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**Report on the Results  
of the Subsidiarity Check  
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**



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## Abstract

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This report, prepared by the COSAC Secretariat, presents the results of the COSAC-coordinated subsidiarity 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 final). This check was conducted under the provisions of the Treaty of Lisbon during the period of eight weeks, i.e. from 21 October until 17 December 2009.

This was the **eighth** COSAC-coordinated subsidiarity check and the fifth one conducted under the provisions of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon. It took place in **unique legal circumstances** as the Treaty of Lisbon came into force on 1 December 2009 while the check was underway.

By the deadline of 17 December 2009, the check was carried out and completed by a **record high number** of national Parliaments, i.e. **36 national parliamentary Chambers out of 40** (henceforth "the participating Parliaments") **representing 25 Member States**. Two participating Parliaments started the check but had difficulties in completing it within the set deadline, while one national Parliament and one Chamber did not take part in the check.

**One participating Chamber - the Belgian *Sénat* - found the Proposal in breach of the principle of subsidiarity.**

A number of participating Parliaments issued **opinions** either **supporting the Proposal** in general or **expressing concerns** over its contents, legal basis or compliance with the principle of proportionality. These concerns, although outside the scope of Protocol 2 *per se*, are a clear indication of the increased interest on the part of national Parliaments in various aspects of the EU draft legislation.

In contrast to previous subsidiarity checks, **the Commission's justification** of this Proposal on the grounds of its compliance with the principle of subsidiarity seemed to have **satisfied the overwhelming majority of participating Parliaments**. Only three participating Parliaments were not entirely satisfied with the Commission's justification.

**The IPEX website** was seen by the participating Parliaments as **the principal source of information** on the state of play of the subsidiarity check in other national Parliaments. However, the analysis of the information uploaded by the participating Parliaments on IPEX after the eight-week deadline revealed **a number of shortcomings**. The participating Parliaments also reported bilateral contacts and an intensive exchange of information through their permanent representatives in Brussels.

**A record high number of participating parliaments**, i.e. 34 out of 36, reported **no particular difficulties** encountered during this check.

Three participating Parliaments reported **recent or envisaged changes in their Rules of Procedure** with regard to the appraisal of the compliance of EU draft legislative acts with the principle of subsidiarity.

# 1. Introduction

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This report, prepared by the COSAC Secretariat, presents the results of the COSAC-coordinated subsidiarity 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 final) conducted under the provisions of the Treaty of Lisbon. The report summarises the procedures, findings and experiences of the subsidiarity check carried out by national Parliaments/Chambers of the Member States of the European Union. It aims to facilitate an exchange of views and best practices between national Parliaments within the COSAC framework as well as to improve understanding by them of the provisions of Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon (henceforth "Protocol 2").

## 1.1 BACKGROUND

Based on proposals from national Parliaments, the COSAC Chairpersons in their meeting on 18 February 2008 in Ljubljana agreed to carry out 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 on several occasions by subsequent meetings of COSAC.

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 final)<sup>1</sup> was adopted by the European Commission on **14 October 2009**.

As in previous cases, COSAC decided that, in order to allow national Parliaments the opportunity to test the practical application of the new provisions on subsidiarity, the check should be conducted under the provisions of Protocol 2. The COSAC Secretariat was asked to prepare all necessary arrangements for the subsidiarity check.

This was the **eighth** COSAC-coordinated subsidiarity check and the fifth one conducted under the provisions of the Treaty of Lisbon. It was conducted in **unique legal circumstances**, because the Treaty of Lisbon came into force while the check was underway.

## 1.2 TIMING

Article 6 of Protocol 2 gives national Parliaments **eight weeks** to examine the subsidiarity implications of a proposal and to submit reasoned opinions outlining a breach of the principle of subsidiarity "from the date of transmission of a draft legislative act, in the official languages of the Union".

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<sup>1</sup> Upon adoption, the title of the Proposal was changed.

**On 14 October 2009** the Commission adopted the Proposal. The COSAC Secretariat informed national Parliaments about the adoption of the Proposal and distributed an *Aide-mémoire* for the subsidiarity check, which included background information and a questionnaire drafted by the COSAC Secretariat.

**On 21 October 2009** the COSAC Secretariat informed national Parliaments about the publication of the Proposal in all the official languages of the European Union and set the deadline for the completion of the check for **17 December 2009**. In addition, to facilitate the evaluation of the subsidiarity check, national Parliaments were asked to fill in the questionnaire and to send their replies to the COSAC Secretariat by **17 December 2009**.

**This report is presented to the XLIII COSAC Meeting on 31 May – 1 June 2010 in Madrid. The complete replies of the national Parliaments / Chambers including their opinions are presented in the Annex to the Report, which is published as a separate document.**

## 2. Results of the Check

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### 2.1 PARTICIPATION

Of the 27 Member States of the European Union, 14 have a unicameral national Parliament and 13 have a bicameral national Parliament. Due to this combination of unicameral and bicameral systems, there are **40 national parliamentary Chambers** in the 27 Member States of the European Union.

By the deadline of 17 December 2009, the subsidiarity check was carried out and completed by a **record high number** of national Parliaments/Chambers. The following **36 national parliamentary Chambers from 25 Member States** had concluded the check and sent their reports to the COSAC Secretariat: the Austrian *Bundesrat*, the Belgian *Chambre des Représentants* and the *Sénat*, the Bulgarian *Narodno Sabranie*, the *Vouli Ton Antiprosopon* of Cyprus, the Czech *Poslanecká sněmovna* and the *Senát*, the Danish *Folketing*, the Dutch *Tweede Kamer* and the *Eerste Kamer*, the Irish *Houses of the Oireachtas*, the Italian *Camera dei Deputati* and the *Senato della Repubblica*, the Finnish *Eduskunta*, the French *Assemblée nationale* and the *Sénat*, the German *Bundestag*, the Greek *Vouli ton Ellinon*, the Hungarian *Országgyűlés*, the Latvian *Saeima*, the Lithuanian *Seimas*, the Luxembourg *Chambre des Députés*, the Polish *Sejm* and the *Senat*, the Portuguese *Assembleia da República*, the *Parlamentul României*, the Slovakian *Národná Rada*, the Slovenian *Državni zbor* and the *Državni svet*, the Spanish *Cortes Generales*, the Swedish *Riksdag*, and the UK *House of Commons* and the *House of Lords*. Both Chambers of the national Parliaments of Ireland, Romania and Spain conducted the subsidiarity check jointly and sent to the COSAC Secretariat a single set of replies to the questionnaire.

The Estonian *Riigikogu* and the German *Bundesrat* started the check but due to a lack of the opinion from the Government (in the case of the Estonian *Riigikogu*) and a specialised committee (in the case of the German *Bundesrat*) were unable to complete the check within the eight-week deadline. However, the German *Bundesrat* stated that if the early warning system had already been applicable to the Proposal, the *Bundesrat* would have adopted an opinion on the compatibility of the draft legislation with the principle of subsidiarity within the eight-week deadline and would have deferred its deliberations on other points.

The Austrian *Nationalrat* and the Maltese *Kamra-tad-Deputati* did not participate in this subsidiarity check.

Thus, **within the eight-week deadline, the check was conducted and completed by 36 out of 40 national parliamentary Chambers, representing 25 Member States**. One national Parliament and one Chamber started the check but had difficulties in completing it within the set deadline, while one national Parliament and one Chamber did not take part in the check.

## 2.2 PROCEDURES APPLIED BY NATIONAL PARLIAMENTS

The subsidiarity check was carried out by participating Parliaments according to their own rules of procedure. All the participating Parliaments conducted the check in line with the provisions of Protocol 2.

### 2.2.1 Involvement of Parliamentary Committees

In 14 participating Parliaments, the subsidiarity check was conducted by their **Committees on European Affairs** without involving specialised committees. In three of the cases, these were joint Committees of both Chambers of Parliaments (*i.e.*, the Irish *Houses of the Oireachtas*, the Romanian *Parlamentul României* and the Spanish *Cortes Generales*).

In additional 12 cases, the Committees on European Affairs conducted the check **together with specialised committees**, either as lead committees or as committees delivering an opinion. In the vast majority of the latter cases, the specialised committees were the Committees on Legal Affairs or on Justice (*e.g.* in the Bulgarian *Narodno Sabranie*, the Danish *Folketing*, and the Italian *Senato della Repubblica*). In two cases, three committees were involved. In the Lithuanian *Seimas*, the lead Committee on European Affairs sought opinions of two specialised committees, *i.e.* the Committee on Legal Affairs and the Committee on Human Rights. While in the Romanian *Parlamentul României*, the lead joint European Affairs Committee sought opinions of the Committee for Legal Matters, Discipline and Immunities of the *Camera Deputaţilor* and the Committee for Legal Matters, Discipline and Immunities and Validation of the *Senatul*.

In five instances, the check was conducted **solely by specialised committees**. In the cases of the Belgian *Chambre des Représentants* and the *Sénat*, these were the Committees on Justice. In the Finnish *Eduskunta* and the Luxembourg *Chambre des Députés*, these were the Committees on Legal Affairs; while in the Swedish *Riksdag*, the check was conducted by the Committee on Civil Affairs.

In the Dutch *Tweede Kamer*, the check was conducted by two committees, *i.e.* the Subsidiarity Check Committee which endorsed the opinion of the Standing Committee on Justice, while in the *Eerste Kamer*, the check was conducted solely by the Standing Committee for the JHA Council.

### 2.2.2 Involvement of Plenary Sessions

The Belgian *Sénat*, the German *Bundestag*, the Dutch *Tweede Kamer* and the *Eerste Kamer* were the **four Chambers** which **conducted plenary deliberations** on the Proposal and took the final decision on its compliance with the principle of subsidiarity at the plenary level.

### 2.2.3 Coordination between Chambers of Bicameral Parliaments

As mentioned above, of the 27 Member States of the European Union, 13 have a bicameral national Parliament. **Coordination of the subsidiarity check between the Chambers of the participating bicameral Parliaments** was reported by **three national Parliaments**, *i.e.* the Irish *Houses of the Oireachtas*, the Romanian *Parlamentul României* and the Spanish *Cortes*



*Generales*. In these cases, the Joint Committees on European Affairs, which include Members of both Chambers of Parliaments, conducted the subsidiarity check on behalf of their Parliament. The *Parlamentul României*, however, reported only coordination at the staff level.

Three more bicameral national Parliaments reported **partial informal coordination** of the activities as regards this check. According to the French *Assemblée nationale*, the check in both Chambers of the French Parliament was preceded and accompanied by an intense informal exchange of information between the two administrations. Similarly, according to the German *Bundestag*, secretariats of the EU Committees of both Chambers informed each other on their participation in the check.

In the Dutch *Staten-Generaal*, both Chambers kept each other up to date. The *Tweede Kamer* noted that the joint subsidiarity committee ceased to operate in autumn of 2009. Now each Chamber has their separate procedures for checking subsidiarity concerns. However, cooperation, such as sending joint letters, continues to exist, decision being taken on an *ad hoc* basis. The *Tweede Kamer* still operates a Subsidiarity Check Committee, which operates as a switchboard and dialogue partner to the various standing committees. The *Eerste Kamer*, however, works under separate procedures. In this particular case, the *Eerste Kamer* arrived at the same opinion as the *Tweede Kamer*. Therefore, it was considered adequate to send a joint letter to the Vice President of the European Commission on the results of this subsidiarity check. The letter was signed by the Presidents of both Chambers of the *States-General*.

Furthermore, according to the Slovenian *Državni zbor*, there was no coordination with the *Državni svet*, which conducted the subsidiarity check according to its own procedures. However, the opinion of the Commission for International Relations and European Affairs of the *Državni svet* was sent to both the lead and the specialised committees of the *Državni zbor*. In addition, the Chairman of the Commission for International Relations and European Affairs of the *Državni svet* presented the findings of his Commission at the meeting of the Committee on EU Affairs of the *Državni zbor*.

In the remaining seven bicameral national Parliaments no coordination of the subsidiarity check between the Chambers was reported.

#### **2.2.4 Consultation with Regional Parliaments with Legislative Powers**

During this subsidiarity check, **regional Parliaments with legislative powers were consulted in three cases**, i.e. by the Austrian *Bundesrat*, the Spanish *Cortes Generales* and the UK *House of Lords*. In the case of the Spanish *Cortes Generales*, the Chairman of the Joint Committee for the European Union invited the regional legislative assemblies to take part in the check. A number of them, i.e. Canary Islands, Galicia, Navarre, Basque Country, Aragon, Murcia, Asturias, Castile-La Mancha, Cantabria and Catalonia, forwarded their opinions, which were taken into consideration by the Joint Committee of the *Cortes Generales*.

In the case of the UK *House of Lords*, the consultation was less effective. According to the European Union Committee of the *House of Lords*, the European and External Affairs Committee of the Scottish Parliament was unable to consider the matter within the timetable

set; the Welsh Assembly responded that they “were content to leave the response to the Lords as succession is not currently a devolved matter”; and the Northern Ireland Assembly “considered the Proposal but had no comment to make.”

### **2.2.5 Information Provided by Governments**

Out of 36 national parliamentary Chambers which participated in this subsidiarity check, **25 received government information** (in written and/or oral form) on the Proposal including its compliance with the principle of subsidiarity. In the majority of cases, the Governments provided explanatory memoranda, which included an opinion on subsidiarity. In two cases (i.e. the Czech *Poslanecká sněmovna* and the Swedish *Riksdag*) the Governments provided written information on the content of the Proposal, but not on its subsidiarity implications. In seven cases, however, participating Parliaments did not receive any government information.

### **2.2.6 Involvement of NGOs, Interest Groups, External Experts and Other Stakeholders**

Unlike the previous COSAC-coordinated subsidiarity checks, during this check, **a relatively high number**, i.e. 10 participating Parliaments, formally consulted non-governmental organisations, interest groups, external experts and other stakeholders.

In the majority of cases, the participating Parliaments **consulted national chambers of notaries, judicial bodies or bar associations**. The Austrian *Bundesrat* consulted the Austrian Chamber of Advocates and the Chamber of Notaries, the Belgian *Chambre des Représentants* - the Royal Federation of Belgian Notaries and the International Council of the Belgian Notaries, the Bulgarian *Narodno Sabranie* - the Notary Chamber of the Republic of Bulgaria and the Supreme Judicial Council, the Cypriot *Vouli ton Antiprosopon* - the Cyprus Bar Association. The Irish *Houses of the Oireachtas*, on its part, sought views of the Irish delegation to the Committee of the Regions. The Greek *Vouli ton Ellinon* received comments on the creation of a European Certificate of Succession from the Notary Association of Athens-Piraeus-Aegean- and Dodecanese. The Lithuanian *Seimas* received written opinions from the Lithuanian Supreme Court, the Lithuanian Chamber of Notaries and the Institute of Law. The Polish *Senat* was provided with external expertise prepared by an independent expert. The *Parlamentul României* consulted the National Union of the Public Notaries of Romania, the Superior Council of Magistracy and the Legislative Council of Romania. While, the UK *House of Lords* took evidence from two experts (Professor Matthews and Richard Frimston) as part of a more general inquiry undertaken by the Sub-Committee E of the European Union Committee in the course of its scrutiny of the Proposal.

On the other hand, the French *Assemblée nationale* and the *Sénat* conducted such consultations informally, while the Czech *Senát* did not conduct direct consultations, but took note of the positions of the notaries, judges and academics on the key aspects of the Proposal at the Conference on Succession and Wills held in Prague in April 2009.

## **2.3 FINDINGS**

### **2.3.1 Identified Breaches of the Principle of Subsidiarity**

**One participating Chamber - the Belgian *Sénat* - indicated that the Proposal was in breach of the principle of subsidiarity.**

In its Conclusion, adopted by the plenary on 8 December 2009, the Belgian *Sénat* pointed out “contradictions between the texts of the Proposal for a Regulation in the different languages, although they have the same authentic power”. The Committee referred to the “very important Article 27, of which the Dutch text, on the one hand, and the texts in French and English, on the other, is totally contradictory” The *Sénat* called for the clarification of this matter.

The *Sénat* also “underlined that the settlement of competence proposed in the Regulation modifies indirectly provisions of substantive law of the succession law.” “The settlement in the English version, for example, infringes the legal reserve, which is of Public Order in Belgium”. “It means a very radical modification of the Belgian system for successions”. Therefore, the *Sénat* concluded that “**the principle of subsidiarity is not guaranteed** and that **further justification should be provided by the European authorities** in order to know the exact scope of the Proposal for Regulation”.

### **2.3.2 Reasoned Opinions**

Under Article 6 of Protocol 2 any national Parliament or any Chamber of a national Parliament may, within a 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.

Apart from the Belgian *Sénat* which **found a breach** of the principle of subsidiarity and issued a reasoned opinion in the form of a **Conclusion**, seven other participating Parliaments issued Opinions/Statements/Resolutions which did not indicate a breach of the principle of subsidiarity, i.e. the Austrian *Bundesrat*, the Czech *Poslanecká sněmovna*, the Danish *Folketing*, the French *Assemblée nationale*, the Greek *Vouli ton Ellinon*, the Luxembourg *Chambre des Députés*, the Portuguese *Assembleia da República*, the Spanish *Cortes Generales* or sent brief letters to the European Commission (the Dutch *Staten-Generaal*).

In those documents, the participating Parliaments expressed their overall support for the Proposal especially as regards its compliance with the principle of subsidiarity (e.g. the Czech *Poslanecká sněmovna*, the Danish *Folketing*, the Spanish *Cortes Generales*), but some of them pointed out their concerns with regard to its justification (e.g. the Austrian *Bundesrat*), possible breach of the principle of proportionality (e.g. the French *Assemblée nationale*) or concerns over its substantive provisions (e.g. the Greek *Vouli ton Ellinon*, the Portuguese *Assembleia da República*).

### **2.3.3 Justification with Regard to the Principle of Subsidiarity**

**An overwhelming majority** of participating Parliaments found the **Commission's justification** of the Proposal with regard to its compliance with the principle of subsidiarity **satisfactory or had no particular comments on the justification**. For instance, the Irish *Houses of the Oireachtas* found the Commission's justification “to be far more complete than in some previous subsidiarity checks”, stating that “there were more quantitative / qualitative measures given which aids the depth of analysis in the impact assessment”. While the UK *House of Lords* considered that “the justification given under the heading “Subsidiarity” in

the Commission's explanatory memorandum includes only limited reasoning in respect of subsidiarity" and that "the impact assessment was of greatest assistance".

It was only three participating Parliaments that were not entirely satisfied with the Commission's justification, i.e. the Austrian *Bundesrat*, the Belgian *Sénat* and the Portuguese *Assembleia da República*. According to the Portuguese *Assembleia da República* "additional justifications would have been useful". According to the Belgian *Sénat*, "further justification should be provided by the European authorities in order to know the exact scope of the Proposal for regulation" and according to the Austrian *Bundesrat* "adequate qualitative or quantitative reasons as to why the Commission is of the opinion that the Proposal complies with the principles of subsidiarity and proportionality are practically non-existent". The *Bundesrat* thought that "in view of the subject matter, these aspects are particularly important in order to emphasise the need for a Regulation of this nature".

### **2.3.4 Other Concerns**

A number of participating Parliaments did not limit themselves to the examination of the Proposal solely with respect of its compliance with the principle of subsidiarity. In addition, they assessed the Proposal's compliance with the principle of proportionality, its legal basis and looked at certain aspects of its substantive provisions.

Several participating Parliaments indicated that the Proposal was possibly **in breach of the principle of proportionality** (e.g. the Belgian *Chambre des Représentants*, the French *Assemblée nationale* and the *Sénat*). According to the Belgian *Chambre des Représentants*, "on the issue of Article 27 of the Proposal there might be a breach of the principle of proportionality", "indeed, the EC-Treaty does not allow the European authorities to intervene in matters of Family Law; therefore, the draft regulation needs to be reviewed on that issue". Also, the French *Assemblée nationale* called on the Commission "to provide answers to the reservations it had expressed as regards proportionality, in particular on the insufficient protection of the legitimate rights of the surviving spouse and children."

**Substantive provisions of the Proposal raised doubts** for a number of participating Parliaments, e.g. the Austrian *Bundesrat* was concerned, *inter alia*, about interference of the Regulation with national procedural law, national substantive laws on succession and national property laws, as well as about the imprecise formulation of the concept of 'habitual residence'. The Cypriot *Vouli ton Antiprosopon* questioned Article 4 of the Proposal on General jurisdiction and, in particular the concept of 'habitual residence' which, in its opinion, needed to be defined in more detail. The Greek *Vouli ton Ellinon* was concerned, *inter alia*, about the European Certificate of Succession, as further clarification regarding the authenticity of its content and its contestation process was needed as well as about the creation of the central data basis of the European Certificate of Succession. The Hungarian *Országgyűlés* called the attention, *inter alia*, to the necessity to respect the Member States' national traditions in the field of succession, especially in safeguarding the national substantive regulations concerning the effects of *inter vivos* gifts. The *Parlamentul României* expressed concerns about the insufficient protection of the rights of close family members of the deceased to a statutory share of the inheritance, since the Romanian national legislation ensures to a higher degree the statutory reserve. The UK *House of Commons* was concerned about the incompatibility of the 'claw back' provisions of the Proposal with the established

succession regime in the UK, as well as about the administrative burdens imposed by rules allowing for recovery of *inter vivos* gifts.

Two participating Parliaments **questioned the legal basis** of the Proposal. The German *Bundestag* saw "a need for clarification on certain points, especially the European Certificate of Succession", while the Italian *Senato della Repubblica* 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 provisions of article 67 (5) second indent of the EC Treaty), albeit indirectly and under the rules governing "conflicts of law" may be reasonably assessed".

In this context, it should be noted that the German *Bundesrat*, which completed the check after the eight-week deadline, in its Opinion adopted by the plenary on 12 February 2010 identified "a need to examine the issue of whether there is a legal basis for the EU to introduce provisions on a European Certificate of Succession, as these provisions pertain to substantive inheritance law." It should be noted that **the *Bundesrat* considers scrutiny of the legal basis to constitute part of its scrutiny of compliance with the subsidiarity principle**, i.e. "if a proposal for legislation or some of the provisions contained in such legislation do not fall within the ambit of EU legislative competence, the legislation in question cannot be considered to be in compliance with the principle of subsidiarity."

The above concerns, although outside the scope of Protocol 2 *per se*, offer a clear indication of the increased interest on the part of national Parliaments in various aspects of the EU draft legislation. To address these concerns, since 2006, the European Commission and the national Parliaments have been engaged in a political dialogue.

### **2.3.5 Interparliamentary Cooperation and Exchange of Information on IPEX**

In order to enhance the exchange of information during the subsidiarity check, national Parliaments were encouraged to share information on the IPEX website.

In their replies to the questionnaire, ten participating Parliaments indicated that they **actively used the IPEX website** to inform other Parliaments about the start of the scrutiny procedure, to publish their findings or to follow the activities of other national Parliaments.

However, the analysis of the information uploaded by the participating Parliaments on IPEX after the eight-week deadline revealed **a number of shortcomings**. Firstly, almost half of the participating Parliaments, i.e. 17 out of 36, failed to timely update the information on IPEX. They either did not indicate that the subsidiarity check was completed or indicated the fact well after the deadline. Secondly, several participating Parliaments failed to clearly distinguish between the subsidiarity check and the general scrutiny of the Proposal, which in a number of cases continued after the subsidiarity check was over. Thirdly, three participating Parliaments, i.e. the Luxembourg *Chambre des Députés*, the Slovakian *Národná rada* and the Slovenian *Državni svet*, did not upload any information on the check on IPEX. Fourthly, in some cases (e.g. the Finnish *Eduskunta* and the Lithuanian *Seimas*) the information was provided only in the original language with no summary in English or French. Finally, some documents sent to the COSAC Secretariat together with the replies to the questionnaire were not published on IPEX and *vice versa*. The above findings may **affect**

**the reliability of IPEX** as a database for early and up-to-date information on the subsidiarity concerns of national Parliaments/Chambers.

As concerns **direct contacts** between the Parliaments, eight participating Parliaments reported contacts at the officials' level, especially through the network of national Parliaments' permanent representatives in Brussels. Also, some participating Parliaments reported cases of bilateral cooperation. For instance, the German *Bundestag* and the French *Assemblée nationale* each reported direct contacts between the secretariats of their Committees on European Affairs who communicated the results of the check to each other. The Italian *Senato della Repubblica*, on its part, reported that it took into consideration the opinion of the French *Assemblée nationale*.

### **2.3.6 Difficulties Encountered During the Check**

In sharp contrast to the previous COSAC-coordinated subsidiarity checks, **a record high number** of participating Parliaments (i.e. 34 out of 36) **reported no particular difficulties** encountered during this check.

The only two participating Parliaments which commented on specific difficulties were the Portuguese *Assembleia da República* and the UK *House of Lords*. The Portuguese *Assembleia da República* had objective difficulties because of the general elections held on 27 September 2009. The parliamentary committees of the *Assembleia da República* started working only on 12 November 2009, thus reducing the time available for the subsidiarity check. The UK *House of Lords* reported that it had to shorten the normal six-week period for submitting written evidence to meet the deadline. Also, it was necessary for the *House of Lords* to form a view before the completion of all the sessions of oral evidence to the formal inquiry. Regardless of the facts mentioned above, both the Portuguese *Assembleia da República* and the UK *House of Lords* carried out the check and successfully completed it within the eight-week deadline.

### **2.3.7 Changes in the Rules of Procedure of National Parliaments**

**Three participating Parliaments reported recent or envisaged changes in their Rules of Procedure** with regard to the appraisal of the compliance of EU draft legislative acts with the principle of subsidiarity. These were the Dutch *Tweede Kamer*, the Irish *Houses of the Oireachtas*, the Polish *Senat*, and the Swedish *Riksdag*.

As concerns the participation of the Swedish *Riksdag* in decision-making in the EU under the Treaty of Lisbon, its Rules of Procedure have been amended to accommodate new procedures with regard to both subsidiarity checks of EU draft legislative acts and amendments to the Treaties (Chapters 2, 3, 4, 5 and 10 of the *Riksdag Act*).

In the Dutch *Tweede Kamer*, the changes concern the fact that as of the autumn of 2009, the joint subsidiarity committee of both Chambers of the *Staten-Generaal* ceased to operate (see part 2.2.3).

Two other participating Parliaments, i.e. the Irish *Houses of the Oireachtas* and the Polish *Senat* are considering the arrangements to be put in place to give effect to the enhanced role for national Parliaments under the Treaty of Lisbon. In the Irish *Houses of the Oireachtas*, it

is likely that the plenary will be afforded a more active role, particularly if a reasoned opinion on subsidiarity grounds is being considered within the *Oireachtas*. While the Polish *Senat* is of the opinion that its procedure for the appraisal of the compliance of EU draft legislative acts with the principle of subsidiarity developed throughout the COSAC pilot subsidiarity checks may be changed following the amendment of the *Act on Cooperation of the Council of Ministers with the Sejm and the Senat in matters related to Poland's membership in the EU* (henceforth "the Cooperation Act"). One major change likely to be introduced is to empower the *Senat* plenary to issue reasoned opinion on the non-compliance of a given proposal with the principle of subsidiarity, with a draft opinion having been prepared by the EU Affairs Committee and a specialised committee. The amendment of the Cooperation Act will make it necessary to change the Rules and Regulations of the *Senat*.

**TABLE: KEY INFORMATION ON THE SUBSIDIARITY CHECK**

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Austria: Bundesrat</b>	The check was conducted by the EU Committee. The Ministry of Justice provided a position paper. Officials of the Ministry of Justice provided oral statements during the Committee session	Yes, via IPEX	A summary of the proceedings was published on the website of the Parliament. Statement was published on IPEX	No	Yes, in a form of a Statement of the EU Committee	No	No
<b>Belgium: Chambre des Représentants</b>	The check was conducted by the Committee on Justice. The representative of the Secretary of State responsible for family affairs provided information to the Committee on the compliance with the principle of subsidiarity	No	The findings were published as a parliamentary document	No	No	Yes	No
<b>Belgium: Sénat</b>	<b>The check was conducted by the Committee on Justice. The final vote was taken in the plenary</b>	No	<b>The findings were published on the website of the Sénat, on IPEX and as a parliamentary document distributed to Members and staff</b>	<b>YES</b>	<b>YES, in a form of a Conclusion</b>	No	No
<b>Bulgaria: Narodno Sabranie</b>	The check was conducted at the joint meeting of the Committee on European Affairs and Oversight of the European Funds and the Legal Affairs Committee. The Government submitted an explanatory memorandum and a position, including information on the compliance of the Proposal with the principle of subsidiarity	Yes, via IPEX	The report of the two Committees was published on the website of the <i>Narodno Sabranie</i> . A summary of the report was published in the bulletin "Euronews"	No	No	Yes	No



Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>The Czech Republic:</b> <i>Poslanecká sněmovna</i>	The check was conducted by the Committee for European Affairs. The Government provided its preliminary position on the Proposal without any particular reference to the principle of subsidiarity	Yes, on the officials' level, namely by e-mail	The findings were incorporated in the Committee resolution which is available to the public of the website of the <i>Poslanecká sněmovna</i> . It was also published on IPEX	No	Yes, in a form of a Resolution	Yes	No
<b>The Czech Republic:</b> <i>Sénat</i>	The check was conducted by the Committee on EU Affairs which adopted a resolution. The Government provided an explanatory memorandum which stated that the Proposal fully complied with the principle of subsidiarity	Yes, via representatives of national Parliaments in Brussels and IPEX	The resolution was published on the website of the <i>Sénat</i> and on IPEX	No	No	Yes	No
<b>Cyprus:</b> <i>Vouli Ton Antiprosopon</i>	The check was conducted by the Parliamentary Committee on European Affairs. The Ministry of Justice and Public Order as well as the Office of the Attorney General, submitted their opinion and/or views on the Proposal	No	No	No	No	Yes	No
<b>Denmark:</b> <i>Folketing</i>	The check was conducted by the European Affairs Committee and the Legal Affairs Committee. The Government provided a subsidiarity note	No	The findings were published on the website of the <i>Folketing</i>	No	Yes, in a form of an Opinion	Yes	No
<b>Estonia:</b> <i>Riigikogu</i>	The Legal Affairs Committee gave its opinion to the European Union Affairs Committee which took the final decision. The Government provided its position	Through IPEX and permanent representatives in Brussels.	The positions of the Committees are public. The minutes of the meetings are published on the <i>Riigikogu</i> website	No	No	Yes	<b>No, but the check was not completed within the 8-week deadline</b>

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Ireland:</b> <i>Houses of the Oireachtas</i>	The check was conducted by the Joint Committee on European Scrutiny. As this is the committee with the primary responsibility for subsidiarity checks and the scrutiny of EU legislative proposals, no other committees were involved. Information was provided by the Department of Justice, Equality and Law Reform	Yes, increased use of IPEX. The <i>Oireachtas</i> Liaison Officer in Brussels provided timely information received from colleagues from other national Parliaments	The Committee decision was posted on the website of the Joint Committee	No	No	The Commission's justification was found to be far more complete than in some previous subsidiarity checks. There were more quantitative / qualitative measures given which aids the depth of analysis in the impact assessment	No
<b>Italy:</b> <i>Camera dei Deputati</i>	The Committee on EU Policies issued an opinion to the Committee on Justice	Through IPEX	No	No	No	Yes	No
<b>Italy:</b> <i>Senato della Repubblica</i>	The Committee on European Union Policies issued an opinion to the Committee on Justice	The opinion of the French <i>Assemblée nationale</i> was taken into consideration	A summary report of the sittings, including the opinion, was published on the website of the <i>Senato</i> . The opinion was also published on IPEX	No	No	-	No
<b>Finland:</b> <i>Eduskunta</i>	The check was conducted by the Legal Affairs Committee	No	No	No	No	Yes	No
<b>France:</b> <i>Assemblée nationale</i>	The check was conducted by the Committee on European Affairs and the Committee on Constitutional acts, Legislation and General Administration, which took the final decision. The Minister of Justice gave oral evidence to the Committee on European Affairs	Yes, through the Permanent Representative in Brussels. The secretariat of the Committee on European Affairs sent the Opinion to the corresponding Committee of the German <i>Bundestag</i>	The findings were published on the website of the <i>Assemblée nationale</i>	No	Yes, in a form of an Opinion	-	-
<b>France:</b> <i>Sénat</i>	The check was conducted by the Committee on European Affairs and the Committee on Laws (on substance)	No	The findings were published on the website of the <i>Sénat</i>	No	No	Yes	No

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Germany: Bundestag</b>	The check was conducted by the Committee on Legal Affairs (the lead committee) and the Committee on European Union Affairs (in advisory capacity). The final decision was taken by the plenary. The Federal Ministry of Justice provided a written information / report	The Committee on European Union Affairs communicated with the French <i>Assemblée nationale</i> on the results of the check	The decision of the Bundestag was published on the IPEX in English and French in order to inform other Parliaments on the results of the check	No	No	During the parliamentary discussions the Commission's justification was not criticized for not being sufficient	No
<b>Germany: Bundesrat</b>	The Committee for European Union Questions (the lead committee) deliberates on the basis of recommendations from the relevant specialised committees. The Committee on Legal Affairs which examined the Proposal deferred its deliberations until 27 January 2010 to give the Ministries of Justice in various federal states an opportunity to comment on the Proposal. The Federal Government provided a brief report paper on the Proposal. The final opinion was adopted by the plenary on 12 February 2010	No, but results of the deliberations in other national Parliaments were consulted via IPEX. Progress on deliberations and the interim outcome of deliberations in the <i>Bundesrat</i> were also published on IPEX	No, because deliberations were postponed	In the Opinion of 12 February 2010, the Bundesrat did not comment on the principle of subsidiarity, but considered that there is a need to examine the issue of the legal basis for the Proposal. The Bundesrat considers scrutiny of the legal basis to constitute part of its scrutiny of compliance with the principle of subsidiarity	-	No objections	<b>No, but the check was not completed within the 8-week deadline.</b> If the early warning system had already been applicable to the Proposal, the <i>Bundesrat</i> would have adopted an Opinion on the principle of subsidiarity within the 8-week deadline and would have deferred its deliberations on other points
<b>Greece: Vouli ton Ellinon</b>	The check was conducted at the joint meeting of the Special Standing Committee for European affairs and the Standing Committee for Public Administration, Public Order and Justice. The Ministry of Justice, Transparency and Human Rights provided a memorandum. The Minister gave oral presentation	No, but consulted IPEX on the findings of other national Parliaments. Also, consulted the Representative of the <i>Vouli ton Ellinon</i> in Brussels	As soon as the Opinion was approved by the Bureau of the responsible Committees it was uploaded on IPEX	No	Yes, in a form of an Opinion	-	No

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Hungary:</b> <i>Országgyűlés</i>	The check was conducted by the Committee on European Affairs	Yes, the Committee cooperated through the permanent representatives in Brussels and through COSAC	The minutes of the Committee meeting and a short memo summarising the main discussion points were published on the website of the Committee. The Opinion was published on IPEX	No	No	Yes, although the Committee underlined the necessity of the respect of Member States' national traditions in the field of successions	No
<b>Latvia:</b> <i>Saeima</i>	The Committee on European Affairs (took the final decision) and the Committee on Legal Affairs performed the check. Chairperson and Members of the Committee on Legal Affairs participated in the meeting of the Committee on European Affairs. The Ministry of Justice provided an opinion on the compliance of the Proposal with the principles of subsidiarity and proportionality	Not directly, but the Committee on European Affairs followed the course of the check in other national Parliaments through IPEX and the Permanent Representative of the <i>Saeima</i> to the EU	A press release on the last meeting of the Committee on European Affairs was sent to the Latvian news agencies	No	No	Yes	No
<b>Lithuania:</b> <i>Seimas</i>	The check was carried out by three parliamentary committees: the Committee on European Affairs (lead committee) and two specialised committees, the Committee on Legal Affairs and the Committee on Human Rights (the latter two submitted their expert conclusions). The Ministry of Justice, the Supreme Court of Lithuania and the European Law Department under the Ministry of Justice submitted their opinions	Yes, through IPEX and the <i>Seimas</i> Permanent Representative to the EU	No	No	No	Yes	No

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Luxembourg:</b> <i>Chambre des Députés</i>	The check was conducted by the Committee on Legal Affairs. Representatives of the Government participated at the Committee meetings and submitted information of technical nature on the Proposal	No	No	No	Yes, in a form of an Opinion on the conformity of the Proposal with the principle of subsidiarity	Yes	No
<b>The Netherlands:</b> <i>Tweede Kamer</i>	The Subsidiarity Check Committee asked for an opinion of the Standing Committee on Justice. The opinion was endorsed by the Subsidiarity Check Committee which decided to send to the European Commission a joint letter with the <i>Eerste Kamer</i> . The Committee issued a proposal to the plenary which took the final decision. The Government provided information on the compliance of the Proposal with the principle of subsidiarity	No	The findings were published in the official Parliamentary records	No	No	There were no complaints as to the justification	No
<b>The Netherlands:</b> <i>Eerste Kamer</i>	The Proposal was scrutinised by the Standing Committee for the JHA Council of the <i>Eerste Kamer</i> , which drafted an opinion for adoption by the plenary. The final decision was taken by the plenary of the <i>Eerste Kamer</i> and a joint letter was signed by the Presidents of both Chambers of the <i>States General</i> . The Government sent a so-called 'BNC-fiche' containing a brief analysis of the Proposal	No	The findings were published on the Europa-poorte website of the <i>Eerste Kamer</i>	No	Yes, in a form of a joint letter	Yes	No

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Poland:</b> <i>Sejm</i>	The check was conducted by the Committee on European Union Affairs, which is a specialised body giving opinions on EU matters on behalf of the <i>Sejm</i>	No	The Committee Opinion was published on its website. Transcript of the Committee meeting was made available on the website of the <i>Sejm</i>	No	No	Yes	No
<b>Poland:</b> <i>Senat</i>	The check was conducted by the Committee on European Union Affairs (lead committee) and the Committee on Human Rights, the Rule of Law and Petitions. The Government submitted its written position. A government official provided additional information at the Committee meeting	No	A report on the subsidiarity check was published on the website of the Committee on European Union Affairs and on IPEX	No	No	Yes	No
<b>Portugal:</b> <i>Assembleia da República</i>	The check was conducted by the Committee on European Affairs (lead committee), which always triggers the scrutiny process and the Committee on Constitutional Affairs, Freedoms, Rights and Guarantees, competent for the issued covered by the Proposal. The official communication to the EU institutions was made by the Speaker of the <i>Assembleia da República</i>	IPEX was consulted	The findings were uploaded on IPEX	No	Yes, in a form of an Opinion	No, additional justifications would have been useful	Because of general elections held on 27 September 2009, the parliamentary committees started working only on 12 November. This reduced the number of weeks available for the subsidiarity check
<b>Romania:</b> <i>Parlamentul României</i>	The check was conducted by the European Affairs Committee of the <i>Parlamentul României</i> (lead committee), the Committee for Legal Matters, Discipline and Immunities of the <i>Camera Deputaţilor</i> and the Committee for Legal Matters, Discipline and Immunities and	IPEX was consulted	The findings were published on the websites of both Chambers of the <i>Parlamentul României</i> and on IPEX	No	No	Yes	No

	Validation of the <i>Senatul</i> . The Ministry of Justice, the Ministry of Foreign Affairs, including the permanent Representation of Romania to the EU and the European Affairs Department, submitted documentation and their positions						
<b>Slovakia:</b> <i>Národná Rada</i>	The Committee on European Affairs conducted the check. The Ministry of Justice provided a preliminary opinion, which contained information on the compliance of the Proposal with the principles of subsidiarity and proportionality	Monitored through IPEX	The Committee resolution was published on the website of the <i>Národná Rada</i>	No	No	Yes	No
<b>Slovenia:</b> <i>Državni zbor</i>	The Committee on Domestic Policy, Public Administration and Justice conducted the check and adopted an opinion. Taking into account the opinion, the final decision was taken by the Committee on EU Affairs. The Ministry of Justice provided the <i>Državni zbor</i> with a written opinion. The State Secretary of the Ministry of Justice presented the opinion of the Ministry at the meeting of the Committee on Domestic Policy, Public Administration and Justice	No	The findings were published on the website of the <i>Državni zbor</i>	No	No	Yes	No
<b>Slovenia:</b> <i>Državni svet</i>	The check was conducted by the Commission for International Relations and European Affairs. The Ministry of Justice presented their assessment of the compliance of the Proposal with the principle of subsidiarity at the meeting of the Commission	No	No	No	<b>No</b>	Yes	No

Country, Chamber	Procedure used to conduct the check	Cooperation with other national Parliaments	Publication of findings	Was a breach found?	Was a reasoned opinion issued?	Was the Commission's justification satisfactory?	Any specific difficulties encountered during the check?
<b>Spain:</b> <i>Cortes Generales</i>	The check was conducted by the Joint EU Committee. The Government, through the Secretary of State for Constitutional and Parliamentary Affairs, forwarded a report on the Proposal	No	The debate was broadcasted and webstreamed. A full transcript is published in the Parliamentary Journal. The Resolution is published in the Parliamentary Official Journal. The Resolution with its translation into English is published on IPEX	No	No	No objections were tabled regarding the Commission's justification	No
<b>Sweden:</b> <i>Riksdag</i>	The Committee on Civil Affairs examined the Proposal. The Ministry of Justice provided brief information on the content of the Proposal, but not on its compliance with the principle of subsidiarity	No	The findings were noted in the record of the Committee meeting and published on IPEX	No	No	Yes	No
<b>United Kingdom:</b> <i>House of Commons</i>	The check was conducted by the European Scrutiny Committee. The Government provided an Explanatory Memorandum	No	The findings were published in the Report to the House of Commons	No	No	Yes	No
<b>United Kingdom:</b> <i>House of Lords</i>	The check was conducted by the Sub-Committee on Law and Institutions (Sub-Committee E) of the European Union Committee. The Government provided an Explanatory Memorandum on the Proposal which included comments on compliance with the principle of subsidiarity and expanded on these comments in response to a specific request	No	Updates on progress were made available on the website of the Committee and via IPEX	No	No	The justification given under the heading "Subsidiarity" in the Commission's explanatory memorandum includes only limited reasoning in respect of subsidiarity. The Impact Assessment was of greatest assistance	In order to meet the deadline, the normal 6-week period for submitting written evidence was shortened. Also it was necessary to form a view before the completion of all the sessions of oral evidence to the formal inquiry