14 October 2009

Aide-mémoire
**for the subsidiarity check
under the provisions
of the Treaty of Lisbon
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

Aide-mémoire
**for 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**

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1. Background

Based on the proposals from national parliaments, the COSAC Chairpersons in their meeting on 18 February 2008 in Ljubljana agreed to carry 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. This decision was confirmed by the XXXIX COSAC meeting on 7-8 May 2008[1] in Brdo pri Kranju. Since the adoption of this Proposal by the European Commission was postponed until 2009, the COSAC Chairpersons' meeting on 7 July 2008 in Paris agreed to conduct this subsidiarity check during the first semester of 2009 under the Czech Presidency[2]. Since the Proposal was not adopted during the Czech Presidency, the decision to conduct a subsidiarity check on this Proposal was reconfirmed by the XLII COSAC Meeting in Stockholm on 5-6 October 2009[3].

The check is to be 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 Community[4] (hereinafter referred to as "the Protocol").

The COSAC Secretariat was asked to prepare all necessary arrangements for the subsidiarity check on the Proposal.

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)[5] was adopted by the European Commission **on 14 October 2009.**

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[1] See Conclusions adopted by the XXXIX COSAC on 7-8 May 2008 in Brdo pri Kranju//
http://www.cosac.eu/en/documents/contributions/.
[2] See Minutes of the Meeting of the COSAC Chairpersons on 7 July 2008 in Paris, agenda point 2//
http://www.cosac.eu/en/meetings/Paris2008/chairpersons/
[3] See Conclusions adopted by the XLII COSAC on 5-6 October 2009 in Stockholm//
 http://www.cosac.eu/en/meetings/stockholm/
[4] 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
[5] Upon adoption, the title of the Proposal was changed.

2. Procedure for the subsidiarity check

The subsidiarity check should be carried out by national parliaments according to their own rules and procedures.

However, the Protocol stipulates a certain framework for the conduct of subsidiarity checks by national parliaments. Under Article 6 of the Protocol, any national parliament or any chamber of a national parliament may, within the period of eight weeks, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating **why** it considers that the draft in question **does not comply** with the **principle of subsidiarity**. It will be for each national parliament or any chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers.

Timing

The check will be conducted by national parliaments within **eight weeks** of the publication of the Proposal in all official languages of the EU. The evaluation of the results of this subsidiarity check will take place during the incoming Swedish Presidency.

Making use of IPEX

In its Conclusions the XL COSAC considered IPEX to be the most appropriate platform to transmit at early stage information on subsidiarity and the official decisions of national parliaments on this matter[6].

In order to enhance the exchange of information during the subsidiarity check, national parliaments are **encouraged to share information on the IPEX website**. Availability of timely and precise information from national parliaments on the IPEX website will allow an early exchange of information, *inter alia,* on subsidiarity concerns of national parliaments and will allow those interested to follow the results of the subsidiarity check **in real time**.

For more information, please contact your parliament's IPEX Correspondent, or contact IPEX Central Support (centralsupport@ipex.eu).

Reasoned opinions

National parliaments or chambers participating in the current subsidiarity check are asked to transmit their **reasoned opinions** explicitly stating the reasons why they consider that the Proposal in question does not comply with the principle of subsidiarity to the above mentioned EU Institutions and to the COSAC Secretariat.

For that purpose, the following e-mail addresses should be used:

Commission: sg-national-parliaments@ec.europa.eu
European Parliament: ep-np@europarl.europa.eu
Council: sgc.cosac@consilium.europa.eu
COSAC Secretariat: secretariat@cosac.eu

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[6] See Conclusions of the XL COSAC, paragraph 3.5//
http://www.cosac.eu/en/meetings/Paris2008/doc/

3. Evaluation of the subsidiarity check

To facilitate the evaluation of the subsidiarity check, national parliaments or chambers are, on behalf of the Czech Presidency, kindly asked to reply to the following questions and send their answers to the COSAC Secretariat (secretariat@cosac.eu).

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?
2. Was the plenary involved?
3. At which level the final decision was taken and who signed it?
4. Which administrative services of your parliament were involved and how? Please specify.
5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?
6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?
7. Did you consult your regional parliaments with legislative powers?
8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?
9. What was the chronology of events? Please specify the dates.
10. Did you cooperate with other national parliaments in the process? If so, by what means?
11. Did you publicise your findings? If so, by what means?

Findings:

12. Did you find any breach of the principle of subsidiarity?
13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.
14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?
15. Did you encounter any specific difficulties during this subsidiarity check?
16. Any other comments?

Key dates:

- Adoption of the Proposal: **14 October 2009**.
- Launch of the subsidiarity check: when translations of the Proposal into all the official languages of the EU are available.
- Reasoned opinions should be sent to the EU Institutions **within eight weeks** of the launch of the check.
- Reasoned opinions **and answers** to the above questions should be sent to the COSAC Secretariat **within eight weeks** of the launch of the check.

The COSAC Secretariat will inform national parliaments of the exact dates of the launch and the finish of the subsidiarity check.