

Replies of the Italian Senate to the COSAC Questionnaire on subsidiarity compliance check 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 (COM(2009)154).

To COSAC Secretariat (secretariat@cosac.eu).

Procedures:

1. Which parliamentary committees were involved in the subsidiarity check and how?

The proposal was referred to the Committee on Justice as the committee having jurisdiction over the matter and to the Committee on EU policies for an advisory remit.

2. Was the plenary involved?

No

3. At which level the final decision was taken and who signed it?

The Committee on Justice hasn't concluded scrutiny yet. The Committee on EU policies issued an opinion on 2 december 2009, within the 8 weeks time. Senate Rules of procedure state that if the Committee having jurisdiction over the subject matter (the Committee on Justice in this case) does not issue its "final" decision within 15 days counting from the date when the opinion of the Committee on EU policies is issued, then the opinion of the Committee on EU policies should be considered the final decision of the Senate. In such case, the European Affairs Committee shall take another vote on the opinion, but only to "upgrade" it to. The vote is taken by simple majority, with the presence of the majority of members (15 out of 29).

All opinions issued by Senate committees scrutinising EU business are signed by the rapporteurs.

4. Which administrative services of your parliament were involved and how? Please specify.

The European Affairs Office followed the scrutiny of the proposal and prepared documentation on it. The Secretariats of the Committee on EU policies and the Committee on Justice were involved too.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

No.

6. Did your government provide any information on the compliance of the Proposal with the principle of subsidiarity?

No.

7. Did you consult your regional parliaments with legislative powers?

No.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders?

No.

9. What was the chronology of events? Please specify the dates.

On 3 November 2009 the proposal was referred to the Committee on Justice and to the Committee on EU policies.

On 11 November 2009 the Committee on Justice started consideration.

the Committee on EU policies started consideration on 25 November 2009 and ended it on 2 December 2009 issuing an opinion to the Committee on Justice.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

No. The opinion of the French National Assembly has been taken into consideration.

11. Did you publicise your findings? If so, by what means?

Yes. As usual, a summary report of the sittings was published on the Senate website the day following the Committee meetings. The papers adopted and the opinion issued are attached to the reports of the sittings. The opinion is also published on the IPEX website, at the following page:

http://www.ipex.eu/ipex/cms/home/Documents/dossier_COD20090157/pid/45639?matrix=1260957888449

Findings:

12. Did you find any breach of the principle of subsidiarity?

See answer to question 13.

13. Did you adopt a reasoned opinion on the Proposal? If so, please enclose a copy.

The Committee on Eu policies expressed a positive opinion on the Proposal as a whole. However expressed a critical opinion on the wording of article 27(2) because, there would appear to be reasonable doubts regarding respect of the legal basis which is needed to govern this subject area, whose linkage with family law (which is excluded from co-decision under the provisions of article 67(5) second indent of the EC Treaty), albeit indirectly and under the rules governing "conflicts of law" may be reasonably asserted. In fact, under Italian legislation the choice of the law applicable to the succession by individuals must not interfere with the rights which Italian law grants to legitimate heirs resident in Italy, that is to say that Italian law makers has clearly acted in favour of the closest family members as legitimate heirs. Consequently, in this particular part, the Proposal differs from Italian law because under article 27(2) of the proposal "the application of a rule of the law determined by this Regulation may not be considered to be contrary to the public policy of the forum on the sole ground that its clauses regarding the reserved portion of an estate differ from those in force in the forum". Therefore the Committee has asked that the adoption of a measure of this kind should be

carefully reconsidered because the application of co-decision with qualified majority voting on the Council might not be enough adequate.

14. Did you find the Commission's justification with regard to the principle of subsidiarity satisfactory?

See answer to question 13.

15. Did you encounter any specific difficulties during this subsidiarity check?

No.