



REPUBLIC OF LATVIA SAEIMA

EUROPEAN AFFAIRS COMMITTEE

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Riga, December 16, 2009

No. 9/17-2-4/23-(9/09)

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On the subsidiarity and proportionality

The participants of the COSAC Chairpersons meeting on 18 February 2008 in Ljubljana agreed to carry out the 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.

Accordingly, the Saeima (Parliament) of the Republic of Latvia has carried out a subsidiarity and proportionality check concerning the final wording of the Proposal for Regulation of the European Parliament and the Council COM(2009)154 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.

On 11 December 2009 the given issue was examined and the final decision was taken by the Saeima European Affairs Committee. The Saeima European Affairs Committee's initial assessment regarding observance of subsidiarity and proportionality principles is as follows: Saeima European Affairs Committee considers that the final wording of the Proposal for Regulation of the European Parliament and the Council COM(2009)154 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 complies with the principles of subsidiarity and proportionality and the regulation of the said issue falls within the competence of the European Union.

In order to facilitate the compilation of the replies, we have structured our reply in the form of answers to the questions posed in the aide-mémoire prepared by the COSAC Secretariat.

Annex: A copy in English (four pages) of the opinion of the Saeima European Affairs Committee.

Sincerely,

Vaira Paegle

Chairperson of the Saeima
European Affairs Committee

Opinion of the Saeima European Affairs Committee on the subsidiarity and proportionality check for the final wording of the Proposal for Regulation of the European Parliament and the Council COM(2009)154 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

Procedure:

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

The Saeima European Affairs Committee and Legal Affairs Committee considered the proposal.

2. Was the plenary involved?

The given issue has not been on the agenda of Saeima plenary meetings.

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

Rules of Procedure of the Saeima Article 185¹. (1) state, that the Saeima shall participate in EU affairs through the European Affairs Committee unless the Saeima has ruled otherwise.

Accordingly final decision was taken by Saeima European Affairs Committee and covering letter signed by Chairperson of the Saeima European Affairs Committee.

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

The Saeima European Affairs Committee and Legal Affairs Committee. Other administrative services of the Saeima were not involved in the scrutiny process.

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

Latvia has a unicameral parliament.

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

On the part of the Latvian government, the Ministry for Justice was involved in the scrutiny process. Ministry for Justice provided opinion regarding the observation of the principles of subsidiarity and proportionality in the given item.

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

Since the given proposal does not lie within the competence of Latvian local governments, local governments were not consulted on this issue.

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

In view of the specific nature of the issue, other external actors were not involved in the examination.

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

On 21 October 2009, the Saeima European Affairs Committee transmitted a letter to the Ministry of Justice of the Republic of Latvia and Legal Affairs Committee with a request to assess the compatibility of the given proposal with the principles of subsidiarity and proportionality.

On 9 December 2009, the Saeima European Affairs Committee received the opinion of the Ministry of Justice of the Republic of Latvia regarding the observation of the principles of subsidiarity and proportionality in the given proposal.

On 11 December 2009 the issue was examined and final decision was taken by the Saeima European Affairs Committee. Chairperson and members of Legal Affairs Committee participate in European Affairs Committee meeting and contributed their views to the European Affairs Committee.

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

While preparing its opinion on subsidiarity and proportionality check the Saeima European Affairs Committee did not directly cooperate with other EU national parliaments. European Affairs Committee followed subsidiarity and proportionality checks in other EU parliaments through IPEX and Permanent Representative to the EU of the Parliament of Latvia.

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

The conclusions were not published; however, a press release on the last meeting of the European Affairs Committee during which the subsidiarity and proportionality check was discussed was prepared and sent to the Latvian news agencies.

Findings:

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

Breaches of the subsidiarity and proportionality principles were not detected.

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

Taking into account the fact that no breaches of the subsidiarity and proportionality principles were detected, the reasoned opinion on the given item was not adopted.

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

The justification elaborated in Explanatory memorandum where considered as satisfactory.

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

No.

16. Any other comments?

This proposal for a regulation has been drafted by taking into account the increasingly growing number of cross-border succession cases within the European Union. The

variety of substantive law provisions and of provisions of applicable laws and jurisdiction, a large number of authorities where people can apply in case of a cross-border succession, as well as the need to settle matters of succession in different countries concurrently because of differing regulations, hampers the freedom of movement in the European Union. Currently, people face major difficulties in realizing their rights in matters of cross-border succession. For example, one should bear in mind that most countries apply the principle that in disputes over real estate, exclusive jurisdiction belongs to the country where the property is located. Thus people who need to settle matters of succession have to deal with the authorities of various countries in order to start settling the succession. Even if the national legislative acts concerning international private law allowed a seemingly effective solution – giving to the court (authority) of this country a jurisdiction to govern the succession as a whole – then probably there would be a problem with recognizing and enforcing this decision in countries where some property items of the succession are actually located. This creates a situation whereby the potential heir has to initiate a new succession process in each country where some property items of the succession are located; furthermore, each country may have different rules regarding private law with different provisions for applicable law, jurisdiction, etc., which makes the succession settlement process burdensome, bothersome, and ineffective, as well as cost-inefficient and time-consuming. Concurrently this uncertain and hardly predictable situation poses a threat to legal predictability and legitimate expectation, since there is the risk of “running to court” – namely, people, knowing that regulations in force in different countries differ, can manipulate the possible outcomes of the case, depending on who initiates the case in the competent authority of the country that offers them more beneficial regulation.

The objective of this draft regulation is to solve the above-mentioned problems and to enable people living in the European Union to organize their succession matters effectively in advance with the last will in order to guarantee the rights of heirs and/or legatees and of other persons linked to the deceased, as well as creditors of the succession. Taking into account the fact that the draft regulation applies only to cross-border succession matters that are of international nature, the problematic issues in this context cannot be solved by action taken by Member States only, or only at national level. Furthermore, the Saeima European Affairs Committee regards that such regulation at Union level that is foreseen in this draft regulation would ensure a more effective functioning of the internal market by encouraging the free movement of people than would similar measures if they were taken individually in the framework of the national regulations of each Member State.

At the same time, Article 67.4 of the Treaty on the Functioning of the European Union provides that “The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters”. Thus, taking into account the fact that practical problems in cross-border succession cases have been identified and that solving these problems at national level would not be possible, as well as the fact that the Treaty on the Functioning of the European Union has a clearly defined objective of facilitating cooperation among Member States in civil matters, one can conclude that inaction of the Union in seeking the solution to the problems would contradict provisions and objectives set forth by the Treaty on the Functioning of the European Union.

Article 81 of the Treaty on the Functioning of the European Union, which sets forth the judicial cooperation in civil matters having cross-border implications, also refers

to succession cases in which there is more than one Member State involved. In addition to facilitating effective access to justice, as well as the mutual recognition and enforcement of judgments, Article 81 of the Treaty on the Functioning of the European Union sets forth measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning jurisdiction and conflict of laws. With respect to the relevant sphere of competence, the draft regulation offers uniform rules for jurisdiction, applicable law, and recognition and enforcement of judgments.

The Saeima European Affairs Committee is of the opinion that the measures set forth in the draft regulation aimed at effectively guaranteeing to the Community citizens the rights of heirs and/or legatees and of other persons linked to the deceased, as well as creditors of the succession, are proportional and appropriate. First, the draft regulation sets forth uniform rules for jurisdiction, applicable law, and recognition and enforcement of judgments, etc, which ensure simplified and more efficient settlement of cross-border successions in the European Union. Second, measures set forth in the draft regulation are appropriate and proportional with the set goal. Thus these measures do not exceed which is necessary for ensuring the intended effect and achieving the set goal, namely, ensuring legitimate expectation, legal certainty, and clarity of the legal regulation in all cross-border successions in the European Union.

In view of the afore-mentioned facts, The Saeima European Affairs Committee's initial assessment about observance of subsidiarity and proportionality principles is as follows: the European Commission has chosen an adequate framework for developing legislative act. Cause aims put forward in the Regulation of the European Parliament and the Council can not be fully achieved by Member States acting alone. Considering proportionality, Saeima European Affairs Committee considered that planned requirements put forward in Regulation of the European Parliament and the Council are adequate and do not exceed the minimum necessary to achieve the aims.

Taking into consideration the above-mentioned, the Saeima European Affairs Committee considers that the final wording of the Proposal for Regulation of the European Parliament and the Council COM(2009)154 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 complies with the principles of subsidiarity and proportionality and the regulation of the said issue falls within the competence of the European Union.