



## REPORT

on the pilot project to check the Commission proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM (2006)399),  
based on:

*the Protocol on the application of the principles of subsidiarity and proportionality, and  
the Protocol on the role of national parliaments in the European Union*  
accompanying the Treaty of Amsterdam

### Introduction

At the XXXIV meeting in London in October 2005, the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) decided to encourage national parliaments to carry out subsequent pilot projects following the pilot project on the examination of the 3<sup>rd</sup> railway package in 2005. The Conference stated that “within two weeks after the examination by national parliaments of the European Commission’s annual work programme, as envisaged in the initiative “Raising European Awareness”, participating national parliaments should inform the COSAC Presidency of the proposals they wish to be subject to the subsidiarity and proportionality check“. The Conference also specified the procedure of conducted so-called ”pilot projects”. The procedure should be based this time<sup>1</sup> on the provisions of the Treaty of Amsterdam, particularly on its *Protocol on the role of national parliaments in the European Union* and *Protocol on the application of the principles of subsidiarity and proportionality*.

Decisions included in these protocols were supplemented by agreements set out in the Conclusions of the XXXIV COSAC meeting in London. In particular, those agreements stated that the six-week period in which participating national parliaments should seek to complete their scrutiny of compliance of European Commission projects with the principles of subsidiarity and proportionality would begin when these projects have been published in all official languages of the European Union<sup>2</sup>.

<sup>1</sup> With respect to the first pilot project, COSAC decided that the 3<sup>rd</sup> railway package should be scrutinized as if the *Protocol on the application of the principles of subsidiarity and proportionality* accompanying the Constitutional Treaty had come into force.

<sup>2</sup> The *Protocol on the role of member-state national parliaments in the European Union* accompanying the Treaty of Amsterdam states that “a six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on the European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on the Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to Article 189b or 189c of the Treaty establishing the European Community, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position.”

The Austrian Presidency received written proposals from 18 EU national parliaments or parliamentary chambers (from 14 EU member states). On that basis, the chairmen of delegations to the COSAC meeting in Vienna in February 2006 decided to scrutinize compliance with the principles of subsidiarity and proportionality of two European Commission projects mentioned most often in those proposals:

- Proposal concerning the Commission regulation on the applicable law and jurisdiction in divorce matters (2005/JSL/187); and
- Proposal for the full accomplishment of the Internal Market for Postal Services (2006/MARKT/006).

On 17 July 2006, the European Commission adopted the **proposal on the Commission regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters** (COM (2006) 399). In late July early August the proposal was translated into all official EU languages, hence the check of compliance with the principles of subsidiarity and proportionality of these two European Commission proposals should be completed by mid-September of this year at the latest.

This report constitutes a fulfilment of arrangements made by chairmen of European affairs committees and representative of the European Parliament at the Vienna meeting in February 2006.

The structure of the report takes into account COSAC presidency recommendations submitted to EU national parliaments in an aide-mémoire prepared by the COSAC Secretariat.

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## **1. PROCEDURES APPLIED IN THE PILOT PROJECT TO CHECK COMPLIANCE WITH THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY OF THE EUROPEAN COMMISSION PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EC) No 2201/2003 AS REGARDS JURISDICTION AND INTRODUCING RULES CONCERNING APPLICABLE LAW IN MATRIMONIAL MATTERS (COM (2006) 399)**

### **1.1. Which committees participated in the pilot project and what role did they play?**

Three standing Polish Senate committees took part in the project: European Union Affairs Committee, Family and Social Policy Committee and Human Rights and the Rule of Law Committee.

### **1.2. Was the pilot project subject to a debate by the Senate plenary assembly?**

No.

### **1.3. Did other parliamentary services participate in the pilot project?**

Yes, the Senate Proceedings Office, the Legislative Office and the Information & Documentation Office of the Polish Senate Chancellery.

### **1.4. Please describe the course of the entire procedure of checking compliance of the European Commission proposal with the principles of subsidiarity and proportionality account taken of the role played by each committee and other participants, and the chronology of events.**

- At a meeting held on **2 August 2006**, the European Union Affairs Committee discussed the procedure involved in the pilot project to check compliance of the European Commission proposal with the principles of subsidiarity and proportionality as decided at the COSAC forum. The Committee:
  - Decided to hold a joint session concerning the pilot project with the Family and Social Policy Committee and the Human Rights and Rule of Law Committee;
  - Appointed the senator-rapporteur;
  - Initiated the process of selecting experts and commissioning expert opinions on compliance of the European Commission proposal with the principles of subsidiarity and proportionality.
- Participants in a joint session of the European Union Affairs Committee, Family and Social Policy Committee and Human Rights and the Rule of Law Committee held on **6 September 2006** evaluated the European Commission proposal from the perspective of its compliance with the principles of subsidiarity and proportionality. They heard the opinions of government representatives, senator-rapporteur and members of the participating Senate committees. In summing up the session, the chairman of the European Union Affairs Committee submitted a motion to recognize the European Commission proposal for a Council regulation amending Regulation (EC) No. 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM (2006) 399) as compliant with the principles of subsidiarity and proportionality. The motion was adopted by acclamation.

### **1.5. Did your government prepare any information on compliance of the European Commission proposal with the principles of subsidiarity and proportionality?**

Yes, the government prepared a position and a justification thereof.

### **1.6. Did your national government consult regional parliaments which have legislative powers?**

Polish provincial councils do not operate as “regional parliaments” and, hence, they were not consulted by the Polish Senate within the framework of the process of checking compliance of the European Commission proposal with the principles of subsidiarity and proportionality.

**1.7. Where there any outside participants in the process of checking compliance of the European Commission proposal with the principles of subsidiarity and proportionality?**

Yes, government representatives participated in the joint session of the European Union Affairs Committee, Family and Social Policy Committee and Human Rights and the Rule of Law Committee held on **6 September 2006**. In addition, two expert opinions were submitted in writing.

**1.8. If your parliament has a bicameral system, did the two chambers coordinate their work?**

Sejm and Senate of the Republic of Poland did not cooperate with each other in the process of checking the conformity of the above proposal of the European Commission with the principles of subsidiarity and proportionality.

**1.9. Is the procedure applied in the pilot project compliant with the procedure that your parliament intends to apply after the Constitutional Treaty comes into force?**

It is too early to answer this question.

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**2. CONCLUSIONS OF THE PILOT PROJECT TO CHECK COMPLIANCE WITH THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY OF THE EUROPEAN COMMISSION PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EC) NO 2201/2003 AS REGARDS JURISDICTION AND INTRODUCING RULES CONCERNING APPLICABLE LAW IN MATRIMONIAL MATTERS (COM (2006) 399)**

**2.1. In your opinion, was the principle of subsidiarity violated?**

At their joint session, the European Union Affairs Committee, Family and Social Policy Committee and Human Rights and Rule of Law Committee decided that the European Commission proposal was complaint with the subsidiarity principle.

**2.2. Was the principle of proportionality violated in your opinion?**

At their joint session, the European Union Affairs Committee, Family and Social Policy Committee and Human Rights and Rule of Law Committee decided that the European Commission proposal was complaint with the proportionality principle.

**2.3. Did you prepare a justified opinion on non-compliance of the European Commission proposal with the principle of subsidiarity? (If yes, please attach its copy to the report submitted to the COSAC Secretariat)**

This question does not apply to the Polish Senate as the three joint Senate committees recognized the European Commission proposal as compliant with the principles of subsidiarity and proportionality.

**2.4. In your opinion, is the justification of compliance with the principle of subsidiarity presented by the European Commission sufficient?**

The three joint Senate committees - European Union Affairs Committee, Family and Social Policy Committee and Human Rights and Rule of Law Committee – recognized the justification of compliance with the principle of subsidiarity presented by the European Commission as sufficient.

**2.5. Did you come across any particular problems during the work?**

No, while checking compliance of the European Commission proposal for a Council regulation amending Regulation (EC) No. 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM (2006) 399), the three joint Polish Senate committees - European Union Affairs Committee, Family and Social Policy Committee and Human Rights and Rule of Law Committee – did not come across any particular problems.

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Approved by:

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