

4 February 2010

Note
on the subsidiarity check
on the Commission Proposal
for a Regulation of the
European Parliament and of the Council
on jurisdiction, applicable law,
recognition and enforcement of decisions
and authentic instruments
in matters of succession
and the creation
of a European Certificate of Succession



Prepared by the COSAC Secretariat and presented to

The Meeting of the Chairpersons of COSAC

4-5 February 2010
Madrid

Note
on the subsidiarity check under the provisions of Protocol 2 on the
Application of the Principles of Subsidiarity and Proportionality
as attached to the Treaty of Lisbon on the Proposal
for a Regulation of the European Parliament and of the Council
on jurisdiction, applicable law, recognition and enforcement of decisions
and authentic instruments in matters of succession and
the creation of a European Certificate of Succession

1. Background

Based on the proposals from national Parliaments, the COSAC Chairpersons in their meeting on 18 February 2008 in Ljubljana agreed to carry out a COSAC-coordinated subsidiarity check on the **Proposal for a Regulation of the European Parliament and of the Council on the applicable law, jurisdiction, recognition of decisions and administrative measures in the area of successions and wills (2008/JLS/122)** in 2008.

The **Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (COM(2009) 154/4)**¹ was adopted by the European Commission **on 14 October 2009**.

The COSAC Secretariat was asked to prepare all necessary arrangements for the subsidiarity check. The check was **launched on 20 October 2009** when translations of the Proposal into all the official languages of the EU were made available by the European Commission. Also, an eight-week **deadline, i.e. until 17 December 2009**, was set for the reasoned opinions of national Parliaments to be sent to the EU Institutions. In addition, to facilitate the evaluation of the subsidiarity check, national Parliaments were asked to fill in a questionnaire drafted by the COSAC Secretariat and to send their replies to the COSAC Secretariat by 17 December 2009.

The check was conducted under the provisions of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community² (hereinafter referred to as "the Protocol").

This was the **eighth** COSAC-coordinated subsidiarity check. It was conducted in **unique legal circumstances**, because the Treaty of Lisbon came into force while the check was underway. In other words, the pilot project became a real subsidiarity check on 1 December 2009.

¹ Upon adoption, the title of the Proposal was changed.

² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C115, 9.5.2008)
<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:EN:HTML>

2. Results of the subsidiarity check

Of the 27 Member States of the European Union, 14 have a unicameral national Parliament and 13 have a bicameral national Parliament. Due to this mixture combination of unicameral and bicameral systems, there are **40 national parliamentary Chambers** in the 27 Member States of the European Union.

Within the set deadline, the subsidiarity check was carried out and completed by a **record number** of national parliamentary Chambers from 25 Member States. The Austrian *Nationalrat* and the Maltese *Kamra-tad-Deputati* did not participate in the check. The Estonian *Riigikogu*, German *Bundesrat* and the French *Assemblée nationale*, on the other hand, did start the check but due to the non-submission of opinions by government or specialised committees were unable to complete it within the eight-week deadline. The bicameral national Parliaments of Ireland, Romania and Spain conducted a joint subsidiarity check by both Chambers and each sent a single set of replies to the COSAC questionnaire. Thus, out of 40 national parliamentary Chambers, **the check was conducted and completed within the eight-week deadline by 35 Chambers from 25 Member States**. Three more Chambers started the check but had difficulties in completing it within the set deadline.

A breach of the principle of subsidiarity **was found by one Chamber** of a bicameral national Parliament, namely the Belgian *Sénat*.

Some national Parliaments and Chambers expressed concerns with regard to the respect of the principle of proportionality (e.g. the Belgian *Chambre des Représentants*, the French *Sénat*), to some substantive provisions of the Proposal (e.g. the Austrian *Bundesrat*, the Cypriot *Vouli ton Antiprosopon*, the Greek *Vouli ton Ellinon*, the Portuguese *Assembleia da República*) or to the legal basis of the Proposal (e.g. the German *Bundestag*).

In contrast to the previous COSAC-coordinated subsidiarity checks, this time **the vast majority** of national Parliaments **did not encounter any specific difficulties** during the check.

3. Report on the subsidiarity check

The full report on this subsidiarity check will be presented to the XLIII COSAC Meeting on 30 May-1 June 2010 in Madrid.