

REPORT TO COSAC

BY THE COMMITTEE ON EUROPEAN AFFAIRS OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA

ON THE SUBSIDIARITY CHECK OF 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

19 November 2009

Procedures:

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

Three parliamentary committees were involved: the Committee on European Affairs and two specialised committees, the Committee on Legal Affairs and Committee on Human Rights. The specialised committees submitted their expert conclusions to the Committee on European Affairs, which made the final decision.

2. Was the plenary involved?

No.

In accordance with the provisions of the Statute (Rules of Procedure) of the Seimas, reasoned opinions are subject to adoption at the plenary in cases where the Committee on European Affairs has established non-compliance with the principle of subsidiarity. In cases where the European Affairs Committee, having obtained an opinion of the specialised committee, concludes that draft legislative proposal does not violate the principle of subsidiarity, the matter is completed without involvement of the plenary.

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

The final decision was taken by the Committee on European Affairs and signed by the Chairman of the Committee.

4. Which administrative services of your parliament were involved and how (please specify)?

The Legal Department of the Office of the Seimas was asked to submit its conclusion on the compliance of the Proposal with the principle of subsidiarity.

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

Not relevant.

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

Yes.

The Ministry of Justice and the Supreme Court of Lithuania were commissioned to submit their opinions on whether the Proposal for a Regulation is in conformity with the principle of subsidiarity. In addition, the European Law Department under the Ministry of Justice was asked to present its expert opinion.

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

Not relevant.

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

Yes.

The Institute of Law, a public research institution established by the Government of the Republic of Lithuania and designed to coordinate the reform of the legal system and legal institutions as well as harmonize the process with the economic and social reform of the state, was asked to submit its opinion. According to the Institute of Law, the Proposal complies with the principle of subsidiarity.

Lithuanian Chamber of Notaries was invited to submit its opinion. The Lithuanian Chamber of Notaries is a self-government institution of notaries, established in accordance with the Law on the Notariat of the Republic of Lithuania and uniting all notaries of Lithuania. The legal form of the Chamber of Notaries is an association.

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

The subsidiarity check organised through the COSAC is conducted following the usual control mechanism of the principle of subsidiarity provided for in Article 180⁶ of the Seimas Statute, with one exception: the procedure is initiated by the Committee on European Affairs rather than by a specialised committee, which is normally responsible, within its competence, for proper and timely control of the principle of subsidiarity, as generally provided for in Article 180⁶(1) of the Seimas Statute.

21 October 2009 **The Committee on European Affairs initiated the subsidiarity check at the Seimas. The Committee informed the responsible specialised committees (Committee on Legal Affairs and Committee on Human Rights) in writing and requested their conclusions. The Committee also requested other institutions, organisations and experts, within whose competence comes this issue, to present their expert opinion on the compliance of the Commission Proposal with the principle of subsidiarity. Two members of the Committee on European Affairs were nominated as reporters.**

Beginning of November 2009 **The Ministry of Justice presented the primary conclusion that the Proposal for a Regulation of the European Union is in conformity**

with the principle of subsidiarity.

The European Law Department under the Ministry of Justice submitted its opinion to the Committee on European Affairs. In view of the analysis and reasoning of the Proposal provisions, the Department assumes that there are no grounds to suggest that the draft EU legislative proposal is not in conformity with the legal criteria of the principle of subsidiarity.

The Legal Department of the Office of the Seimas issued its legal conclusion. In its opinion, it cannot be definitely stated that the provisions of the Proposal are not related in any way to the regulations of the Lithuanian law applied to the family law; therefore, this does not allow, in its turn, to unambiguously assess the compliance of the Proposal with the principle of subsidiarity regardless of the potential added value of the Proposal (creating the area of European civil justice in matters of succession).

The Lithuanian Chamber of Notaries submitted its opinion. Following legal, social and economic assessment of the Proposal, Lithuania can expect positive results in solving the international succession matters without violating the state's sovereignty or interfering with the national legal system or established practice.

The Institute of Law submitted its opinion that the Proposal does not result in potential non-conformity with the principle of subsidiarity.

In the opinion of the Supreme Court, the Proposal complies with the principle of subsidiarity.

18 November 2009 **The Committee on Legal Affairs** held a meeting and issued its conclusion. In the opinion of this specialised committee, this Proposal complies with the principle of subsidiarity.

At the same day the Committee on Human Rights held a meeting and issued its conclusion that this Proposal complies with the principle of subsidiarity.

20 November 2009 **The Committee on European Affairs** debated the issue at its meeting.

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

Traditionally, the Committee on European Affairs follows subsidiarity checks in other EU national parliaments through IPEX and Permanent Representative to the EU of the Seimas of Lithuania. Yet, the information on the decisions made by other national parliaments was rather limited in this case, this may be due to the fact that the Committee adopted its opinion at quite an early stage.

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

No.

Findings:

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

No. Subsequent to its initial assessment, the Committee on European Affairs adopted the conclusion that it has found no possible breach of the principle of subsidiarity.

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

No.

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

Yes.

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

No.

16. Any other comments?

The Seimas has made an extensive use of the opportunities provided by the initiative of Mr Barroso and stated its opinion not only on the subsidiarity principle, but also on that of proportionality as well as on some aspects relating to the content of the proposal.

At its meeting on 20 November 2009, the Committee on European Affairs adopted the following conclusion.

Bearing in mind that:

- the diversity of national legal rules on succession in the European Union Member States creates considerable difficulties not only for the people asserting their rights in international succession matters but also for the legal authorities competent to settle succession matters,

- the Proposal aims at removing obstacles to the free movement of persons that result from divergent rules on international succession applicable in Member States,

- the object of the Proposal is obviously transnational in nature and individual actions by Member States would not be able to achieve the purpose of the proposed instrument and ensure proper functioning of the single market,

- the adoption of the Proposal would provide the citizens of the European Union with a greater legal certainty, create conditions for determining the law applicable in every individual case of succession, facilitate the settlement of matters of international succession, help avoid overlapping procedures, and thus save costs and time,

- the adoption of the Proposal would facilitate the international recognition of court judgements passed in individual Member States,

the Committee considers the Proposal submitted by the Commission of the European Communities to comply with the principle of subsidiarity.

In view that:

- the Proposal is not aimed to harmonise the law of succession of Member States, nor deny or eliminate the applicability of the national law in the area of legal relations, but rather

harmonise just some conflict-of-laws rules on international succession (as far as jurisdiction, applicable law, and recognition and enforcement of decisions are concerned); therefore, the proposed actions are necessary for creating the conditions for the citizens of the European Union to organise their succession in advance and to effectively ensure the rights of heirs and legatees;

- even though a Regulation is the strictest form of regulation, a law that is universally applicable in the entire European Union would provide more legal certainty and help avoid divergent regulation, which could arise due to uneven transposition of the European Union *acquis* into the national law;

the Committee considers that there are no grounds to assume that the Proposal is disproportionate to its objectives and that it essentially complies with the principle of proportionality.

Noting, however, that the national law of some Member States of the European Union does not provide for eligibility of the closest family members to the statutory legacy, the Committee:

recommends that in the process of drafting and presenting the position of the Republic of Lithuania at the negotiations within the European Union institutions (in particular, debating the rules determining the applicable law), the authorised institutions of Lithuania should take account of the fact that, in matters of succession, the laws of the Republic of Lithuania provide for eligibility of heirs in need of support to the statutory legacy.