



Meeting of the LIX COSAC 17 – 19 June 2018, Sofia

Background Information

Session V: EU Interparliamentary cooperation in the context of the debate on subsidiarity and proportionality

The principle of **subsidiarity** is defined in Article 5 of the Treaty on European Union. Its main goal is to guarantee that the decision-making process is as close as possible to the EU citizens and that particular action at EU level is justified at national and regional level. The principle of subsidiarity concerns areas that fall outside of the EU's exclusive competences, stipulating that the Union is not to take actions, unless proven that they are more effective than the ones taken at national, regional or local level.

Like the principle of subsidiarity, the principle of **proportionality** regulates the implementation of the EU powers. In accordance with the proportionality principle EU action must be limited to what is necessary to achieve the objectives of the Treaties, i.e. the content and form of action must be consistent with the objective pursued.

The principle of subsidiarity was included for the first time in the Single European Act of 1986 but solely in reference to the environment policy (art. 130R). In the Maastricht Treaty, it was already upgraded to the status of general principle of EU law and thus became liable for judicial review by the European Court of Justice. This was followed by the Treaty of Amsterdam, which added a "Protocol on the application of the principles of subsidiarity and proportionality".

Article 5(3) of the Lisbon Treaty incorporated the principles of proportionality and subsidiarity, adding an explicit reference to the regional and local dimension of the principle of subsidiarity. In the Lisbon Treaty the 1997 Protocol on the application of the principles of subsidiarity and proportionality was replaced by a new protocol with the same name – Protocol No 2, the main difference being the new role of national Parliaments.

Under the Lisbon Treaty, national Parliaments have **eight weeks** to deliver a **reasoned opinion** if they consider that draft legislation does not comply with the principle of subsidiarity. The so-called **Early Warning System** has resulted so far in three "yellow cards" - one in 2012 on the proposal for a Regulation concerning the exercise of the right to take collective action within the context of the freedom of establishment and the



freedom to provide services ("Monti II"); one in 2013 on the proposal for a Regulation on the establishment of the European Public Prosecutor's Office, and a third one in 2016 on the proposal for a revision of the Directive on the posting of workers. On all three occasions the Commission stated that the principle of subsidiarity had not been breached.

Over the years COSAC has addressed many times the procedure set in Protocol No 2¹. In 2015 a working group was set by the Polish *Sejm* on the possibility to improve the "yellow card" procedure², followed by the establishment of a COSAC working group in the Luxembourg *Chambre des Députés*³ later the same year. The subject was also covered in special reports by the Danish *Folketing*⁴, the Dutch *Tweede Kamer*⁵ and the UK *House of Lords*⁶.

On 14 November 2017, the European Commission's President Jean-Claude Juncker established the **Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently"**⁷, chaired by Commission's First Vice-President Frans Timmermans. The Task Force was intended to also include three members from national Parliaments of the EU, three from the European Parliament and three from the Committee of the Regions. The delegates in the LVIII Plenary COSAC (Tallinn, 26-28 November 2017) had a lively debate and ultimately decided that parliamentarians from the COSAC Presidential Troika (Estonian *Riigikogu*, Bulgarian *Narodno sabranie* and Austrian *Bundesrat* and *Nationalrat*)

¹ <http://www.cosac.eu/poland2011/plenary-meeting-of-the-xlvi-cosac-2-4-october-2011/k2-Contrib.pdf>
<http://www.cosac.eu/hungary2011/ordinary-meeting-of-xlv-cosac-29-31-may-2011/i1-contrib.pdf>
<http://www.cosac.eu/48-cyprus-2012/plenary-meeting-of-the-xlviii-cosac-14-16-october-2012-nicos/h8-CONTRIBUTION%20OF%20THE%20XLVIII%20COSAC.pdf>
<http://www.cosac.eu/49-ireland-2013/plenary-meeting-of-the-xlix-cosac-23-25-june-2013/h8-%20Contribution%20EN%20FINAL.docx>
http://www.cosac.eu/50-lithuania-2013/plenary-meeting-of-the-l-cosac-27-29-october-2013/g8-2-L%20COSAC%20Contribution_EN.pdf
<http://www.cosac.eu/54-luxembourg-2015/plenary-meeting-of-the-liv-cosac-29-november-1-december-2015/h1-9%20Contribution%20of%20the%20LIV%20COSAC%20Luxembourg%20EN.PDF>
<http://www.cosac.eu/55-the-netherlands-2016/lv-cosac-12-14-june-2016-the-hague/h1-9%20Contributions%20of%20the%20LV%20COSAC.PDF>
<http://www.cosac.eu/56-slovakia-2016/lvi-cosac-13-15-november-2016-bratislava/h1-9%20Contribution%20of%20the%20LVI%20COSAC%20EN.PDF>
² http://oide.sejm.gov.pl/oide/images/files/koferencje/kartka/Working%20paper_13.05.15_FINAL.pdf
³ <http://www.cosac.eu/54-luxembourg-2015/cosac-working-group-30-october-2015/>
⁴ http://renginiai.lrs.lt/renginiai/EventDocument/6fa11f98-fc15-4443-8f3f-9a9b26d34c97/Folketing_Twenty-three%20recommendations_EN.pdf
⁵ https://www.tweedekamer.nl/sites/default/files/field_uploads/Ahead%20in%20Europe_tcm181-238660_0.pdf
⁶ <http://www.parliament.uk/documents/role-of-national-parliaments.pdf>
⁷ https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en#mission



should become members of the Task Force. The work of the Task Force started in January 2018. There have been five meetings since then. The Task Force is in the process of drafting its final report, to be presented to President Juncker by 15 July 2018. The report will include recommendations on how to better apply the principles of subsidiarity and proportionality, how to identify policy areas that could be re-delegated to Member States, as well as to find ways of further involvement of regional and local authorities in the EU policy making process.

Following the Conclusions of the LVIII COSAC⁸, it was decided by the COSAC Chairs, who met in Sofia on 21-22 January 2018, that a working group would be set up under point 2.6 of the Rules of Procedure of COSAC, in order to facilitate regular and comprehensive discussions related to the work of the Task Force. Each Parliament was invited to appoint up to two of its members to participate in the working group. The members met in Brussels on 26 March 2018 and the outcome of their discussions was used in the preparation of the draft Contribution of the LIX COSAC.

⁸ <http://www.cosac.eu/58-estonia-2017/lviii-cosac-26-28-november-2017-tallinn/h1-9%20LVIII%20COSAC%20Conclusions-EN.pdf>