treaties, in 2000 it dealt with 43 bills and 9 international treaties.

As we can see, the Committee initially focused mainly on monitoring the compatibility of our legal standards, overseeing accession negotiations, and communicating with Parliamentary bodies from other European countries, i.e. within the

Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC). In 2001, the first year of the third term of the Senate, the European Integration Committee, composed of 8 members and chaired by Senator Jiri Skalicky, started paying more attention to the reform of EU institutions. This new priority also determined the agenda of meetings with foreign diplomatic missions in the Czech Republic.

As the Convention on the Future of Europe was coming closer in 2002, this issue gained more prominence. The competence of national parliaments in the European institutional structure became one of the central issues at the Convention, resulting in thoughts about establishing a European parliamentary body composed of representatives of national parliaments. On 13 February 2002, the European Integration Committee of the Senate elected 17 Senators in a newly established **Subcommittee for the 2004 Intergovernmental Conference** to debate this and other points already discussed by the Convention. A number of public hearings, workshops and debates on the issues of the EU future development took place under the auspices of the **National Forum**.

The European Integration Committee set up a new webpage in April 2002 containing, among others, information about the meetings of the European Integration Committee, the activities of the Senate delegation at the Convention, and monitoring the debate on developments in the European Union. These web pages can be found at www.senat.cz/evropa, and are intended to inform the general public about the tasks pursued by the Senate in relation to European Union bodies and their work.

After Czech accession to the EU, the Senate work gained a new dimension in light of the "Euro-Amendment" to the Czech Constitution. The **EU Affairs Committee** took over from the European Integration Committee. The core of the committee work has shifted from implementing obligations arising from European law to the scrutiny of the Czech Government's actions in the Council of Ministers. In other words, rather than supervising the implementation of European standards in domestic legislation, the Committee focuses on debates about emerging European legal acts whose fate is decided in EU legislative bodies by government ministers. The Parliament has thus taken on the standard role of the guardian of democratic legitimacy in the creation of European law.

Although article 10b paragraph 3 of the Czech Constitution envisages the possibility of creating a joint European committee of both Houses of the Czech Parliament, a specific law establishing such a joint committee has not been passed yet. The remit of the Senate European committee has been clearly defined by an amendment to the Senate Rules of Procedure, namely the addition of Title Twelve (see Annex 2). This title defines a time-limited parliamentary reserve, based on which the government must await the Senate position on the issue in question. A position on the merits of the Government's position vis-à-vis the draft legislative act in question is adopted by the Senate plenary session. The Senate plenary session puts European issues on the agenda usually upon recommendation of the designated committee. Apart from the EU Affairs Committee, the **Committee on Foreign Affairs, Defence and Security** is also authorized to take up European affairs but only within the second and third pillar of European law, namely Common Foreign and Security Policy and Police and Judicial Cooperation in Criminal Matters.

Let us illustrate Senate debates on European affairs by a few figures covering the first calendar year in which the Senate was able to use its new powers in this area. In 2005, the EU Affairs Committee debated 54 documents, of which 11 were referred to the

plenary session; the Foreign Affairs Committee attended to three Union documents in the same period. Based on the recommendation of the EU Affairs Committee, the other committees in the Senate dealt with 20 Union documents in the same period. In the subsequent year (2006), the Foreign Affairs Committee debated 2 documents and the EU Affairs Committee focused on 40 proposals. Other committees discussed 5 Union documents. During 2007, the EU Affairs Committee debated 47 documents, the Foreign Affairs Committee dealt with 5 Union proposals and other committees discussed 28 documents of European institutions on request of the EU Affairs Committee.

After accession of the Czech Republic to the European Union, the Senate plenary used its right to comment on Union legislative proposals and communication documents of the European Commission, anchored in the Czech Constitution and the Senate Rules of Procedure, fifty-three times in 2004-2007 (24 resolutions were passed in the last year). Unlike the Chamber of Deputies, where the position of the European Affairs Committee on European documents is taken as the position of the entire House, in the Senate, the final resolution must be taken by the **Plenary** rather than just the EU Affairs Committee. As seen in documents included in Annex 4 and 5, in a number of cases these resolutions concerned key developments in the EU (the Reform Treaty, financial perspective, the Lisbon strategy, opening accession negotiations with Turkey) or closely followed legal acts debated at the time (Services Directive, Visa Information System Regulation, acts concerning Matrimonial Law).

We will also notice that the Senate pays regular attention to several themes, such as the allocation and use of money from European funds, EU competence in dealing with the consequences of demographic developments, or support of research and development. Such a longer-term focus is well aligned with the role of Senate as a house of long-term reflection. It therefore comes as no surprise that many resolutions deal with communication documents. The Senate strategy aims at a comprehensive grasp of a particular issue by following it from green or white paper to a draft legislative act. This strategy is well aligned with the nature of the Senate as a body whose third-by-third elections are conducive to continuity. Subsidiarity checks, pursued by the European committee for a long time, can be viewed in the same light. The emphasis on effective legal regulation and, in particular, compliance with the defined remit of European law, reflect the reality in which both Houses of the Czech Parliament – the Chamber of Deputies as well as the Senate – must give their consent before the Czech Republic ratifies EU Founding Treaties, thus defining the competences of the European Union. In the service for the constitutional order, the Senate carefully observed the preparatory works of the Reform Treaty. The submission of the draft Treaty to the Constitutional Court by the Senate proves this fact.

The European agenda could not be approached in a responsible manner without professional support services that draft briefs on European issues for Senators. These services are provided by the **European Union Unit** that works within the Foreign Relations Department of the Senate Office. A permanent representative of the Senate Office in Brussels, who is on the staff of the European Union Unit, facilitates direct contact with European institutions.

Annex 1:

Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic (excerpt)

Article 10a

(1) An international agreement may provide for a transfer of certain powers of bodies of the Czech Republic to an international organization or institution.
(2) An approval of the Parliament is required to ratify an international agreement stipulated in Subsection 1 unless a constitutional law requires an approval from a referendum.

Article 10b

(1) The Government shall inform the Parliament regularly and in advance on issues related to obligations arising for the Czech Republic from its membership in an international organization or an institution stipulated in article 10a.
(2) The Houses of Parliament express their opinions on the decisions of such an international organization or institution in a form provided for by their rules of procedure.
(3) An act on the principles of conduct and relations between both Houses and their external relations may entrust the exercise of the competence of the Houses under paragraph 2 to a joint body of the Houses.

Annex 2:

Act No. 107/1999 Coll., on the Rules of Procedure of the Senate (excerpt)

Part Twelve: Cooperation of the Senate with the Government on issues related to obligations arising for the Czech Republic from its membership in the European Union

§ 119a

(1) The Senate shall consider issues relating to obligations resulting from the Czech Republic's membership in the European Union; the Senate shall be informed of such issues regularly and in advance by the Government pursuant to article 10b (1) of the Constitution. The Senate shall consider, in particular:

a) the report on the development of the European Union during the preceding year and its further development, which shall be submitted by the Government at least once a year;

b) the report on incorporating into the legal order obligations resulting from membership in the European Union, particularly on the implementation of legislative acts requiring transposition, which shall be submitted by the Government at least once a year;

c) preliminary Government information on the agenda of any meeting of the European Council, and subsequent information on the results thereof

d) Government information on the commencement and course of negotiations on altering the Treaties upon which the European Union is established;

e) draft legislative acts of the EU, which shall be submitted by the Government without undue delay after they have been referred by the European Commission or by any other EU body; and

f) preliminary opinions submitted by the Government on draft legislative acts of the EU.

(2) The Senate shall further consider proposals of binding measures of EU bodies, and up-to-date information and opinions of the Government on legislative acts or other EU documents, including information on the stage of their consideration, which are submitted by the Government upon its own motion or upon the request of the Senate or a committee thereof designated to consider legislative acts and binding measures of EU bodies (hereinafter referred to as "designated committee").

(3) The Senate shall consider documents referred to it directly by the bodies of the European Union, in particular, communication documents.

§ 119b

The designated committee shall keep files of draft legislative acts and binding measures issued by the bodies of the European Union, as well as of documents directly referred to the Senate by those bodies; the files shall be open to other bodies of the Senate and Senators.

§ 119c

Members of the European Parliament elected in the Czech Republic may attend meetings of the designated committee, and they shall be entitled to an advisory vote; they may express their opinion on the matter under consideration and submit proposals thereon.

The designated committee procedure

§ 119d

(1) The designated committee shall, upon the motion of its chairperson, decide within five working days of receipt whether or not the draft legislative act should be taken note of without consideration. In order to consider the draft legislative act that has not been taken into account by the designated committee without consideration, the chair of the designated committee shall appoint a rapporteur from amongst the members of the designated committee; the process of consideration of the draft legislative act shall be thereby commenced. The chairperson of the designated committee shall notify the President of the Senate of the commencement and the President shall inform the Government.

(2) The commencement of considering the proposal of a legislative act shall constitute an impediment to participation of a Government member in decision--taking with respect to the act proposed by a European Union body. The impediment shall not apply where the period of thirty-five days from the receipt of the proposal by the Senate has elapsed to no effect.

(3) The designated committee may request that the Government, or a member thereof, provide information on the proposal of a legislative act under consideration; requested information shall be provided by the Government, or a member thereof, not later than within 14 days of the delivery of the request of the designated committee.

(4) The designated committee may request that the body of the Senate which would have subject-matter jurisdiction should a bill be considered, submit its opinion on the draft legislative act under consideration within a time-limit agreed on by the chair of the designated committee and the chair of the Senate body in question.

§ 119e

(1) The designated committee shall decide, upon the motion of its chair, whether a proposed binding measure of the European Union bodies adopted within common foreign and security policy (hereinafter referred to as "draft decision") shall be taken note of by the designated committee without consideration. The chairperson of the designated committee shall appoint a rapporteur from amongst the members of the designated committee in order to consider the draft decision that has not been taken note of without consideration by the designated committee.

2) The designated committee may request that the Government, or members thereof, provide information on the draft decision under consideration. Information shall be provided by the Government, or members thereof, without undue delay upon delivery of the designated committee's request.

§ 119f

(1) The consideration of a draft legislative act or a draft decision shall be attended by a Government representative, rapporteurs of those bodies of the Senate that have considered the draft legislative act or draft decision, and other persons who are able provide information on the issue under consideration and have been invited by the designated committee to do so.

(2) The reasoning for a draft legislative act or a draft decision shall be given by a Government representative, followed by the rapporteur of the designated committee. Debate shall commence where a motion may be proposed either to take note of the proposal of the legislative act or draft decision, or to recommend that the issue be referred to the Senate for its consideration.

(3) After closing the debate the designated committee shall decide on the submitted motion. Where a motion has been passed by the designated committee to recommend that the issue be referred to the Senate for its consideration, the motion shall be sent to the Government for its information, and submitted to the President of the Senate. The President of the Senate shall place the motion on the agenda of the next immediate meeting; if the draft legislative act where the time limit during which Member States should express their opinion, will not exceed six weeks and it will therefore be handled in compliance with Section 119d (2) is in question, the President of the Senate shall be obliged to call the meeting so that it may commence not later than within thirty two days of the delivery of the draft legislative act to the Senate.

§ 119g

Procedure before the Senate

(1) The Senate shall consider a draft legislative act or a draft decision where such motion has been submitted by the designated committee, or a minimum of 17 Senators have so moved in writing before the adoption of the closing resolution by the designated committee; the President of the Senate shall immediately inform the Chair of the designated committee of such motion. In order to commence the meeting called upon the motion of a minimum of 17 Senators, the third sentence of section 119 (3) shall apply accordingly.

(2) The Senate may decide that a draft legislative act or a draft decision be taken note of, or should be considered. The President of the Senate shall immediately inform the Government of the result of such consideration.

§ 119h

Fast-track procedure relating to draft legislative acts

(1) Where a draft legislative act has been designated as urgent it shall be considered within fast-track procedure if the Government so requests. The request shall be appended with a preliminary opinion. The provisions of s. 119d (2), s. 119f (3) (second and third sentences) and s. 119g shall not apply, and actions for which time limits are set in s. 119d shall be executed without undue delay.

(2) Where, within fast-track procedure, the designated committee passes a motion to recommend that the issue be referred to the Senate for consideration, such resolution shall be sent immediately to the Government. Such resolutions shall be concurrently sent by the chair of the designated committee to the President of the Senate who shall resend them to all Senators.

Annex 3:
Directive of the Government on the procedure for transmitting EC/EU draft legislative acts and European Commission documents to the Chamber of Deputies and the Senate of the Parliament of the Czech Republic

(Annex to the Government Resolution 680 of 7th June 2006)

Article 1
Scope

1) The purpose of this Directive is to set out a single procedure through which the government shall fulfill its obligations arising from Act No. 107/1999 Coll., on the Senate Rules of Procedure, as amended, and Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, as amended, regarding:

a) the submission of draft legislative acts of the European communities and the European Union, as well as documents issued by other European Union bodies, and of government's positions on these acts and documents, to the Senate and the Chamber of Deputies (hereinafter "Relevant House");

b) the attendance by a cabinet minister at the Relevant House's committee meetings where draft legislative acts or other documents issued by EU bodies are debated or where briefing on meetings of the Council of the EU and the European Council is to be given to the Relevant House.

2) Cabinet ministers and heads of other central administration Authorities shall be accountable to the Government for fulfilling the Government's obligations, laid down in this Directive, vis-à-vis the Parliament of the Czech Republic, in particular for

a) the quality and timely preparation of a position and its presentation to the Relevant House;

b) taking into account the position of the Relevant House at meetings in European Union bodies;

c) attending meetings of the bodies of the Relevant House in order to provide information about draft legislative acts or other documents issued by European Union bodies.

Article 2
Definitions

For the purposes of this Directive, these terms shall be construed to mean the following:

1) "Draft legislative act" shall mean the first draft of a Directive, Regulation, Decision concerning the first pillar of the European Union or a Framework Decision or Decision concerning the third pillar of the European Union, at the moment of its referral by EU Council to Member States,

2) "Other documents issued by European Union bodies" shall mean drafts of other acts or any other documents drafted by European Union bodies that are not draft legislative acts within the intention of point 1)

3) "Responsible authority" shall mean the ministry, central state administration authority, or any other state authority responsible for the drafting of a position.

4) "Position" shall mean a Framework position or a Position for the Czech Parliament on a draft legislative act or any other document issued by European union bodies, drafted based on documents and information available at the time. The position shall be drafted using the form "Framework position/Position for the Czech Parliament." The framework position may be further updated over time; if the responsible authority so considers or the Chamber of Deputies or the Senate so asks, it may be re-submitted to the European Affairs Committee of the Chamber of Deputies or the delegated committee of the Senate.

5) "EU CFSP act of fundamental nature" shall mean a formal statement on EU activities and intentions in common foreign and security policy (CFSP) affecting Czech priorities, regardless of the CFSP instrument used to carry out these activities and intentions.

Article 3
Submitting documents issued by the Council of the EU

1) All EU Council documents shall be promptly sent by the Ministry of Foreign Affairs to the Chamber of Deputies and the Senate via Extranet EU, a system implemented pursuant to Czech Government's directive 180 of 25 February 2004. Relevant documents shall also be sent via Extranet to other designated state administration authorities active within the Committee for the EU, as per their request. The distribution of these documents shall be completely automated.

2) All draft legislative acts and other documents issued by European Union bodies shall be submitted to the Division of compatibility of the Government's Office (hereinafter "compatibility division") in order for them to appoint the responsible authority.

Article 4
Appointing responsible authorities

1) Documents issued by the Council of the EU shall be sent via Extranet EU to the compatibility division in order for them to appoint the responsible authority. The compatibility division shall appoint responsible authorities, and shall record which authorities have been made responsible for particular documents issued by the European Commission and the Council of the EU, through the Information System for the Approximation of Legislation, namely in the section 1C "Authorities responsible for documents issued by the European Commission and the Council of the EU." The

compatibility division shall attach a responsible authority to all draft legislative acts and other selected documents, such as, among others: white papers, green papers, instructions, guidelines, positions, action plans within the first and third pillar of the EU, common positions, common actions, strategies, conventions, declarations and other acts drafted in the second pillar of the EU.

2) The compatibility division shall appoint a responsible authority no later than 2 business days after the receipt of the draft legislative act or another document issued by EU bodies. The compatibility division shall inform the responsible authority of their appointment through a record in the section 1C "Authorities responsible for documents issued by the European Commission and the Council of the EU" of the Information system for the approximation of law. At the same time, the responsible authority shall be notified electronically, if they had so requested. Within 3 business days, the responsible authority may refuse the appointment. The responsible authority shall indicate such refusal in the database of the Information system for the approximation of law, through which it had been appointed. It must provide grounds for the refusal, and suggest an alternate responsible authority. If the responsible authority does not refuse the appointment within the deadline, the appointment is deemed accepted.

3) The compatibility division shall resolve refused appointments and/or appointment disputes on an ongoing basis. The Committee for the EU shall deal with refused appointments for which an alternate responsible authority has not been found, and any disputes over appointments, at the first meeting taking after the appointment was refused or became subject to competing claims of multiple ministries.

4) Once accepted, the appointment may be changed only after the previous and new responsible authorities have expressed their consent to the compatibility division.

5) The Institutions and Coordination Division at the Ministry of Foreign Affairs, the secretary of the European Affairs Committee of the Chamber of Deputies, and the European Union Unit at the Senate Office shall be informed electronically by the compatibility division of appointment of responsible authorities or a change thereof.

Article 5
Position for the Chamber of Deputies and the Senate

1) The Government of the CR shall submit a preliminary position on draft legislative acts to the European Affairs Committee of the Chamber of Deputies and the designated committee of the Senate. The Government of the Czech Republic shall also submit to the Chamber of Deputies a position on the first draft of acts related to the CFSP of the EU that are of fundamental significance for the Czech Republic. A relevant cabinet minister, or a head of a central administrative body attending the Committee for the EU, or Czech Central Bank – whichever has been appointed responsible authority for the legislative act in question – shall carry out this responsibility on behalf of the Government.

2) If a draft legislative act concerns the Czech Republic, the responsible authority shall automatically submit a position to the relevant Houses.

3) Positions on other documents issued by EU bodies shall be submitted by the responsible authority to the relevant Houses only if the government has been asked to submit such a position by the Houses or their bodies. The compatibility division keeps these requests for a position on file, and informs the relevant responsible body, always noting when the request was delivered to the government. If no responsible authority had been appointed before the delivery of the request, one shall be appointed pursuant to article 4.

4) A responsible authority is free to draft an own-initiative position on a document, particularly if the document is of fundamental importance for the Czech Republic or when a draft legislative act, to which an own-initiative position had been prepared, changed so significantly in the course of EU negotiations that the position needs to be updated.

A responsible authority shall also draft an updated position, either of its own initiative or having been asked by the relevant House, when the document has been considered by the committee and submitted to the plenary session of the relevant House. In drafting such a position, the responsible authority shall bear in mind that the position will be included in public documentation for the plenary session of the relevant House.

Article 6

Drafting, approving, and submitting a position

1)The responsible authority shall promptly, but not later than 10 days after its appointment, submit to the Chamber of Deputies and the European Union Unit of the Senate Office a position on a draft legislative act or the first draft of acts related to the CFSP of the EU that are of fundamental significance for the Czech Republic, by uploading it into the database 1C (Authorities responsible for documents issued by the European Commission or the Council of the EU) in the Information system for the approximation of law, and by an e-mail notification generated by this system. A requested position is going to be sent by a similar procedure to the European Affairs Committee of the Chamber of Deputies and the European Union Unit of the Senate Office as soon as possible, taking into consideration in particular the nature and size of the document, but not later than 14 business days after the receipt of the request for position.

2)If the position involves multiple departments or concerns a particularly important matter, the responsible authority shall submit the position to the Committee for the EU before forwarding it to the Chamber of Deputies or the Senate.

3)Taking into account the nature of the document, the responsible authority may choose co-responsible authorities, in which case the responsible authority shall coordinate and supervise the work of co-responsible authorities on the position. It shall include the information about co-responsible authorities in section 1C "Authorities responsible for documents issued by the European Commission and the Council of the EU," and shall ensure that the co-responsible authority is informed. Any disputes regarding the acceptance by co-responsible authorities of their role, and fulfillment of their duties, may

be presented by the responsible or co-responsible authorities to the Committee for the EU.

4)The position shall be drafted on a form "Framework position/Position for the Czech Parliament."

5)The position shall be drafted under the Departmental coordination group procedures, i.e. co-responsible authorities shall be involved in the drafting under the responsible authority's guidance. Once the position is approved by the relevant cabinet minister, head of a central administration authority, the Central Bank governor or the president of the Personal Data Protection Office, a person shall be authorized by them to submit the position to the European Affairs Committee of the Chamber of Deputies and the European Union Unit of the Czech Senate, by uploading it to the database 1C (authorities responsible for documents issued by the European Commission or the Council of the EU) in the information system for the approximation of law, and by an e-mail notification generated by this system.

6)Text files containing the position may be named by responsible authorities using a standardized system recommended by the compatibility division in an Annex to section 1C "Authorities responsible for documents issued by the European Commission and the Council of the EU."

7)The compatibility division shall be responsible for filing resolutions adopted by the Senate and the Chamber of Deputies on the positions, in the Information System for the Approximation of Legislation. The compatibility division shall inform, without undue delay, the relevant responsible authority of such resolutions.

8)Should a responsible authority receive a decision from either House of the Parliament that the House will consider the document, the responsible authority shall hold a parliamentary reserve in relevant EU meetings. The responsible authority shall reflect positions received from the Parliament in all ensuing documentation and positions for negotiations in the EU.

Article 7

Briefings on negotiations in the Council of the EU and the European Council, attendance by cabinet ministers at meetings of the European Affairs Committee and designated Senate committees

1) If requested by the European Affairs Committee of the Chamber of Deputies or a designated Senate committee, a government minister shall attend that committee's meeting, prior to a meeting of the Council of the EU or the European Council where draft legislative acts or other draft acts and EU/EC documents are on the agenda, and inform the committee about the government's mandate, or the mandate of the government minister, to be pursued at the meeting.

2) Cabinet ministers shall send the committees of the Czech Parliament mentioned above information from the meeting of the Council of the EU or the European Council immediately after such information has been submitted to the Czech Government.

Annex 4:
Senate resolutions concerning the EU Reform Treaty debate

RESOLUTION OF THE SENATE No. 197

from the 8th session held on 20 September 2007

on the Government's information on the meeting of Heads of State and Government held in Lisbon on 18 and 19 October 2007 and on the positions of the Czech Republic

The Senate

I. further to the comments on the draft Constitutional Treaty expressed in the reports of the Senate Committee on European Integration of 30 September 2003 and the Committee on European Union Affairs of 3 November 2004:

1. **Appreciates** the Czech government's cooperative attitude in informing about the course of the Intergovernmental Conference dealing with the draft Reform Treaty;
2. **Welcomes** the enshrining of the principle of two-way flexibility of European integration, including the adjustment of procedural instruments serving to the implementation of this principle in the draft Reform Treaty;
3. **Considers** it necessary in this context to modify the wording of the existing article 208 of the Treaty Establishing the European Community so that it is fully consistent with the wording of the mandate for the Intergovernmental Conference and makes it possible to create a functional mechanism for initiating the repeal of superfluous legislation (note 10 in the mandate);
4. **Regards** the early warning mechanism that entrusts national parliaments with the role of guardians of compliance with the subsidiarity principle as an important tool for reflecting the development of European integration, whereby it regards a realistic threshold for raising relevant objections concerning breach of the subsidiarity principle and the stipulation of clear material criteria for appraising the proposed legislation's compliance with this principle to be fundamental conditions for the functioning of this mechanism;
5. **Calls for** a discussion on the prospects of judiciary over issues of competences in the EU, including the context of decisions on actions brought by a Member State on the grounds of a breach of the subsidiarity principle;
6. **Recommends** that a national parliament's binding statement on the use of a bridging clause (general *passerelle* pursuant to Article 33 (3), also e.g. specific *passerelle* pursuant to Article 69d (4)) also be applied to the case of transfer of competences in the field of cooperation in criminal matters pursuant to the final provision of Article 69f (1) of the draft Reform Treaty;
7. Regretfully **states** that the one-way nature of the possible use of bridging clauses is preserved in the draft Reform Treaty;

8. In conformity with the previous report of the Senate Committee on European Integration of 30 September 2003 **expresses** the conviction that not just a more rigorous substantive delimitation but also time limitation of the validity of a measure adopted under Article 308 (flexibility clause) of the Treaty Establishing the European Community would correspond better to the principle of conferred competences that the Union law is governed by.

II. Calls on the Czech Government in the light of this resolution to inform it on the further course of the Intergovernmental Conference.

RESOLUTION OF THE SENATE No. 379

from the 13th session, held on 24 April 2008,

on the Government proposal by which the Treaty of Lisbon, amending the Treaty on the European Union and the Treaty establishing the European Community (Senate print no. 181), is submitted to the Parliament of the Czech Republic for the expression of approval for ratification

The Senate

I. **submits** to the Constitutional Court a proposal to decide on conformity of the Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community with the constitutional order, given in the Appendix to this Resolution;

II. **requests** the Constitutional Court, under Art. 71d para. 1 of Act No. 182/1993 Coll., on the Constitutional Court, as amended by Act No. 48/2002 Coll., that it decide on the proposal stated in point I outside the order in which it was received, and without unnecessary delay**.**

Přemysl Sobotka, sign manual
President of the Senate

Karel Barták, sign manual
Verifier of the Senate

Appendix to Resolution No. 379

The Senate submits on the basis of Art. 117b para. 1 of Act No. 107/1999 Coll., on the Rules of Procedure of the Senate, as amended by Act No. 172/2004 Coll., and in accordance with Art. 71a para. 1 letter (a) of Act No. 182/1993 Coll., on the Constitutional Court, as amended by Act No. 48/2002 Coll., **a proposal that the Constitutional Court** in accordance with Art. 87 para. 2 of the Constitution of the Czech Republic, as amended by Act No. 395/2001 Coll., **decide on the conformity of the Treaty of Lisbon,** amending the Treaty on the European Union and the Treaty establishing the European Community, **with the constitutional order**.

On 25 January 2008, the Government submitted the Treaty of Lisbon, amending the Treaty on the European Union and the Treaty establishing the European Community (hereinafter only referred to as "Treaty"), to the Senate with a request for approval of its ratification. In connection with its Resolution dated 20 September 2007, by which it gave its opinion on the positions of the Czech Republic prior to negotiation at the summit of the Heads of States and Governments in Lisbon, taking into account the report of the Committee for European Integration of the Senate of the Parliament of the Czech Republic on the draft Treaty establishing a Constitution for Europe dated 30 September 2003, and the report of the Committee on EU Affairs of the Senate of the Parliament of the Czech Republic on the draft Treaty establishing a Constitution for Europe dated 3 November 2004 and taking into consideration the standpoints of the Standing Senate Commission on the Constitution of the Czech Republic and Parliamentary Procedures dated 9 October 2003, 3 November 2004 and 27 March 2008, the Senate is of the opinion that certain provisions of the Treaty have an immediate relation to the rules of constitutional order of the Czech Republic.

Due to the significant changes which the Treaty introduces and which affect the substantive elements of statehood, it is clearly essential to examine whether the Treaty is in conformity with the constitutional character of the Czech Republic as a sovereign, unitary and democratic, law-abiding state (Art. 1 para. 1 of the Constitution of the Czech Republic) and whether it makes a change in the principal attributes of a democratic, law-abiding state, which is inadmissible under Art. 9 para. 2 of the Constitution. The Senate also considers it to be essential for the Constitutional Court to adjudicate the conformity of the sectional, specific provisions of the Treaty and the standards of constitutional order, in particular concerning the following issues:

1. In accordance with the conviction that legislative competence of competences belongs to the Member States of the European Union which delegate the performance of certain competences to international institutions, the Senate considers the provisions of Art. 10a para. 1 of the Constitution as being key, under which it is possible to transfer certain powers of bodies of the Czech Republic to an international organisation or institution. The new wording of the Treaty on the functioning of the European Union (formerly the Treaty establishing the EC) sets forth a **classification of competences**, which is characteristic more of federal states, by which in addition to other matters it establishes the category of exclusive competence of the European Union, which covers comprehensive areas of legal regulation, in which under Art. 2a para. 1 of the Treaty on the functioning of the

European Union the Member States can establish or accept legally binding acts "*only if so empowered by the Union or for the implementation of Union acts*". The connected concept of shared competence (Article 2c of the Treaty), which is to exist alongside the above mentioned exclusive competence, together with borders which are not entirely clear regarding the creation of norms for secondary legislation of the European Union, opens the area of the broad scope of EU legal regulation which is hard to identify in advance under implicitly recognised situation where, in accordance with Declaration no. 17 attached to the Treaty, the principle of the primacy of EU law is applied. The scope of the delegation of competences can also be seen in the field of shared competence as being not completely definable in advance from the point of view of Art. 10a of the Constitution of the Czech Republic (cf. also in a general form the introduction to Art. 2c para. 2 of the draft Treaty on the functioning of the European Union – *"Shared competence between the Union and the Member States applies in the following principal areas:"*).

1. The Senate is also of the opinion that a subject of review concerning conformity with Art. 10a of the Constitution should be the nature of the drafted provisions of Art. 308 para. 1 of the Treaty on the functioning of the European Union, under which, on a proposal from the Commission, the Council unanimously adopts measures *"to attain one of the objectives set out in the Treaties"* if action by the Union should prove necessary, within the framework of EU policies, and if the Treaty does not provide essential competence for said action. In contrast to the current wording of the establishing treaties, the draft provision of the Treaty is not limited to the area of regulation of the internal market, but in fact represents a blanket norm. This, therefore, enables the **adoption of measures out of the framework of the Union competence**, i.e. outside the scope of the delegation of competence under Art. 10a of the Constitution of the Czech Republic. Such measures could also be subsequently adopted in the area of sensitive questions in criminal matters without sufficient procedural guarantees for the protection of civil rights and freedoms when the interpretive monopoly of the European Court of Justice is maintained. The specific jurisdictional competence of the European Court of Justice as a kind of final arbiter in cases of a dispute arising can, in situations where there is an unclear relationship to the constitutional courts of the Member States, give rise to questions over adherence to the principle of legal certainty. Also deserving of special attention is the absence of a time limitation to the validity of a measure adopted in this way, as well as its executive nature, which can cause doubts over the relevance of participation by national parliaments in considering the adoption of such a measure.

1. The concept of competence, as it is used in Art. 10a of the Constitution of the Czech Republic, does not only, however, have a substantive dimension with overlapping demarcations of scope, but also an institutional dimension which relates to the manner of decision-making. In connection with this, it is necessary to review the harmony of the draft Art. 48 of the Treaty on the European Union with the above mentioned provisions of the Constitution of the Czech Republic. Art. 48 paras. 6 and 7 in fact establish the possibility of so-called **simplified revision procedures for primary EU law** through an executive act by which the features of properly ratified treaties establishing EU are amended.

It is clearly in connection with this that a general bridging clause (*passerelle*) has been formulated which, even despite the formal anchoring of the principle of two-way flexibility in Declaration No. 18 attached to the Treaty, remains an instrument of one-way amendment of competence. The application of this clause in order to change unanimous decision-making to decision-making by a qualified majority in certain areas, or the replacement of a special legislative procedure by regular legislative procedure according to Art. 48 para. 7 obviously represents a change in competence in the sense of Art. 10a of the Constitution without said change being attended either by ratification of an international treaty or through the active consent of the Parliament of the Czech Republic. The loss of the right of veto can at the same time be understood as the delegation of competence to an international organisation, which also means a *de facto* restriction of the parliamentary mandate granted to the Government for decision-making, whereby representatives of the Governments of individual Member States could be outvoted once the delegation was adopted after application of the bridging clause.

In the case of the provisions drafted for Art. 69b para. 1 of the Treaty on the functioning of the EU, where the sector Council decides whether to include further areas of criminal activity into the realm of the European Union regulation, there is absolutely no opportunity for the Parliament to express its disagreement, even though in another case – in the drafted wording of the general bridging clause (Art. 48 para. 7 of the Treaty on the European Union) and the sectional bridging clause in the realm of judicial co-operation in civil matters (Art. 65 para. 3 of the Treaty on the functioning of the EU) – this possibility is guaranteed.

The limited involvement of national parliaments in decision-making process regarding changes to otherwise relatively broadly defined competence of the European Union is supplemented by an extension of voting by a qualified majority, which is not rarely connected to an overall communitarisation of the current third pillar of European law, where in parallel with an implicit weakening of the domestic parliamentary mandate and a cancellation of the category of treaties approved by the Parliament of the Czech Republic, the European Parliament takes over responsibility for the parliamentary dimension of decision-making. In view of the character of the European Union as a Community of States (not a federal state), is this dimension of parliamentary democracy sufficient? Does this not lead to the *de facto* eradication of Art. 15 para. 1 of the Constitution of the Czech Republic (*"Legislative power in the Czech Republic shall be vested in the Parliament"*)?

1. Alongside the above mentioned bridging clauses and the flexibility clause, the procedural rules established by the Treaty affect constitutional order in yet another respect. This concerns the negotiation of international treaties under the draft Art. 188l of the Treaty on the functioning of the European Union. For it is here that the circumstances for **concluding international treaties on behalf of the EU** are extended (*"…where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act, or is likely to affect common rules or to alter their scope."*). The Treaties are binding both on the EU and its Member

States, while at the same time they are concluded by the decision of a qualified majority in the Council. The Czech Republic therefore need not have expressed its approval of a treaty and would nonetheless be bound by it; the usual ratification process does not take place, by which amongst other matters the possibility of preliminary examination of the conformity of such treaties with the constitutional order of the Czech Republic ceases to exist. The questions remain as to whether this is a procedure which is compatible with the phrasing in Art. 49 and Art. 63 para. 1 letter (b) of the Constitution of the Czech Republic, and if there is a space here for application of these Treaties on the basis of Art. 10 of the Constitution of the Czech Republic.

1. The strengthening of the competence of those European Union bodies which represent the supranational level of decision-making is attended by the introduction of unified legal subjectivity in the European Union. The functioning of the European Union thus acquires a completely new legislative framework in the realms of the current second and third pillars, i.e. in the areas of primarily political co-operation. Within such a framework which, in the realm of the current third pillar, fundamentally dismantles the principle of unanimous decision-making, any conflicts with domestic standards of human rights protection could, of course, be more frequent than until now. Although under the draft Art. 6 para. 2 of the Treaty on the EU the European Union has to proceed to the European Convention on the Protection of Human Rights and Fundamental Freedoms, this same article in para. 1 at the same time states that: "*the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted in Strasburg, on 12 December 2007, which shall have the same legal value as the Treaties.*"

This indirect reference to the Charter of Fundamental Rights of the European Union (hereinafter referred to as "Charter") can produce ambiguities concerning its standing (statute), just as the fact that the Charter contains not only directly enforceable rights, but also principles and aspirations without any clear, systematic arrangement. In a situation whereby the European Union does not have and indeed cannot have a specialised body, in this case a court resolving "constitutional complaints" which would interpret the provisions of the Charter in specific cases of civil rights violations, the role of the Charter is not clear. Does this represent the protection of citizens' rights or rather is it an instrument for interpretation, from whose viewpoint the powers of European Union bodies are interpreted or by which the objectives which the European Union is pursuing are explained in greater depth? Does this strengthen or, on the other hand, weaken the authority of domestic institutions which always interpret the national catalogues of human rights in connection with the individual traditions of the political nations of Europe? What procedural consequences (prolonging or else accelerating the enforceability of the law) does this step have in relation to the jurisdiction of the European Court of Human Rights? As a result of this fact, could the **standard of domestic protection of human rights** based in the Charter of Fundamental Rights and Freedoms be either strengthened or levelled?

1. Of equal importance is the demarcation of the status of the Charter and the possibility of its interpretation which is also needed to understand the newly formulated Art. 1a of the Treaty on the EU, which brings about an extension in the values upon which the EU is founded, and also to an inclusion of the standards of the European social model ("…*in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and the equality between women and men prevail*"). The question of interpretation of this provision comes to the fore even more due to the fact that a gross violation of the above mentioned values can lead to **a suspension of the rights arising from the Treaty for the Member State in question**. Already a mere proposal submitted by either one third of the Member States, the European Parliament, or the European Commission against a particular Member State could actually create political pressure leading to amendments to the domestic rule of law. Is the wording of this provision in accordance with the basic characteristics of the Czech Republic contained in Art. 1 para. 1 and also Art. 2 para. 1 (the principle of the sovereignty of the people) of the Constitution of the Czech Republic?

With regard to the above mentioned issues, the Senate proposes that the Constitutional Court pursuant to Art. 87 para. 2 of the Constitution of the Czech Republic, as amended by the Constitution Act No. 395/2001 Coll., and Art. 71e of Act No. 182/1993 Coll., on the Constitutional Court, as amended by Act No. 48/2002 Coll., decide on the conformity of the Treaty with the constitutional order.

Annex 5:

Senate resolutions on EU draft legislative acts and European Commission documents adopted in 2004-2007

Resolutions adopted by the Senate plenary sessions have been included in this overview in chronological order by their number in the Senate filing system:

1) N 6/04 – Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund
2) N 9/04 – Proposal for a Council and EP Regulation on the European Regional Development Fund
3) K 20/04 – Communication of the Commission to the Council and the European Parliament: EC's recommendation on Turkey's progress toward accession
4) N 25/04 – Proposal for a Council and EP Directive on services in the internal market
5) N 1/05 – Proposal for a Regulation of the EP and the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas
6) K 8/05 – Communication to the Spring European Council: Working together for growth and jobs. A new start for the Lisbon Strategy (5990/05) COM(2005)24/1
7) N 9/05 - Proposal for a Regulation of the EP and of the Council establishing a European Institute for Gender Equality
8) K 14/05 - Green paper "Confronting demographic change: a new solidarity between the generations"
9) N 15/05 - Proposal for an EP and Council Decision concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), Proposal for a Council Decision concerning the Seventh Framework Programme of the European Community for nuclear research and training activities (2007-2011)
10) K 16/05 – Financial perspectives 2007-2013 – the negotiation package
11) K 21/05 – Commission Communication "Healthier, safer, more confident citizens: a health and consumer protection strategy"
12) K 28/05 – Green paper on the financial services policy (2005-2010)
13) N 34/05 - Proposal for a Council Regulation on the common organization of the markets in the sugar sector, Proposal for a Council Regulation amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers
14) N 44/05 – Modified proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EC
15) N 46/05 – Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights
16) K 55/05 – Communication from the Commission to the Spring European Council: Time to move up a gear
17) K 68/05 - Communication of the European Commission: Implementing the renewed partnership for employment and growth - Flagship of knowledge: European Technology Institute
18) N 71/05 - Proposal for a Regulation of the European Parliament and of the Council establishing the European Globalisation Adjustment Fund

19) K 72/05 - Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy"
20) K 77/05 – Amended proposal for a Directive of the European Parliament and of the Council on services in the internal market
21) N 79/05 - Amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights
22) K 80/05 – Communication from the Commission to the European Council: A Citizens' Agenda – Delivering results for Europe
23) N 87/05 - Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services
24) N 89/05 - Proposal for a Council Regulation amending Regulation (EC) No. 2201/2003, as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters
25) N 91/05 - Proposal for a Council Regulation amending Regulation (EC) No 2424/2001 on the development of the second generation Schengen Information System (SIS II) – Proposal for a Council Decision amending Decision 2001/886/JHA on the development of the second generation Schengen information System (SIS II)
26) K 92/05 - Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition
27) N 98/05 – Proposal for a Directive of the European Parliament and of the Council on road infrastructure safety management
28) N 100/05 - Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services
29) N 103/05 – Proposal for a Regulation of the European Parliament and the Council – Establishing the European Institute of Technology
30) K 2/06 - White Paper on enhancing the Single Market Framework for Investment Funds
31) K 4/06 - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A strategic review of Better Regulation in the European Union"
32) N 5/06 - Green Paper: Modernising labour law to meet the challenges of the 21st century
33) M 9/06 - Proposal for a Council Decision establishing the European Police Office (EUROPOL)
34) N 14/06 – Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emissions allowance trading with the Community
35) K 15/06 - Communication from the Commission to the European Parliament and the European Council: An Energy Policy for Europe
36) M 16/06 - Proposal for a Council Decision on stepping up of cross-border cooperation, particularly in combating terrorism and cross border crime
37) N 18/06 - Proposal for a Directive on the protection of environment through criminal law

38) K 19/06 - Communication from the Commission to the Council and the European Parliament - Results of the review of the Community Strategy to reduce CO_2 emissions from passenger cars and light-commercial vehicles
39) K 20/06 - Green Paper on the Review of the Consumer Acquis
40) K 22/06 - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Annual Policy Strategy 2008
41) K 24/06 - Communication from the Commission to the European Parliament and the Council – Towards sustainable water management in the European Union
42) K 26/06 - Green paper on market-based instruments for environment and related policy purposes
43) K 27/06 - Green Paper: The European Research Area - New Perspectives (Text with EEA relevance)
44) K 28/06 - Green Paper: Public Access to Documents held by institutions of the European Community – A review
45) K 30/06 - Communication from the Commission concerning proposals to amend Council Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector and Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, Proposal for a Council Regulation amending Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, Proposal for a Council Regulation amending Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector
46) N 34/06 - Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals
47) K 36/06 - Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: GALILEO at a cross-road - the implementation of the European GNSS programmes
48) N 37/06 - Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection
49) K 40/06 - Communication from the Commission to the European Parliament and the Council: Organ donation and transplantation - policy actions at EU level
50) K 41/06 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards Common Principles of Flexicurity - More and better jobs through flexibility and security
51) N 42/06 - Proposal for a Council Regulation on the common organisation of the market in wine and amending certain regulations
52) K 45/06 - Communication from the Commission: Towards a European Charter on the Rights of Energy Consumers
53) N 49/06 - Proposal for a Council Decision implementing Regulation (EC) No 168/2007 as regards the adoption of a Multiannual Framework for the European Agency for Fundamental Rights for 2007-2012

1) N 6/04 – Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund

Text of the Resolution:

127th RESOLUTION OF THE SENATE

from the 5th session held on 4 May 2005

on the Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund

The Senate

Recommends that the Government

I. analyze articles 5, 6, and 7 based on Chapter III (Geographic competence) and present it for comment;

II. harmonize, as far as possible, project submission procedures concerning all measures in this document and subsequent documents.

2) N 9/04 – Proposal for a Council and EP Regulation on the European Regional Development Fund

Text of the Resolution:

128th RESOLUTION OF THE SENATE

from the 5th session held on 4 May 2005

concerning the Proposal for a Council and EP Regulation on the European Regional Development Fund

The Senate

Recommends that the Government

I. pay particular attention to the development of tourism, and submit a separate tourism program related to the national program; the latter should, however, remain unchanged;

II. in negotiating drawing possibilites of financial measures from the European Regional Development Fund in 2007-2013 under Article 4 Convergence, pursue points 3, 4, 7, 10, classify buildings with large energy losses and technological risks as one of priorities;

III. align and complement national programs, and determine, which programs should be maintained and which ones could be transformed into future programs under this Fund, and justify the decision.

3) K 20/04 – Communication of the Commission to the Council and the European Parliament: EC's recommendation on Turkey's progress toward accession

Text of the Resolution:

570th RESOLUTION OF THE SENATE

from the 18th session held on 10 December 2004

on the brief submitted by the Czech Government concerning the agenda of the European Council meeting held on 16 and 17 December 2004 in Brussels, and on the Czech Republic's positions

The Senate

I. **Takes note** of the brief submitted by the Czech Government concerning the agenda of the European Council meeting held on 16 and 17 December 2004 in Brussels, and on the Czech Republic's positions.

II.

1) **Supports** the cautiously positive attitude of the Czech Republic to the initiation of accession talks with Turkey, while bearing in mind that such talks do not automatically guarantee Turkey's accession to the EU;

2) **Recommends that the Czech Government** consistently pursue Czech and European interest in considering Turkey's accession to the EU, particularly regarding the security strategy, foreign policy, and the economy;

3) Despite clear progress achieved by Turkey in respecting human rights, as noted by the Council of Europe serving as a monitoring authority, there are still obvious shortcomings. Therefore, the Senate **calls on the Czech Government** to continue monitoring the efforts aimed at rectifying the shortcomings in human rights legislation and its application.

4) N 25/04 – Proposal for a Council and EP Directive on services in the internal market

Text of the Resolution:

249th RESOLUTION OF THE SENATE

from the 8th session held on 30 November 2005

concerning the Proposal for a Council and EP Directive on services in the internal market/ Senate document No N 25/04

The Senate

1. Takes note of the current framework position of the Czech Republic on the draft Directive on services in the internal market;
2. Welcomes the shift in the negotiating position of the Government since 2004, namely the withdrawal of most requests to exclude particular services from the scope of the Directive;
3. Believes that progress in the negotiations on this Directive may not be pursued at the expense of its underlying principles. It is desirable to adhere as much as possible to the idea behind the original Commission's Proposal, particularly concerning the country of origin principle and the horizontal approach to the scope of the Directive;
4. Supports the introduction of the country of origin principle based on which service providers are bound only by legislation of the country in which they are settled, while Member States may not limit services provided by a person settled in another Member State;
5. Does not support proposals rejecting the country of origin principle as they run counter to European Court of Justice judgments, and are counterproductive to achieving the long-term objective of mutual trust among Member States, without which a fully functional internal market can not be established;
6. Does not agree with limiting the scope of the Directive to such a degree that would eliminate the meaningful content of the Draft and limit its potential to benefit European economies;
7. Views the horizontal approach taken by the Commission in the Draft as the only possibility for the services sector, and does not agree with the idea of extensive particular harmonization that would be both difficult and ineffective;
8. Believes it necessary for the Directive to spell out a general ban of measures that are capable of distorting the internal market of services, including measures that would allow national legislations to introduce different tax regimes for service providers from other Member States;
9. Believes that services of general economic interest must be viewed rationally, and ought to be included in the scope of the Directive;

10. Strongly objects to the term "social dumping" used by the opponents of the Draft Directive in comparing social, labour law and consumer protection levels in new and old Member States;
11. While realizing that a legislative proposal as weighty as the Directive on services in the internal market may not be adopted against the will of a substantial part of the European public, such a proposal may not be changed to the point where it will fail to achieve the original intention and create additional obstacles;
12. Has found that it is critical to communicate the benefits of the Directive to the public in order to ensure that, in the current economic and political situation in Europe, the Draft does not fall victim to those economic problems that it was designed to resolve;
13. Believes that while being of benefit for the entire European Union, elimination of barriers on the internal market of services will result in major advantages for new Member States of the European union; therefore, new Member States should coordinate their endeavours toward adopting the Directive;
14. In light of the above, the Senate **recommends that the Government**
    a. continue consulting their positions on particular negotiation issues with interested parties;
    b. highlight in all its strategic documents the adoption of the Directive on services in the internal market as the Czech Republic's priority, and pursue it as such in EU bodies;
    c. pursue the earliest possible adoption of the Draft Directive;
    d. reconsider, given the course of negotiations in the Council, the request to exclude any references to tax issues, and support the ban of discriminatory requirements placed on foreign service providers in national tax systems by the Directive pursuant to the decisions of the European Court of Justice; the adopted language must, however, in no way lay ground for any tax harmonization in the EU;
    e. maintain its negative position on the exclusion of health services (article 23) from the scope of the Directive or, failing that, support their exclusion only from the country of origin principle;
    f. continue pursuing the inclusion of the services of general economic interest in the scope of the Directive, or – particularly in view of the "Analysis of economic impacts of the Draft Directive on services in the internal market" – negotiate with a view to a compromise that would exclude those services only from the country of origin principle;
    g. properly communicate nationally and internationally about the benefits of liberalizing trade in services in the EU, and work toward refuting concerns that standards established in old Member States will be endangered;
    h. pay attention to such negative phenomena as unauthorized business activities carried out by Czech businesses in neighbouring Member States that is being mistaken for cross-border provision of services, as these issues may hurt the Czech pursuit of cancellation of transitional periods for the free movement of labor, and may negatively influence public opinion in those Member States regarding the liberalization of trade in services;

i. continue cooperating closely in the Council of Ministers with those Member States that hold similar opinions, in the pursuit a high-quality and workable Services Directive.

5) N 1/05 – Proposal for a Regulation of the EP and the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas

Text of the Resolution:

229th RESOLUTION OF THE SENATE

from the 7th session held on 15 September 2005

concerning the Proposal for a Regulation of the EP and the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (Senate Document No. N 1/05)

The Senate

- **Supports the definition of the purpose and function of the VIS, and the responsibility for its operation;**
  As defined in this proposal for a Regulation, the purpose and the function of the VIS as well as the responsibility for its operation are well aligned with the original intention.
- **Insists that the Czech participation in the VIS may not delay our accession to the Schengen system;**
  Fast accession to the Schengen system, namely by 2007, is a priority for the Czech Republic. Possible problems in the operation of the VIS should not in any way delay our entry.
- **Agrees that the VIS system be made accessible to police and security forces by a separate legal act, provided that reasons for and conditions of such access are clearly defined;**
  Access of police and security forces to the VIS system, under strictly defined conditions, is expected to be instrumental in fighting illegal migration and terrorism and provide for increased security.

6) K 8/05 – Communication to the Spring European Council: Working together for growth and jobs. A new start for the Lisbon Strategy (5990/05) COM(2005) 24
Text of the Resolution:

91st RESOLUTION OF THE SENATE

from the 4th session held on 31 March 2005

on the Lisbon Strategy (Senate Document No. 48)

The Senate

I. **Takes note** of the Government's information concerning the Lisbon strategy.

II. **Recommends that**

1. the Government

- support a recast Directive of the European Parliament and the Council on the patentability of computer implemented inventions;
- support a clear statement that computer programs in themselves may not be subject to patents;
- reject efforts to quickly adopt the European Patent Regulation and the Directive on the patentability of computer implemented inventions; support EU Member States that reject the Council proposal of 18 May 2004.

2. the Czech Members of the European Parliament support recommendations listed under point 1.

III. **Authorizes** the President of the Senate to send this Resolution to the Prime Minister and the Czech Members of the European Parliament.

7) N 9/05 - Proposal for a Regulation of the EP and of the Commission establishing a European Institute for Gender Equality

Text of the Resolution:
108th RESOLUTION OF THE SENATE

from the 4th session held on 31 March 2005

concerning the Proposal for a Council and EP Regulation establishing a European Institute for Gender Equality (Senate document No N 9/05)

The Senate

I. **Believes** that sufficient justifiable and objective reasons do not currently exist for establishing a European Institute of Gender Equality as a new agency of the EU, because:

1) primary responsibility for securing civic equality before the law, including equal treatment of men and women, continues to rest with EU Member States, who are expected to take appropriate measures;
2) the specific nature of such measures in Member States depends on the political composition of their governments and their social and economic policies;
3) there is no relevant form of competition among political forces and their manifestos at EU level;
4) pursuant to article 3 paragraph 2 of the Treaty establishing the EC, the European Community shall strive to support equal treatment of men and women only in areas for which it has been made responsible by Member States;
5) the proposal to set up a new authority cannot be considered a measure toward fulfilling the objective of establishing equal gender treatment as laid down in article 13 paragraph 2 and article 141 paragraph 3 of the Treaty establishing the EC;
6) therefore the establishment of a new EU agency may not be justified by the extensiveness of the agenda and by article 5 of the Treaty establishing the EC (principle of subsidiarity and proportionality), according to which the Community shall take action "only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community."
7) at the time of tense negotiations about the new EU financial perspective for 2007-2013, it would be more acceptable, and in order to deal with the agenda more holistically in view of guaranteeing other civil rights it would be more appropriate, if the tasks of the proposed European Institute of Gender Equality were taken over by the Agency for Human Rights which is to be established by

extending the mandate of the current European Monitoring Centre on Racism and Xenophobia.

II. **Recommends** that the Government reject, for these reasons, the draft Regulation of the European Parliament and Council establishing a European Institute for Gender Equality at the upcoming meeting of the Council of Ministers.

8) K 14/05 - Green paper "Confronting demographic change: a new solidarity between the generations"

Text of the Resolution:

238th RESOLUTION OF THE SENATE

from the 7th session held on 6 October 2005

regarding the Green paper "Confronting demographic change: a new solidarity between the generation" (Senate Document No K 14/05)

The Senate

- **Is aware** of the importance of a document recalling the significance of demographic changes, their pan-European dimension, and their effect on the economic and social policies of Member States. Almost all of Europe is currently facing a population decrease due to aging, which makes social security standards less sustainable. It is therefore necessary to explore adequate responses to the process, and discuss new solidarity between the generations.

- **Appreciates** that the issue of integrating young people in the work process has been broached. Establishment of European objectives in this area, in coordination with the reform of structural funds, may help bring about necessary change, although education remains in the remit of Member States.

- **Calls on** the Czech Government to work actively on a pension reform reaching beyond cosmetic changes of the current system.

- **Believes** that families continue to play an important role in the solidarity between generations. It is in this light that we consider the appropriate social recognition of families based on solidarity among generations a prerequisite for a successful advancement of society.

- **Recalls** however that a number of proposals enshrined in the Green paper could interfere with family policies that must remain, in pursuance of the principle of subsidiarity, in the exclusive competence of Member States. Coordination of measures to counter demographic developments is not among the competences of the European Union, and should not be carried out through open coordination or other non-legislative procedures.

- **Considers** it therefore inappropriate for the document to suggest pro-population measures that concern the division of roles in families. Distribution of duties in the household, choice of child-care options, and harmonization of family and work life must be left to the discretion of citizens and families, and must not be subject to state or other forms of regulation. Benefits and advantages (such as

parental leave) may not be granted based on the division of responsibilities among the sexes in the household, as it is up to the autonomous choice of the family.

- **Recalls** that some issues covered in the Green paper are presented in a leading manner. We may not debate ways of increasing the offer of collective care for children up to 3 years of age so long as there is no general consensus as to the usefulness of such measures as such. As the Czech Republic does not support any collective care for children under 3, this potential measure runs counter to our policy in this area. Instead, the Czech Government ought to support individual all-day care for children under 4 by their parents as a socially useful and adequately rewarded full-time employment.

- **Recalls** that population policy was in the past abused by non-democratic regimes. Possibilities of regulating ongoing demographic changes that are determined by a number of cultural and civilization factors, must be approached with caution. Social and tax policy instruments are not in a position to revert long-term population development trends; they can only adequately respond to them. European countries should therefore aim at supporting the autonomy and natural functions of the family; the state – and, in part, also international organizations – can facilitate but not regulate them or include them among their competencies.

- **Calls therefore on** the Czech Government to base its family policy priorities on the need to maintain the autonomy of families in their natural functions and principal objectives. To this end, they must use instruments that will not increase the feeling that families depend on the social policy system, and that will express the willingness of the state to reward child care in the family as an activity that is beneficial to the society.

9) N 15/05 - Proposal for an EP and Council Decision concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), Proposal for a Council Decision concerning the Seventh Framework Programme of the European Community for nuclear research and training activities (2007-2011)

Text of the Resolution:

185th RESOLUTION OF THE SENATE

from the 7th session held on 28 July 2005

concerning the Proposal for an EP and Council Decision concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), Proposal for a Council Decision concerning the Seventh Framework Programme of the European Community for nuclear research and training activities (2007-2011) (Senate Document No. N 15/05)

The Senate

in the light of the projected demographic development and the ability of Member States to carry out the Lisbon Strategy

I. Welcomes
the proposed Seventh Framework Programme and supports the Czech position on this programme;

II. Supports in particular
- the establishment of the European Research Council;
- the establishment of the Joint Research Centre;
- the establishment of the Central European Technological Institute (CETI) in the Czech Republic
- public-private partnership in research focused on key technologies that will make a substantial contribution to European research;

III. Requests
the utmost cooperation of all parties at national level given the limited timeframe for negotiations on the Seventh Framework Programme;

IV. Believes it necessary
to ensure that the final budget for the Seventh Framework Programme is under no circumstances lower than the original Commission Proposal (i.e. 72,726 million EUR and 3,092 million EUR for 2007-2013) even at the expense of other areas.

10) K 16/05 – Financial perspectives 2007-2013 – the negotiation package

Text of the Resolution:

135th RESOLUTION OF THE SENATE

from the 5th session held on 4 May 2005

regarding the Financial perspectives 2007-2013 – the negotiation package

The Senate

I.

Supports the position pursued in the negotiations on the financial perspectives 2007-2013 at European level by the Czech Government;

In negotiations on the financial perspectives 2007-20013 at European level, the Czech Government is duly underscoring the concerns and defending the interests of the Czech Republic.

II.

Considers it particularly important to stress the following points:

- The Czech Republic views the allocation of 4 % of GDP to the cohesion policy as a prerequisite for any agreement on the financial perspective.
- The Berlin method must be applied to the allocation of funds to the cohesion policy.
- The proposed transitional support is too generous.
- The use of any corrective mechanisms on the income side of the budget may no longer be tolerated.
- In order to make the income side of the budget simpler and more transparent, it would be useful to replace VAT based sources by GNI based sources.

III.

Welcomes and supports initiatives on the part of the European Parliament aimed at facilitating a compromise in negotiations on the financial perspective 2007 – 2013.

11) K 21/05 – Commission Communication "Healthier, safer, more confident citizens: a health and consumer protection strategy"

Text of the Resolution:

225th RESOLUTION OF THE SENATE

from the 7th session held on 15 September 2005

regarding the Commision's communication to the European Parliament, Council, Economic and Social Committee and the Committee of the Regions: "Healthier, safer, more confident citizens: a health and consumer protection strategy 2007-2013"

The Senate

I. **Recommends** to narrow the focus of the strategy and the program down to areas in which effective use of funds and a clearly defined European added value are guaranteed;

II. **Believes it would be useful to** underscore the need for investment into the basic research of serious diseases in connection with the Seventh Framework Programme of the European Community for research, technological development and demonstration activities;

III. **Does not recommend** the merger of public health and consumer protection policies and programmes in a single framework.

12) K 28/05 – Green paper on the financial services policy (2005-2010)

Text of the Resolution:

206th RESOLUTION OF THE SENATE

from the 7th session on 4 August 2005

on the Green paper on the financial services policy (2005-2010)

The Senate

given the insufficient integration of financial markets in the European Union that significantly hampers the functioning of the internal market,

I. Welcomes
the consultation process initiated by the Green paper on the financial services policy (2005-2010);

II. Supports the draft position of the Czech Government, particularly as regards
- the accent on consolidation, transposition, and simplification of legislation;
- the need to converge supervision standards and reporting methods;
- laying down the same legal requirements across financial sectors, wherever feasible;

III. Recommends
- that steps be taken to eliminate obstacles in the retail sector in order to maximize the benefits of the financial markets integration for the final consumer;

IV. Calls on the Czech Government to:
- complete the implementation of remaining financial services directives;
- thoroughly integrate supervision of Czech financial markets by establishing a single effective regulator.

13) N 34/05 - Proposal for a Council Regulation on the common organization of the markets in the sugar sector, Proposal for a Council Regulation amending Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

Text of the Resolution:

241st RESOLUTION OF THE SENATE

from the 7th session held on 6 October 2005

concerning the Proposal for a Council Regulation on the common organization of the markets in the sugar sector, Proposal for a Council Regulation amending Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, draft Council Regulation establishing a temporary scheme for the restructuring of the sugar industry in the European Community and amending Regulation (EC) No. 1258/1999 on the financing of the common agricultural policy

The Senate

1. **Welcomes** the proposal to reform the EU sugar market, particularly its focus on maximizing the competitiveness of the sector;

2. **Identifies** with certain points in the Government's position, particularly as regards the administrative increase of isoglucose quotas and the request to explain the purpose of the 12 euro levy in the quotas;

3. **Calls on** the Czech Government to discuss with the European Commission the issue of divergent direct payment systems with a view to finding a solution that would guarantee a level playing field for Czech farmers;

4. **Calls on** the Czech Government to actively pursue the issue of the distribution of sugar quotas in the CR by creating a communication platform for stakeholders, and by making sure that the potentially negative ruling by the Constitutional court does not jeopardize the viability of this market in the Czech Republic.

14) N 44/05 – Modified proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EC

Text of the Resolution:

570th RESOLUTION OF THE SENATE

from the 15th session held on 16 November 2006

on the Modified proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EC

The Senate

I. - Supports

on a general level the proposal for a Directive as a measure leading to the creation of an internal consumer credit market and at the same time presenting a guarantee of a high standard of protection for consumers in this area;

- Considers it appropriate

that building savings contracts that have been left out of the Directive be regulated in the Directive on mortgage loans that is being drawn up and, in so doing, be covered by a community regulation;

II. - Believes

that setting a total amount of credit, under which the providers of credits would not have the right to claim indemnity for the early repayment, should be subject to criteria which would take into consideration the different economic strength of consumers in EU member states;

III. - Requests

that the Government inform the Senate about further evolution of the negotiations and how this resolution was reflected by the Government.

15) N 46/05 – Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights

Text of the Resolution:

530th RESOLUTION OF THE SENATE

from the 14th session held on 5 October 2006

on the Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights

The Senate

- **Supports**
  the Commission's attempt to remove the obstacles to workers' mobility;

- **Is convinced**
  that, with regard to the fact that pension reform in the Czech Republic is unavoidable, greater attention needs to be paid to the problem of employee pension insurance;

- **Recommends**
  that during further negotiations, the Government of the Czech Republic push for as wide scope of the directive as possible without, however, disturbing the stability of the existing occupational pension schemes;

- **Does not consider it appropriate**
  that the scope of the directive should be limited only to newly arising supplementary pension rights;

- **Believes**
  that the directive should allow transfers of pension rights between the second and the third pillar of pension insurance, i.e. between the occupational and private pension schemes;

- **Requests** that the Government of the Czech Republic
  - inform the Senate about the way in which it has taken this opinion into account;
  - in the event of fundamental changes to the Czech Republic's position during negotiations regarding the proposal, or if fundamental changes are made to it during negotiations, update the Position of the Government provided to the Parliament of the Czech Republic.

16) K 55/05 – Communication of the European Commission to the spring European Council: Time to move up a gear

Text of the Resolution:

495th RESOLUTION OF THE SENATE

from the 12th session on 25 May 2006

on the Communication of the European Commission to the spring European Council: Time to move up a gear - Part one: The new partnership for growth and jobs, Part two: Country chapters

The Senate

1. Points out the importance of creating a functioning internal services market and the need for the completion of the free movement of labour in the EU within the context of discussions on the termination of the validity of transition periods for 8 new Member States of the Union;
2. Draws the Government´s attention to the significant reserves in the preparation of measures facilitating the mobility of workers on the Czech job market;
3. Requests to set up alternative strategic ways for the employment policy the applicability of which will not depend on results of the Czech parliamentary elections in 2006.

17) K 68/05 – Communication of the European Commission: Implementing the renewed partnership for employment and growth – Developing a knowledge flagship: the European Institute of Technology

Text of the Resolution:

477th RESOLUTION OF THE SENATE

from the 12th session held on 24 May 2006

on the Communication of the European Commission: Implementing the renewed partnership for growth and jobs - Developing a knowledge flagship: the European Institute of Technology

The Senate

- **Takes note of**
establishment of the European Institute of Technology as a system of networks of collaborating top European institutions whose objective is to set up closer links among domains of research, education and innovation at the European level;

- **Takes note of**
the current position of the Government of the Czech Republic set forth in its Position provided to the Parliament of the Czech Republic on the Communication from the Commission to the European Council - Implementing the renewed partnership for growth and jobs - Developing a knowledge flagship: the European Institute of Technology;

- **Considers indispensable**
that cardinal qualities of the European Institute of Technology, notably the legal base upon which it has been founded, its structure and financing and its relation to national institutions, including the issue of intellectual property rights sharing, are clarified as soon as possible;

- **Recommends**
that the Government of the Czech Republic take an active stand during further negotiations and concentrate their utmost efforts into reaching such a final form of the European Institute of Technology that would enable the Czech Republic to get involved into its activities and that would have due regard to the positions expressed by Czech universities and professional institutions working in the domain of research and development, private scientific facilities included;

- **Calls on**
the Government of the Czech Republic to endeavour that the principal seat of the European Institute of Technology be established in the Czech Republic. With regard to the applications which have already been submitted by other Member States, the Senate recommends Prague as competitive candidate for the seat of the Institute.

18) N 71/05 - Proposal for a Regulation of the European Parliament and of the Council establishing the European Globalisation Adjustment Fund

Text of the Resolution:

571st RESOLUTION OF THE SENATE

from the 15th session held on 16 November 2006

on the Proposal for a Regulation of the European Parliament and of the Council establishing the European Globalisation Adjustment Fund

The Senate

- Believes that more flexible conditions for drawing of financial resources from already existing EU structural funds (especially European Social Fund) could lead to sufficiently effective solutions of current global challenges;

- Approves of the criticism expressed by the Government with regard to the proposed wording of the Regulation while stating that:

- there is a necessity to consider carefully the real need of establishing a new fund with regard to the additional administration costs (compare the so-called technical assistance of European Commission in article 8 of the Regulation);
- clearer evidence should be provided whether the proposal establishing a new fund does not in fact conflict with the effort to strengthen the internal and external competitiveness of European economy and whether it guarantees equal access for all employees affected by the consequences of changes in the world trade structure;
- it recommends further revision on whether the proposal for a Regulation corresponds with the interest of all Member States (and particularly with the interests of new Member States) and in this context especially recommends a revision of the adjustment of the qualification criteria for drawing financial help from the Fund in a way that does not give advantage to some country groups;
- in regard to division of competences between particular levels of decision making it would be appropriate to ensure that the distribution of financial resources from the Fund, if it is established, does not interfere with domestic employment policy instruments of the Member States.

19) K 72/05 - Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy"

Text of the Resolution:

522nd RESOLUTION OF THE SENATE

from the 14th session held on 5 October 2006

considering the Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy"

The Senate

- **Agrees** with the emphasis on acceleration toward a single energy market, nevertheless without precipitous introduction of new legislative rules or creation of additional institutions;

- **Supports** primarily the completion of (supranational) regional energy markets;

- **Supports** the convergence of national regulators' competences, mainly aimed at ensuring a consistent approach to trans-border issues;

- **Supports** the formation of common information and co-ordination centres of transfer systems operators on a regional level;

- **Supports** the reinforcement of interconnectivity of networks between the Member States considering that it is necessary to identify all bottlenecks of energy transfer in advance;

- **Supports** the diversification of the structure of energy sources but insists that it is up to each and every Member State to choose its own structure of energy sources;

- **Supports** the use of nuclear energy, which is in the framework of non-emissive energy hardly substitutable and recommends to leave it at the discretion of individual Member States to what degree they shall engage nuclear energy in their own resources' structure;

- **Supports** rational development of renewable resources but with due regard to their costs and their negative effect on the stability of energy networks.

20) K 77/05 – Amended proposal for a Directive of the European Parliament and of the Council on services in the internal market

Text of the Resolution:

487th SENATE RESOLUTION

from the 12th session held on 25 May 2006

on the Amended proposal for a Directive of the European Parliament and of the Council on services in the internal market

The Senate
with reference to its 249th Resolution from the 8th session of the 5th term of office held on 30th November 2005, regarding the Proposal for an EP and Council Directive on services in the internal market:

1) Has reservations about the wording of the European Parliament and Council amended draft directive on services on the internal market as submitted by the European Commission;

2) Has regretfully found that the amended draft is primarily based on the wording passed by the European Parliament in February of this year in its first reading, and its effect on the establishment of the fully functioning market for services would therefore be significantly weakened;

3) Regrets that the Government of the Czech Republic has to a significant degree retreated from its position as stated in the Czech Republic's general position on the draft Directive on services in the internal market which the Senate discussed on 30th November 2005;

4) Is worried by the current precipitate manner, in which the amended proposal is being discussed, where the Member States are intending to vote in the Council on political consensus at a time when the European Commission has not yet compiled an impact study on a substantially amended Proposal yet;

5) Is lacking a detailed updated Government position for the Parliament of the Czech Republic explaining, in particular, the change in the position held by the Government of the Czech Republic regarding the amended draft Directive;

6) Nevertheless appreciates the efforts by the Government of the Czech Republic to properly clarify the legislative and technical matters in the amended Proposal aimed at ensuring the legal safeguard of providers and recipients of services in the European Union;

7) Requests the Government of the Czech Republic to add to the position for the Parliament of the Czech Republic (under no. 5 of the form) an evaluation of the economic and other impacts of the amended draft bill, in

particular with comparison with the assessment of the impacts of the original Proposal.

21) N79/05 - Amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights

Text of the Resolution:

525th RESOLUTION OF THE SENATE

from the 14th session on 5 October 2006

on Amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights

The Senate

I. - **Considers**
the submitted proposal and the questions which are arising in connection with the hearing of the proposal to be fundamental regarding the division of competence in criminal-law field;

- **Believes**
that criminal law remains in its nature an area of regulation which is more than any other connected with the community of every Member State, and that this conviction is adequately expressed in the structure of the Founding Treaties of the European Union;

- **Is inclined**
therefore to a rather restrictive interpretation of the judgment of the Court of Justice in case C-176/03 *Commission v Council* arguing that if a measure is aimed at harmonisation of criminal-law legislation as its main objective, it is necessary to adopt it in the framework of intergovernmental cooperation in the third pillar (compare judgment in joint cases C-317/04 and 318/04 *European Parliament v Commission*);

- **Understands**
article 47 of the Treaty on European Union as being a provision that clearly divides individual pillars on which the EU is founded, without however providing for hierarchical priority of the first pillar over the other pillars and therefore considers the interpretation submitted by the Commission to be impermissible;

II. - **Does not consider**

it appropriate that negotiations in the Council on material content of the proposal should be postponed until the decision of the Court of Justice in case of criminal-law framework for the enforcement of the law against ship-source pollution (C-440/05) is reached, proposes to open a discussion on the topic of necessity, scope and will for introducing criminal-law provisions for the protection of intellectual property rights;

- **Does not suppose**
  that although the difference in sanctions imposed by individual Member States can make effective abatement of counterfeiting and piracy more difficult, the proved degree of negative influence on functioning of the internal market authorises the relatively detailed harmonisation of criminal sanctions imposed by Member States' criminal law;

III. - **Takes note of**
the withdrawal of the original Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights and Proposal for a Council Framework Decision to strengthen the criminal law framework to combat intellectual property offences COM(2005)276, Council doc. No.11245/05;

- **Recommends,**
  however with regard to securing legal certainty, to resume discussions led over the original proposal of the Commission, which separates matters of criminal law from the other issues including the choice of adequate instruments (i.e. framework decision and directive) aimed at reaching the desired objective.

22) K 80/05 - Communication from the Commission to the European Council: A Citizens' Agenda – Delivering results for Europe

Text of the Resolution:

521st RESOLUTION OF THE SENATE

from the 14th session held on 5 October 2006

on the Communication from the Commission to the European Council: A Citizens' Agenda – Delivering results for Europe

The Senate

- **Welcomes** the activities of the European Commission directed at presenting effective and practical answers to questions which the citizens of the Member States expect to be answered;

- **Finds** that effort concentrated on several key areas may bring more benefit than an endeavour to interfere in a wide spectrum of issues without sufficient authority of competences;

- **Observes** together with the European Commission that completion of the single internal market with clear and generally observed rules of operation represents an unequivocal priority in further European integration; in this context the Senate considers that any motions aimed at new forms of tax burden or possibly any efforts towards EU harmonization in the sphere of direct taxation, to be factors which if put into practice could jeopardize growth and lead to a reduction of competition in the European Union;

- **Urges** for a pragmatic approach with regard to ensuring the enforcement of common social standards in the European Union by means of legislation and by the open method of coordination. This effort cannot limit fundamental sovereignty of the Member States in defining their own economic and social policy;

- **Believes** that the conceivable use of bridging clauses according to article 42 of the Treaty on European Union and article 67 paragraph 2 of the Treaty establishing the European Community in the Area of Freedom, Security and Justice necessarily has to be preceded by a thorough discussion with representatives of the national parliaments, all this with regard to the seriousness of changes which could be brought about by this step in the sphere of criminal-law and related regulation;

- **Agrees** with the conviction expressed in the Communication of the European Commission: openness of the decision-making process, reduction of the bureaucratic load and observance of the subsidiarity principle have to be brought

into practice by the means of thorough use of options which are offered on the basis of the provisions of the existing Founding Treaties.

23) N 87/05 - Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services

Text of the Resolution:

34th RESOLUTION OF THE SENATE

from the 2nd session held on 20 December 2006

on the Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services

The Senate

I. Notes that due to the fact that the roaming services market is characterized by certain specific features, prices for international roaming services invoiced to the final customer are relatively high;

II. Considers any reflections about regulation without a due preliminary analysis of causes of this situation and discussion about efficiency of the conceivable regulation to be premature;

III. Invites the Government to continue to observe its cautious approach during the negotiations on the proposal;

IV. Demands that the Government inform the Senate about:
- the way in which it took this resolution into account,
- further evolution of the negotiations, notably about a conceivable submission of an amended proposal of the Regulation.

24) N 89/05 - Proposal for a Council Regulation amending Regulation (EC) No. 2201/2003, on jurisdiction and introducing rules concerning applicable law in matrimonial matters

Text of the Resolution:

524th RESOLUTION OF THE SENATE

from the 14th session held on 5 October 2006

on Proposal for a Council Regulation amending Regulation (EC) No. 2201/2003, on jurisdiction and introducing rules concerning applicable law in matrimonial matters

The Senate - Considers

the submitted document to be premature as the relevant analysis of the conformity of the particular proposal with the principle of subsidiarity can, with regard to judicial practice, only be carried out after a longer period of time has elapsed since Regulation (EC) No. 2201/2003 has come into force;

- **Expresses fear**

this particular Proposal amending the Regulation (EC) No. 2201/2003 could represent a further step in the transfer of Member States' exclusive powers regarding family law to the European level;

- **Believes**

that the concept of residual jurisdiction needs to be examined through greater analysis in view of the need for it, particularly reflecting the problem of recognition in third countries of the decisions made by Member States' bodies, and due to Member States' international commitments;

- **Does not consider**

the introduction of the European conflict-of-law rule in divorce matters to be a suitable measure to ensure legal certainty and prevent the risk of "rush to court", in particular with regard to the difficulties which could occur while justifying the use of the EU conflict-of-law rule in specific cases;

- **Finds**

it necessary for the linguistic, logical and substantive quality of the proposal to be of such a standard in the official languages of all the Member States that it guarantees the compatibility of the submitted document with the version, in which the proposal was drawn up;

- **Authorises**

the President of the Senate to deliver this resolution to
a) the European Commission,

b) the Government of the Czech Republic.

25) N 91/05 - Proposal for a Council Regulation amending Regulation (EC) No 2424/2001 on the development of the second generation Schengen Information System (SIS II) – Proposal for a Council Decision amending Decision 2001/886/JHA on the development of the second generation Schengen information System (SIS II)

Text of the Resolution:

557th RESOLUTION OF THE SENATE

from the 14th session held on 2 November 2006

on the Proposal for a Council Regulation amending Regulation (EC) No. 2424/2001 on the development of the second generation Schengen Information System (SIS II) – Proposal for a Council Decision amending Decision 2001/886/JHA on the development of the second generation Schengen information System (SIS II)

The Senate - Considers

the accession of the Czech Republic to the Schengen Area to be a priority;

- **Welcomes**
  the Portuguese initiative "SISone4all" and approves of this initiative as a chance for accession for every new Member State to the Schengen Area within the period previously agreed (autumn 2007);

- **Expresses regret**
  regarding the non-compliance of the preparation schedule concerning the enlargement of the Schengen Area after the European Union enlargement in May 2004;

- **Considers as a necessity**
  - the elaboration of new realistic schedule for SIS II with well-defined responsibility of all the individual actors for its time keeping,
  - the setting up of a control body which should independently of the Commission oversee strict adherence to this schedule,
  - the creation of a financial instrument to cover additional costs of new Member States caused by delay of SIS II;

- **Requests,**
  that the Czech Government inform the Senate about
  - how it will have paid due regard to this resolution,
  - further progress in the negotiation, especially about the final agreement concerning further steps that is planned for the meeting of Council of Ministers for justice and home affairs in December.

26) K 92/05 - Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition

Text of the Resolution:

22nd RESOLUTION OF THE SENATE

from the 1st session held on 30 November 2006

on the Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition

The Senate

Notes the position of the Government of the Czech Republic with regard to the Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition;

suggestive of the need to simplify the legal environment in the EU in accordance with the strategy of the European Commission to ensue from the Communication of the Commission of 25 October 2005 (COM (2005) 535):

1) **Recommends** the consideration of the need to adopt new legal regulation to regulate conflict of laws rules in matters concerning matrimonial property regimes given the situation in which the ratification of the existing Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes is an issue which has yet to be resolved;

2) **Assumes** that the conflict of laws regulation in matters concerning matrimonial property regimes may only relate to the property consequences of matrimony, must respect the principle of *lex rei sitae* in the case of determining a connecting factor for immovable assets, and draws on the need for continuity of related proceedings in the case of determining jurisdiction;

3) **Does not consider** it possible or desirable to concurrently regulate with one and the same legal regulation (a) the settlement of matrimonial property regimes and (b) property relations to ensue from other forms of union which are not recognised by all Member States (registered partnership) or which are not formalised in an adequate and transparent manner from the perspective of possible legal consequences (unmarried couples); in order to resolve property settlement from such forms of union it is possible within the EU to apply the existing regulations for determining jurisdiction and the recognition and enforcement of judgements in civil matters (e.g. Council Regulation (EC) No. 44/2001);

4) **Requests** that the Government of the Czech Republic informs it:
    - of the manner of consideration of its position;

- of the further development of debate.

27) N 98/05 – Proposal for a Directive of the European Parliament and of the Council on road infrastructure safety management

Text of the Resolution:

98th RESOLUTION OF THE SENATE

from the 5th session held on 12 April 2007

on Proposal for a Directive of the European Parliament and of the Council on road infrastructure safety management

The Senate

I.

1. States, that the proposal of the directive comes out of the good intention, however, it involves many inaccuracies and bureaucratic components which will complicate its possible implementation into the Czech legal order;

2. Is of the opinion, that the gathering of information about the safety conditions of the communications within the Trans-European Network (TEN-T) and sending them to the European Commission will not contribute to the improvement of road traffic safety;

3. Takes note of the proposal presented by the German Presidency and the Commission to modify the original wording of the directive which shows certain development towards the removal of the superfluous administrative requirements;

4. Believes, however, that the form of recommendation would be more suitable for the achievement of the aim set in the proposal of the directive and wonders why the European Commission did not consider this possibility in the impact assessment of the proposal;

II.

Prefers not to approve of the above mentioned initiative in the form of directive but to communicate the intentions of the Commission to the Member States in the form of recommendation - if the majority of the Member States insist on presenting of the directive, then it recommends that its annexes be indicative;

III.

Requests the Government to inform the Senate about the way this position was taken in account and about the further proceeding of the negotiations.

28) N 100/05 - Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services

Text of the Resolution:

106th RESOLUTION OF THE SENATE

from the 5th session held on 19 April 2007

on Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services

The Senate

I. Recommends

1. **to support** the proposal to accomplish the postal services market because it believes that new competitive pressure will help to improve the offered services;

2. **not to support** the postponing of the opening of the postal services market, and deems that for reaching true internal market it is necessary to fix the same date of application for all Member States;

3. **to proceed** with further negotiations so that the provisions of the Directive do not endanger provision of high quality postal services at affordable prices, especially so that the residual cost of the universal service is not covered by increased price of postal services for individual (small-scale) users;

4. **to put stress** on a cautious formulation of conditions for handing out licences and determining their scope as these will represent the only guarantees of accessibility and quality of the universal service;

II. Requests the Government to inform the Senate about the way this position was taken into account and about further evolution of the negotiations.

29) N 103/05 – Proposal for a Regulation of the European Parliament and the Council – Establishing the European Institute of Technology

Text of the Resolution:

37th SENATE RESOLUTION

from the 2nd session held on 20 December 2006

on the Proposal for a Regulation of the European Parliament and the Council – Establishing the European Institute of Technology

The Senate

I.

1. **Supports** the establishment of the European Institute of Technology (EIT);
2. **Welcomes** the two-level structure of the EIT proposed by the Commission which, on the one hand, gives the Governing Board sufficient powers to set strategic priorities and manage the EIT and, on the other hand, enables the knowledge communities to decide through contractual arrangements on its legal status, forms of employment relations, granting of degrees and diplomas and the rules for management of intellectual property;

I. Recommends that the Government

3. push, in accordance with the European Union's promise made in 2003, for one of the new EU member states to be chosen as the seat of the EIT;
4. by setting up suitable national programmes for science, research, innovation and public-private partnership, create conditions which would make it possible for the Czech subjects to get involved in the structures of knowledge communities;
5. take into consideration the opinions of universities, scientific institutions and economic sector during further negotiations concerning the EIT;

II. Requests that the Government inform the Senate about the way in which this opinion was taken into account and about further developments of the negotiations.

30) K 2/06 - White Paper on enhancing the Single Market Framework for Investment Funds

Text of the Resolution:

140th RESOLUTION OF THE SENATE

from the 6th session held on 7 June 2007

on White Paper on enhancing the Single Market Framework for Investment Funds

The Senate

I. **Considers** the White Paper to be a contributive document starting to pave the way toward simplification of the operating environment for investment funds;

II.

1. **Supports** the Position which the Government has taken on measures proposed in the White Paper;

2. **Is of** the same opinion as the Government that the approach proposed by the European Commission will not cause over-regulation of the sector;

3. **Stresses** that it is particularly necessary to conduct a thorough assessment of the need to and possibilities of inclusion of some non-harmonized funds to the single market framework;

III. **Requests** the Government to inform the Senate about further development and about the actions intended for improvement of the efficiency of the directive on the coordination of legal and administrative regulations related to Undertakings for the Collective Investment of Transferable Securities (so-called directive UCITS).

31) K 4/06 - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A strategic review of Better Regulation in the European Union“

Text of the Resolution:

128th RESOLUTION OF THE SENATE

from the 6th session held on 7th June 2007

on Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A strategic review of Better Regulation in the European Union“

The Senate

I.

1. **Welcomes** the *Better Regulation* initiative of the European Commission which is to lead to the improvement and the simplification of legal environment in the European Union;
2. **Considers it** to be important that this initiative is one of the priorities of the present Commission;

II.

1. **Stresses** that it is necessary to understand the *Better Regulation* initiative not only as a way to improve the quality of laws – regulation, but also as a way to decrease their volume – deregulation;
2. **Points out** the complementary character of the initiative, because the evaluation of existing legal regulations and the assessment of the legitimacy of legal rules in preparation is not limited only to the European rules, but also influences the formation of national rules;
3. **Finds it important** that the measuring of administrative costs is not limited only to the private business area since administrative overburdening also impacts citizens and state institutions and we can only hardly separate these sectors;
4. **Appreciates** the active approach of the Government and its participation on the pilot project of the Commission to measure administrative burden of entrepreneurs and the fact that the Czech Republic as the only country from new Member States has committed itself to decrease administrative burden by 20% until 2010 compared to the year 2005;

III.

Requests the Government to inform the Senate about the way this position was taken into account and about further evolution of the *Better Regulation* initiative.

32) N 5/06 - Green Paper: Modernising labour law to meet the challenges of the 21st century

Text of the Resolution:

100th RESOLUTION OF THE SENATE

from the 5th session held on 13 April 2007

on Green Paper: Modernising labour law to meet the challenges of the 21st century

The Senate

I.

a. **Welcomes** the Green Paper as the ground for the necessary debate on the modernization of labour law;

b. **Disagrees**, with regard to the different conditions being the basis for setting up social policies in particular Member States, with any further regulation of labour relations on the EU level;

c. **Regards** the constructive approach of both the employees' and the employers' representatives to be the necessary precondition for finding a suitable solution, particularly with regard to the fact that the significant union membership rate persists precisely in the sectors which encounter the most intensive global competition pressure;

d. **Considers** the main instruments for improving the employment rate to be:

i. appropriate adjustment of the active and passive employment policy measures which would support the responsible behaviour of all participants of the labour market;

ii. enhancement of the competitiveness of the labour force via lifelong learning, the improvement of qualification and the increasing of flexibility of the labour market;

II.

1. **Supports** the position adopted by the Government to the questions posed by the Commission in the Green Paper;
2. **Is of the opinion** that there are still measures leading to lower flexibility of workers remaining in the Czech legal order, which has in effect a negative impact on the workers themselves;
3. **Calls** on the Government to pay attention to the regulation of agency work in the Czech legal order and to consider its possible revision with regard to the clarification of the rights of the agency workers;

III.

1. **Requests** the Government to inform the Senate:
   - about the results of the consultation process which was launched by the publication of the Green Paper;
   - about the follow-up initiatives of the European Commission.

33) M 9/06 - Proposal for a Council Decision establishing the European Police Office (EUROPOL)

Text of the Resolution:

95th RESOLUTION OF THE SENATE

from the 5th meeting held on 12th April 2007

on Proposal for a Council Decision establishing the European Police Office (EUROPOL)

The Senate

I. Is in accordance with the actual position of the Czech Republic in the negotiations in the EU Council;

II. Recommends to the Government:

1. To initiate in due time the intra-state process of eventual termination of the Convention on the Establishment of the European Police Office and the amending Protocols, to what assent of both chambers of the Parliament and the President of the Republic is required according to Article 49 and Article 63 paragraph 1, letter a) of the Czech Constitution;

2. To urge in the framework of negotiations in the Council that the Europol is financed by the Member States, in order to guarantee democratic parliamentary control of the functioning of Europol by the national Parliaments;

3. To advocate the necessity of unanimous voting during the negotiations in the Council. Unanimous voting is particularly important in the following areas: formulation of the priorities of Europol, assignation of bodies of international cooperation and the rules of information transfers to third parties, decision making on establishing of new information systems and adoption of the rules applied to them, adoption of rights and obligations of the liaison officers;

4. To ensure that activities and measures of operative or executive character on the territory of the Czech republic will not fall within the tasks and competences of Europol, particularly that there will be no authorization for Europol to organize and to conduct investigations and operative actions on Czech territory;

5. That the votes assigned to the European Commission in the Europol's Management Board should not surpass the number of votes assigned to a single Member state;

6. To judge carefully further enlargement of Europol's mandate on criminal activity that is not factually defined;

III. **Requests** the Government to inform the Senate about the way this position was reflected and to provide Senate with further information on the proceeding of negotiations.

34) N 14/06 – Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emissions allowance trading with the Community

Text of the Resolution:

109th RESOLUTION OF THE SENATE

from the 5th session held on 19th April 2007

on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emissions allowance trading with the Community

The Senate

I. **Believes** that despite the relatively low level of pollution caused by air transport, the effort to reduce greenhouse gas emissions of this industry is appropriate due to its expected growth;

II.

1. Considers application of the proposed inclusion of air transport into the scheme for greenhouse gas emissions trading on carriers from third countries to be a necessary condition for adoption of the Directive;

2. Believes that in the interest of maintaining competitiveness of European carriers the measures in the Directive should apply from the very start not only to flights between two airports within the EU, but also to flights arriving at or departing from EU airports;

3. Supposes that the Czech Republic should seek such setting of allowances that would not endanger the competitiveness of Czech carriers;

4. Expresses anxiety that the fact that the allocation of allowances for individual operators will be based on data collected 24 months prior to the start of the relevant trading period could lead to an excessive purpose driven increase in number of flights by carriers;

5. Recommends to further consider whether setting of the total number of allowances granted to the sector of air transport based on the average of years 2004-2006 fully reflects the expected increase in aviation, mainly in the new Member States;

6. Supports the inclusion of the aviation sector into the emissions trading scheme from 2013, which would enable the preparation of the third phase of trading with regard to the entry of aviation into the scheme and at the same time would grant domestic carriers more time for preparation;

III. **Requests** the Government to inform the Senate about the way this position was taken into account and to provide Senate with further information on the proceeding of negotiations, mainly the outcome of negotiations of the International Civil Aviation Organization Assembly.

35) K 15/06 - Communication from the Commission to the European Parliament and the European Council: An Energy Policy for Europe

Text of the Resolution:

79th RESOLUTION OF THE SENATE

from the 4th session held on 8 March 2007

on the Communication from the Commission to the European Parliament and the European Council: An Energy Policy for Europe

The Senate

I.

1. **Got thoroughly acquainted** with the Communication from the Commission: An Energy Policy for Europe;

2. **Welcomes** the launch of the debate on energy policy in Europe and the introduction of a strategic review of the internal energy market;

3. **Welcomes** the government initiative to establish a "Prague Forum" focused on issues of nuclear safety and security;

4. **Intends** to take an active part in the current debate on the shape and the future of energy policy in Europe;

II. Recommends that the Government:

1. clearly defines its position on the proposed unbundling of energy production and transmission facilities before the meeting of the European Council is convened in order to be able to support one of the extant options in this respect;
2. continues to support the unbinding character option of the goal to reach 20 % share of renewable resources;

III. Requests the Government to inform the Senate about the way this position was taken into account and about further evolution of the negotiations.

36) M 16/06 - Proposal for a Council Decision on stepping up of cross-border cooperation, particularly in combating terrorism and cross border crime

129th RESOLUTION OF THE SENATE

from the 6th meeting held on 7th June 2007

on Proposal for a Council Decision on stepping up of cross-border cooperation, particularly in combating terrorism and cross border crime

The Senate

I. **Is in accordance** with the actual position of the Czech Republic in the negotiations in the EU Council;

II.

1. **Welcomes** the proposal for the new mechanisms of the police cooperation, that should lead to the increased efficiency of police work in the Member States;

2. **Considers** necessary that cooperation in areas regulated by the Treaties should evolve in conformity with the duty of loyal cooperation contained in the Article 10 of the Treaty of European Communities and should flourish within the framework of the Treaties, not outside of it.;

3. **Calls for** the full parliamentary control of criminal law and police cooperation that should proceed in a transparent manner;

4. **Considers** important that the four-year implementation term notified by the Czech Government for implementing the provisions of the proposed Council Decision would be shortened;

III. **Requests** the Government to inform Senate about the way this position was taken into account and to provide Senate with further information on the proceeding of negotiations.

37) N 18/06 - Proposal for a Directive on the protection of environment through criminal law

Text of the Resolution:

151st RESOLUTION OF THE SENATE

from the 6th meeting held on 8th June 2007

on Proposal for a Directive on the protection of environment through criminal law

The Senate

I. Is in accordance with the actual position of the Czech republic in the negotiations, that is included in the Government Position for the Parliament;

II. 1. **Considers** the Proposal and the questions arising during the negotiations about it as crucial issues with regard to the delimitation of competences between the European Union, European Community and the Member States in the area of co-operation in criminal law matters;

2. **Believes** that the harmonisation of criminal law rules should be pursued only in thoroughly justified cases and within the framework of intergovernmental cooperation;

3. **Draws attention** to Resolution of the Senate No. 525 of the 14th meeting of the 5th term of office, given on 5 October 2006 regarding the Amended proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (Senate press 079/06);

4. **Does not consider** appropriate to lay aside the negotiations in Council until the judgement of the European Court of Justice in the case of criminal law framework for the enforcement of law against ship-source pollution (C-440/05) and proposes to open discussions on the matter of necessity, extent and Member States' will to adopt criminal law measures ensuring the protection of the environment;

5. **Assumes** that while the differences in character and gravity of the sanctions laid down by individual Member States could make effective fight against activities injurious to the environment difficult, the impact assessment study submitted by the European Commission does not bring sufficiently convincing justification of quite detailed harmonization of criminal sanctions set in the criminal law of the Member States;

III. **Requests** the Government to inform the Senate about the way this position was reflected and to provide Senate with further information on the proceeding of negotiations.

38) K 19/06 - Communication from the Commission to the Council and the European Parliament - Results of the review of the Community Strategy to reduce CO_2 emissions from passenger cars and light-commercial vehicles

Text of the Resolution:

172nd RESOLUTION OF THE SENATE

from the 7th session held on 19 July 2007

on the Communication from the Commission to the Council and the European Parliament - Results of the review of the Community Strategy to reduce CO_2 emissions from passenger cars and light-commercial vehicles

The Senate

I. states that the volume of CO_2 emissions caused by automobile traffic is a serious global problem and that the reduction of it is an important objective of the European Communities, in which the Czech Republic must participate;

II.

1. **supports** the reduction of CO_2 emissions caused by automobile traffic primarily by the way of self-regulation;
2. **recommends** that the Government effectively exercises an integrated approach to the realization of the objectives expressed in the Communication from the Commission to the Council and the European Parliament;
3. **recommends** to the Government to request from the European Commission an examination of the economic impacts of the proposed objective of the reduction of the CO_2 emissions caused by automobile traffic;
4. **requests** that the Government speeds up the elaboration of a study on the impacts of the proposed measures on the Czech Republic as much as possible;
5. **supports** the position of the Government on condition that the proposed measures are economically realizable;

III. **requests** that the Government informs it, in which way did it take this stance into account and about the subsequent course of negotiations.

39) K 20/06 - Green Paper on the Review of the Consumer Acquis

Text of the Resolution:

93th RESOLUTION OF THE SENATE

from the 5th meeting held on 12th April 2007

on Green Paper on the Review of the Consumer Acquis

The Senate

I.

1. Considers the Green Paper to be a good starting point for further discussion on the review of consumer protection *acquis*;

2. Warns that the goal of this review, i.e. simplification and unification of legal regulation, will not be reached if the relation of this review to other instruments existing or in preparation at the European level is not defined (i.e. instruments of international private law and the Common frame of Reference of European contract law);

3. Believes that the common European standard of consumer protection should be based on the concept of a consumer that is well-informed, adequately observant and circumspect, and that is able to actively seek information on the ground of which he reasonably decides whether he takes part in a commercial transaction or not;

II.

1. Supports the position of the Government on the questions formulated by the European Commission in the Green Paper, particularly in the following areas:

- mixed legislative approach to the review of *acquis,*
- broadest possible scope of the horizontal instrument,
- full harmonization, while in sensitive areas, harmonization could eventually be minimal, complemented by the principle of mutual recognition;

2. Recommends that due to the topicality of the issue the Government pay increased attention to the area of consumer protection in the context of the coming Czech presidency in the Council;

III. Requests the Government:

- to provide the Senate with the reply sent to the European Commission after the positions of Czech stakeholders have been reflected;
- to inform the Senate about the follow-up initiatives of the European Commission.

40) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Annual Policy Strategy 2008

Text of the Resolution:

124th RESOLUTION OF THE SENATE

from the 6th session held on 6th June 2007

on Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Annual Policy Strategy 2008

The Senate

I. **Considers** the Annual Policy Strategy for the year 2008 to be a preparatory document in relation to the Commission Legislative and Work Programme 2008;

II.

1. **Believes** that the strategy aimed at strengthening of competitiveness of the European Union in the framework of Global Europe initiative is a good step forward and that particularly the already started discussion about the revision of trade defence instruments should continue;

2. **Reminds** that under the current circumstances we cannot avoid questions tied to the risks and opportunities related to nuclear energy and that there is need for a debate on the future of nuclear energy in Europe to be started;

3. **States** that the effort of the EU to reduce carbon dioxide emissions should take into account the need of maintaining global competitiveness of the European industrial actors;

4. **Does not agree** with the adoption of new anti-discrimination measures at Union level, while the implementation of the current norms in this area is perceived as controversial by the Member States;

5. **Notices** that the new initiatives aimed at better harmonisation of family and professional life cannot extend beyond the legal framework of the EU and cannot limit the freedom of choice of an individual or a family;

6. **Has reservations** to the formulation implying that only after the functioning of SIS II the new Member States will be able to join the Schengen Area, as this formulation does not take into account the conclusions of the JHA Council of 5 December 2006 regarding the enlargement of the Schengen Area on the basis of the current SIS I+ system;

7. **Reminds** that contrary to the global approach to migration, eastern and south-eastern dimension of the European migration policy was completely omitted from the

APS 2008, although the Commission plans to pursue activity in this field already in 2007;

8. **Considers** the harmonisation of rates of direct taxes to be unacceptable, harmonisation in other areas of direct taxation is acceptable only to the level necessary for functioning of the "four freedoms" constituting the base of the common market and without a distinctive impact on the tax systems of individual Member States, and thus the Senate recommends to consider properly the added value for the internal market of the discussed concepts of the Common Consolidated Corporate Tax Base (CCCTB);

9. **Expresses** disquietude about the raising amount of finances assigned for the operation of European agencies;

III.

1. **Expects** that the European Commission will comply with its obligations declared in the framework of the initiative aimed at strengthening of communication with national parliaments of the EU and that it will duly reflect on the remarks made by the Senate while preparing the Legislative and Work Programme for 2008;

2. **Intends to participate** via ex-ante legislative scrutiny at the negotiations on the aforementioned initiatives, emphasising the fact that most of them will influence the Czech Presidency in the Council of EU in 2009;

IV. **Authorises** the President of the Senate to communicate this Resolution to the European Commission.

41) K 24/06 - Communication from the Commission to the European Parliament and the Council – Towards sustainable water management in the European Union

Text of the Resolution:

149th RESOLUTION OF THE SENATE

from the 6th session held on 7 June 2007

on the Communication from the Commission to the European Parliament and the Council – Towards sustainable water management in the European Union

The Senate

I. **states** that the contents of the Communication from the Commission „Towards sustainable water management in the European Union" is the evaluation of the implementation of the Water Framework Directive (Directive 2000/60/EC of the European Parliament and the Council) in the EU member countries;

II.

1. **stresses**, that the key elements of the Directive are:

- to expand water protection to all waters: inland and coastal surface waters and groundwater;
- to achieve "good status" for all waters by 2015;
- to base water management on river basins;
- to combine emission limit values with environmental quality standards;
- to ensure that water prices provide adequate incentives for water users to use water resources efficiently
- to involve citizens more closely;
- to streamline legislation.

2. **finds out** that the Czech republic is altogether positively evaluated in the Communication from the Commission, especially as concerns the fulfilment of the formal requirements of the Directive, such as reporting. It is necessary to focus on the second and third aim of the water policy, to achieve "good status" for all waters by 2015 and to base water management on river basins;

III.

1. **requests** Ministry of Agriculture and Ministry of the Environment to provide the information, how is and will be integrated protection of basins secured, with the aim to improve the quality of the smallest rivers, especially in agricultural regions;

2. **requests** Ministry of the Environment and the authority responsible for the Operational programme „Environment“ to provide information, how the financial resources will be used especially those connected with Priority 1 – Improving of the water-building infrastructure a flood risk management with a view to:
   a) meeting the obligations of the transition period in water treatment till 2010;
   b) reducing the pollution from area sources and the smallest settlements.

42) K 26/06 - Green paper on market-based instruments for environment and related policy purposes

Text of the Resolution:

214th RESOLUTION OF THE SENATE

from the 9th session held on 31 October 2007

on the Green paper on market-based instruments for environment and related policy purposes

The Senate

I.

1. **Got acquinted** with the final answers to the Green paper on market-based instruments for environment and related policy purposes which the Government had transmitted in due time to the European Commission;

2. **Stresses** that with regard to impacts of the possible future legislation on the individual areas it is necessary to pay due attention to these subjects and therefore;

II. **Requests** that the Government inform the Senate about the following issues:

- What are the next plans in the implementation of the ecological tax reform?
- How the Government want to ensure that the environment protection measures (including the market-based instruments) will not just be environmentally effective (improvement of the environment) but also economically efficient (costs not exceeding benefits)?
- What instruments are being prepared by the Government in the area of energy taxation in general and in the area of electric power in particular? What will be the impact of the foreseen measures on the state budget and on the citizens?
- What are the principal elements of the market-based instruments in preparation in the area of transport? What will be the impact of the planned measures on prices in all transport categories?
- What principles will the Government advocate in the area of water management within the Czech Republic and the European Union?

43) K 27/06 - Green Paper: The European Research Area - New Perspectives (Text with EEA relevance)

Text of the Resolution:

169th RESOLUTION OF THE SENATE

from the 7th session held on 19 July 2007

on Green Paper - The European Research Area: New Perspectives (Text with EEA relevance)

The Senate

I.

1. **Realizes** that one of important preconditions for European competitiveness is the ability to produce such technological innovations that are commercially utilizable in the areas of industry and services;

2. **Notes with regret** the enduring insufficient strength of European research;

3. **Is of the opinion** that an important part of the solution to this problem is the strengthening of cooperation of universities, research institutions and the private sector which is essentially more sensitive to the market needs and should therefore be more involved into priority-setting and decision-making processes in the area;

4. **Deems** that public means should be directed through suitable channels also to companies that can ensure practical utilization of innovations;

5. **Recommends** to devote attention to all forms of mobility of research workers, including that between the public and private sectors, especially through provision of sufficiently flexible tools of career building, including a stated perspective upon return to the country of origin and adequate social security;

II.

1. **Evaluates positively,** among the activities aiming towards creation of a European Research Area and from the point of view of effectiveness, especially the European Research Council (ERC), which is based on "bottom up" initiatives and allows European research workers sufficient level of flexibility;

2. **Perceives** as basically satisfactory the general principles defined in the Green Paper on which the construction of the European Research Area is to be founded;

3. **Draws attention to** the necessity to ensure thorough implementation of the aforementioned principles that should lead to the elimination of barriers, to synergic effects, to setting up of conditions for attraction and harnessing of talents and to the inclusion of private business in the field and to the creation of a stable environment for science and research;

4. **Considers** the principal obstacles to the effectiveness of European research to be:
   - the egalitarian principle, lacklustre support for top performers, which lead to mediocrity;
   - insufficient support for joint public private partnership projects;
   - reluctance to take risks;
   - low level of mutual trust among the actors of the European Research Area, that is public administration, research workplaces, universities and the business sector;
   - fragmentation and lack of comprehensiveness in the legislative and administrative areas;
   - administrative barriers;
   - undersized support in material and personal areas;
   - heavy bureaucratic burden on both European and national levels;

5. **Considers** that in the area of research it is desirable:
   on the European level to
   - eliminate all barriers to mobility;
   - enhance the financing of ERC, or eventually on similar principles founded activities, and in this respect revaluate the priorities of the 7th Framework Programme;
   - coordinate European and national programmes;
   - pay regard to lack of personal capacities in the area of research of asylum and migration policies;

   on the national level to

   - support research centres to enhance their capability to take part in European networks;
   - support fundamental research and transfer of applications from public sources;

   on the regional level to
   - support development of tertiary education, from public sources support research institutions that must create the necessary basis for talent search and centres of excellence;

44) K 28/06 - Green Paper: Public Access to Documents held by institutions of the European Community – A review

Text of the Resolution:

175th RESOLUTION OF THE SENATE

from the 7th session held on 19 July 2007

on Green Paper: Public Access to Documents held by institutions of the European Community – A review

The Senate

I. **Welcomes** the Green Paper as a further step to greater openness and transparency of the European Institutions;

II.

1. Is of the opinion that the registers by means of which the institutions provide information on documents are in their current form not only insufficiently comprehensive but also show reserves as to their content, notably in the case of the register of the European Commission;

- a clarification of the term „legislative document" is needed as this particular category of documents should be directly accessible and, simultaneously, direct accessibility should be considered for other categories of documents, as this would contribute to lifting of the administrative burden tied to provision of access to the documents on request;

- a general obligation to information provision should be extended to all organs and bodies of the Community;

2. Urges a very cautious approach to consideration of a possibility to entrench an exception from the duty to provide information for reasons of inadequacy of a request as this could in effect lead to further limitation of the right to access to documents;

III.

1. Calls on the Government to provide the Senate with their reaction sent to the European Commission and any further initiatives;

2. Authorises the President of the Senate to inform the European Commission about this resolution.

45) K 30/06 - Communication from the Commission concerning proposals to amend Council Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector and Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, Proposal for a Council Regulation amending Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, Proposal for a Council Regulation amending Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector

Text of the Resolution:

166th RESOLUTION OF THE SENATE

from on the 7th session held on 18 July 2007

on Communication from the Commission concerning proposals to amend Council Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector and Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, Proposal for a Council Regulation amending Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, Proposal for a Council Regulation amending Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector

The Senate

I.

1. **Expresses concern** over the current development of the restructuring reform in the sugar sector, especially with regard to inequality of the surrender of sugar quotas by individual Member States;
2. **Believes** that the present proposal does not represent a system solution to the dissatisfactory development of the sugar reform and due to which differences in amounts of sugar quota surrendered will be even more disproportionate;
3. **Notes with satisfaction** the intention of the Commission to take into account the situation of Member States which national quota has been reduced in accordance with article 3 of Regulation (EC) No 320/2006 in case a linear reduction of sugar quota should be implemented;

II. **Supports** the position of the Government of the Czech Republic which takes due account of the opinion of branch organisations and states its negative opinion on the proposed changes;

III. **Requests** the Government to inform the Senate about the way this position was taken into account and about further evolution of the negotiations within Working Groups of the Council of the EU and in the European Parliament.

46) N 34/06 - Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals

Text of the Resolution:

236th RESOLUTION OF THE SENATE

from the 9th session held on 1 November 2007

on Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals

The Senate

I.

Considers setting up of the sanctions for employers employing illegally staying third country nationals as an important step towards creating a functioning system of eradication of illegal migration within the EU internal market area;

II.

1. **Believes** that approximation of sanctions against illegal work of foreigners irrespective of their residence status would lead to strengthened effect of the intended measure, nevertheless, is aware of the reasons which do not enable the extension of the scope of the directive, lying particularly in the need for two legal bases entailing different legislative procedures in such a proposal;

2. **States** that a European regulation of sanctions against illegal employment of third country nationals that otherwise stay in a Member State legally would be beneficial in perspective, and, in order to prevent bypassing of the proposed measures, even necessary;

3. **Rejects** the principle set in Article 7 paragraph 4 of the proposal, providing for the postponement of the return of an illegal migrant until he receives any back payment of their outstanding remuneration; with regard to the wording of Article 7, paragraph 3, this provision is redundant;

4. **Requests** that it be upon the decision of the Member State how it regulates the liability of the so called third parties providing assistance to illegal migrants, and that Article 14, paragraph 2 is omitted;

5. **Regards** the imposition of quantitative standard of the duty to perform inspections in companies established in a Member State's territory to be excessive administrative burden that would not contribute to effective implementation of the directive, and rather recommends to aim the inspections at those sectors that are being gravely affected by illegal work;

III.

1. **Recommends** that the Government, upon eventual implementation of the proposed directive, consider the possibility of extending the scope of the principles outlined in the proposal also to the illegal work of foreigners regardless of their residence status;

2. **Requests** the Government to inform the Senate about the way this position was taken into account and to provide the Senate with information on further proceeding of negotiations;

3. **Authorises** the President of the Senate to forward this resolution to the European Commission.

47) K 36/06 - Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: GALILEO at a cross-road - the implementation of the European GNSS programmes

Text of the Resolution:

200th RESOLUTION OF THE SENATE

from the 8th session held on 20 September 2007

on Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: GALILEO at a cross-road - the implementation of the European GNSS programmes

The Senate

I.

1. **Considers** the Galileo project to be an opportunity for the global market that the Czech Republic wants to make use of to the greatest possible extent;
2. **Supports** therefore further continuation of the development and realization of the whole project;

II.

1. **Recommends** the Government to support the endeavour of the Commission to preserve the role of the European Space Agency as a representative of the European Union for the commissioning of public procurement contracts and for creating the concept of the programme;
2. **Supports** the Position of the Government in which it stands for the ensuring of the full operational capability of the project by the public sector;
3. **Recommends** the Government to continue with the endeavour to situate the Galileo Supervisory Authority in the Czech Republic;

III. **Requests** the Government to inform the Senate about the way this position was taken into account and to provide the Senate with information on further proceeding of negotiations.

48) N 37/06 - Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection

Text of the Resolution:

237th RESOLUTION OF THE SENATE

from the 9th meeting held on 1 November 2007

on Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection

The Senate

I. Is convinced that for the functioning of the common European asylum system it is necessary to clearly define the status of beneficiaries of international protection;

II.

1. **Considers** to be a deficit of the proposed directive that it does not contain sufficient solution to the issue of cumulation of the statuses of long-term resident of the EU and beneficiary of international protection;

2. **Notes with regret** that should the proposed Directive enter into force in the wording proposed by the European Commission, the beneficiaries of international protection that receive the status of long-term resident will have better position on the labour markets of the Member States applying a transitional period to the free movement of labour than citizens of the new Member States;

3. **Does not consider** appropriate the calculation of the duration of asylum procedure into the five year period necessary to obtain the status of long-term resident, in particular due to the impact it might have on the length of the procedure that could be purposely prolonged by the applicants;

III.

1. Recommends that during the eventual implementation of the Directive the Government consider sufficient guarantees against the abuse of these legal provisions and set up rules for cases of concurrent statuses of long-term resident and of beneficiary of international protection;

2. Requests the Government to inform the Senate about the way this position was taken into account and to provide the Senate with further information on the proceeding of negotiations;

3. Authorises the President of the Senate to forward this resolution to the European Commission.

49) K 40/06 - Communication from the Commission to the European Parliament and the Council: Organ donation and transplantation - policy actions at EU level

Text of the Resolution:

258th RESOLUTION OF THE SENATE

from the 10th session held on 6 December 2007

on Communication from the Commission to the European Parliament and the Council - Organ donation and transplantation: policy actions at EU level

The Senate

I.

1. **Considers** the harmonisation of the standards of safety and quality of organ transplants proposed in the Communication of the Commission on organ donation and transplantation to be a legitimate measure;
2. **Regards** the common European standard of quality and safety of organs incorporated into the harmonized legal framework as contributing to further development of transplant medicine in the framework of the EU;

II.

1. **Is of the opinion** that the introduction of a European organ donor card would not be currently feasible due to the wide variability of national procedures in the law of donor consent;
2. **Recommends** that the manner of supervision over implementation of the directive is considered carefully while formulating the proposal, so that it does not inflict an excessive administrative burden;

III.

1. **Requests** the Government to inform the Senate about the way this position was taken into account and about the follow-up initiatives of the European Commission;
2. **Authorises** the President of the Senate to forward this resolution to the European Commission.

50) K 41/06 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards Common Principles of Flexicurity - More and better jobs through flexibility and security

Text of the Resolution:

265th RESOLUTION OF THE SENATE

from the 10th session held on 6 December 2007

on Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards Common Principles of Flexicurity - More and better jobs through flexibility and security

The Senate

I. Regards the Communication to be a good basis for continuation of the debate on modernization of labour law launched by the Green Paper in November 2006;

II.

1. **Is of the opinion** that the flexibility of contractual agreements together with the measures supporting lifelong learning and those on modernization of social security system can contribute to higher employment and competitiveness in the Member States;
2. **Emphasizes** that while setting the general principles of flexicurity, the different practices of individual Member States given by the specific national traditions of labour relations, labour market and social protection should be respected;
3. **States** that the parties to the labour contracts, i.e. employees, or possibly their representatives, and the employers, should enjoy sufficient freedom of contract, the role of the state being in setting the legal preconditions for the implementation of the principles of flexicurity;
4. **Regards** the reconciliation of work with family life, i.e. creation of flexible working conditions enabling parallel care of children and family, to be one of possible preconditions of better demographic development;

III.

1. **Requests** the Government to inform the Senate about the way this position was taken into account and about the follow-up initiatives of the European Commission;
2. **Authorises** the President of the Senate to forward this resolution to the European Commission.

51) N 42/06 - Proposal for a Council Regulation on the common organisation of the market in wine and amending certain regulations

Text of the Resolution:

223rd RESOLUTION OF THE SENATE

from the 9th session held on 31 October 2007

on the Proposal for a Council Regulation on the common organisation of the market in wine and amending certain regulations

The Senate

I.

1. **Agrees** with the necessity of reform of the Common Organisation of the Market in wine the aim of which should be to increase the competitiveness of this sector and which would take into account the socio-economical function of the European viticulture and its traditions and while not jeopardizing diversity and authenticity of European wines;

2. **Expresses concern** over the current development of debates on the reform as it considers that the European Commission has not adequately reflected neither the observations of the Czech Republic and remaining Member States nor the positions of specialized organisations and the European Parliament;

3. **Considers it appropriate** that the Czech Republic be on further instances included during the preparatory stage among countries to which the European Commission presents the Common Agricultural Policy reform proposals regarding sectors where the Czech Republic is a significant producer;

II.

1. **Stresses** that the reform must not compromise the essential features of the European viticulture since the wine sector is one of the sectors the cultural, socio-economical and traditional implications of which must not be disregarded;

2. **Evaluates positively** the efforts to increase the promotion of European wines on export markets, to strengthen national envelopes and to abolish subventions on wine distillation;

3. **Disagrees** particularly with proposed ban on adding beet sugar during the fabrication process since this procedure forms part of traditional wine fabrication techniques in many wine regions situated in the north, and notes that the ban on acidification used on the contrary in the south regions has not been proposed;

4. **Disagrees** moreover with the historical share of the wine budget as one of the criteria proposed as a basis for the allocation financial resources into national

financial frameworks because such regard to previous payments would discriminate against wine-growers from the new Member States and regions situated in the north, and on the contrary supports the criterion of wine planted area;

5. **Supports** in view of the aforesaid the position of the Government of the Czech Republic which takes due account of the opinion of the Wine-growers Association of the Czech Republic;

III.

1. **Requests** the Government to inform the Senate about the way this position was taken into account and about further evolution of the negotiations;

2. **Authorises** the President of the Senate to forward this resolution to the European Commission.

52) K 45/06 - Communication from the Commission: Towards a European Charter on the Rights of Energy Consumers

Text of the Resolution:

226th RESOLUTION OF THE SENATE

from the 9th session held on 31 October 2007

on the Communication from the Commission: Towards a European Charter on the Rights of Energy Consumers

The Senate

I.

1. Got acquainted with the proposed elements of the European Charter on the Rights of Energy Consumers;

2. Is aware of reasons leading to the drafting of the Charter, nevertheless believes that such a document should serve as a summarization of existing rights of consumers with the aim to ameliorate their orientation and awareness in the conditions of the open market for gas and electricity, and not as a formulation of new rights beyond the terms of existing legal regulation;

II.

1. Does not believe that it would be appropriate under the terms of the social measures of the Charter to set special (lower) tariffs for a specific category of consumers, as this would cause a transfer of cost to remaining consumers and thus their detriment [there are social security benefits to assist the poor and a well-developed system to evaluate the necessities of such persons];

2. Disagrees with the limitation of possibility of disconnection of consumer under certain conditions from energy supply, because the Senate believes that the contractual rights and obligations between the provider and the consumer must be respected on both sides; treatment of exceptional cases such as connection to a medical device or a want of resources for heating during the winter should be left to solve by the social security system of the Member State;

3. States that the repeated use of unclear expressions such as a "vulnerable consumer" or "energy poverty" in the Draft Charter inhibits a discussion about real causes of problems related both to energy and poverty;

4. Supports with respect to the abovementioned points the position of the Government of Czech Republic;

III. Requests the Government to inform the Senate about the way this position was taken into account and about further evolution of the negotiations.

53) N 49/06 - Proposal for a Council Decision implementing Regulation (EC) No 168/2007 as regards the adoption of a Multiannual Framework for the European Agency for Fundamental Rights for 2007-2012

Text of the Resolution:

270th RESOLUTION OF THE SENATE

from the 10th session held on 6 December 2007

on Proposal for a Council Decision implementing Regulation (EC) No 168/2007 as regards the adoption of a Multiannual Framework for the European Agency for Fundamental Rights for 2007-2012

The Senate

I. Has become acquainted with the proposed set of tasks entrusted to the European Agency for Fundamental Rights as they are outlined in the Proposal;

II.

1. **Stresses** the need for complementarity of functioning of the European Agency for Fundamental Rights with the institutions of the Council of Europe;

2. **Recalls** its opinion expressed in the resolution of 21 May 2005, where the Senate recommended to the Government that instead of establishing a European Institute for Gender Equality the issues of equal rights of men and women ought to be entrusted within its complex competence to the planned European Agency for Fundamental Rights;

3. **Draws attention** to the fact that the legal base for the adoption of the Regulation allows the adoption of necessary measures outside of the competence framework of the Community to ensure the goals of the common market; also for this reason it is necessary to respect the division of competences between the Member States and the Community, including the competences of intrastate bodies while defending the rights and liberties of citizens;

4. **Requires** that the principle that the European Agency for Fundamental Rights fulfils the duties in the frame of the defined thematic areas that are in the direct relation to the application of the acts of the European law be explicitly stated in the proposal;

5. **Recommends** to include intolerance based on hatred against a class of people into the thematic areas covered by Article 2 a);

III. Requests the Government to inform the Senate about the way this position was taken into account and to provide the Senate with further information on the proceeding of negotiations.

Jiri Georgiev (ed.)
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