



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

from: Mr Jerzy MONTAG, Member of Germany's Federal Parliament, Member of the Legal Affairs Committee, Member of the European Affairs Committee

date of receipt: 9 August 2010

to: Mr Ivan BIZJAK, Director-General of Directorate-General H of the General Secretariat of the Council of the European Union

Subject: Commission proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (COM(2010) 94 final)

Dear Sir,

I hereby forward the subsidiarity complaint of the BÜNDNIS 90/DIE GRÜNEN group of the German Bundestag (Federal Parliament) concerning the Commission's proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (COM(2010) 94 final).

Although the subsidiarity complaint has unfortunately not yet been discussed by Germany's Federal Parliament, I wish to advise you of it and draw your attention to the following two points:

1. My group submitted a complaint in good time for it to be discussed, in accordance with the Rules of Procedure of the German Federal Parliament, by the competent Legal Affairs Committee of the Federal Parliament as scheduled on 19 May 2010 so that the deadline of 25 May for lodging complaints could be met. Unfortunately the item was removed from the agenda by the majority, composed of the CDU/CSU and the FDP, without a discussion, which meant that the subsidiarity complaint was not even put to the vote.
2. In Germany the subsidiarity action is established as a minority right. Under Article 23(1a) of the Basic Law, the Bundestag and the Bundesrat are entitled to lodge an action with the Court of Justice of the European Union on the ground that a European Union legislative act infringes the subsidiarity principle. For that, there must be a motion by a quarter of the Members of the Federal Parliament. Unlike for the subsidiarity complaint, the opposition therefore has the possibility of challenging a European legal act on the ground of infringement of the subsidiarity principle even if the government majority does not share that view.

We consider our concerns about the infringement of the subsidiarity principle to be far-reaching and we are convinced that we may still convey those concerns to the Council of the European Union without a decision by the German Federal Parliament.

We hope that the Council of the European Union will examine our technical arguments closely, especially since those arguments may also be put to the European Court of Justice by the opposition in the future action.

(Complimentary close).

(s.) Jerzy MONTAG

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