

2 July 2008

*Aide-mémoire*

**for the subsidiarity check under**

**the Treaty of Lisbon**

**on the Commission Proposal**

**for a Council Directive on**

**Implementing the Principle of Equal Treatment**

**between Persons Irrespective of Religion or**

**Belief, Disability, Age or Sexual Orientation**



Prepared by the COSAC Secretariat

*Aide-mémoire*  
**for the subsidiarity check under the Treaty of Lisbon  
on the Proposal for a Directive  
Implementing the Principle of Equal Treatment between Persons  
Irrespective of Religion or Belief, Disability, Age or Sexual Orientation**

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**1. Background**

Based on the proposals from national parliaments, the COSAC Chairpersons in their meeting on 18 February 2008 in Ljubljana agreed to carry out subsidiarity checks on the following two legislative proposals:

- **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)'; and**
- **Proposal for a Directive implementing the principle of equal treatment outside employment (2008/EMPL/017)"<sup>2</sup>.**

This decision was confirmed in the Conclusions of the XXXIX COSAC that took place on 7-8 May 2008 in Brdo pri Kranju<sup>3</sup>.

COSAC agreed that "conducting the subsidiarity and proportionality checks within COSAC has brought - as stated at the XXXVII COSAC in Berlin - an added value to the way EU affairs are dealt within most national parliaments"<sup>4</sup> and that "national parliaments should continue conducting the foreseen subsidiarity checks, as they are an important early warning mechanism"<sup>5</sup>.

The COSAC Secretariat was asked to prepare all necessary arrangements for the subsidiarity check on the Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The check is to be conducted by national parliaments within eight weeks of the publication of the draft legislative act in all the official languages of the EU. The results of this subsidiarity check will be discussed under the French Presidency"<sup>6</sup>.

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<sup>1</sup> According to the information of the Commission this Proposal will be adopted in the 1st quarter of 2009

<sup>2</sup> Upon adoption, the title of the Proposal was changed. It now reads as follows: Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

<sup>3</sup> See Conclusions of the XXXIX COSAC, paragraph 1.3  
<http://www.cosac.eu/en/meetings/Ljubljana2008/ordinarymeeting/>

<sup>4</sup> See Conclusions of the XXXIX COSAC, paragraph 1.1

<sup>5</sup> See Conclusions of the XXXIX COSAC, paragraph 1.4

<sup>6</sup> See Conclusions of the XXXIX COSAC, paragraph 1.3

The Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation was adopted by the Commission on 2 July 2008.

The subsidiarity check of the Proposal will be conducted in accordance with the Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community<sup>7</sup> (hereinafter referred to as "the Protocol").

## **2. Procedure for the subsidiarity check on the Commission Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**

The subsidiarity check should be carried out by national parliaments according to their own rules and procedures. However, the Protocol stipulates a certain framework for the conduct of subsidiarity checks by national parliaments in order to give them the possibility to have a stronger say in the EU decision making process.

### *Timing*

The Protocol gives national parliaments eight weeks to examine proposals from the date of transmission by the Commission to national parliaments of the draft legislative acts in all the official languages of the EU.

At the XL COSAC on 3-4 November 2008 in Paris, the COSAC Presidency will have an exchange of views and best practices between national parliaments on their experience of the subsidiarity check. It therefore requests that national parliaments participating in the check should seek to complete their examination of the Proposal within the eight-week period.

### *Making use of IPEX*

The XXXIX COSAC called on national parliaments to continue forwarding information and participating actively in, the information exchange<sup>8</sup>. It also invited the COSAC Secretariat to organise a dialogue with the IPEX Board with a view to facilitating timely and effective exchange of information concerning the subsidiarity mechanism as envisaged in the Treaty of Lisbon<sup>9</sup>.

The IPEX website provides national parliaments with a platform for the electronic exchange of EU documents and information. All Commission proposals are available on the IPEX website in English and French – with links to other language versions. In order to enhance the exchange of information between parliaments during the subsidiarity check, national parliaments are encouraged to share information on the IPEX website.

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<sup>7</sup> Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union (OJ C115, 9.5.2008)

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:EN:HTML>

<sup>8</sup> See Conclusions of the XXXIX COSAC, paragraph 1.4

<sup>9</sup> See Conclusions of the XXXIX COSAC, paragraph 1.5

Availability of timely and precise information from national parliaments on the IPEX website will allow conclusions to be drawn from the results of the subsidiarity check, for instance for the use of the "yellow card" or "orange card" procedure.

For more information, please contact your parliament's IPEX Correspondent, or contact IPEX Central Support ([centralsupport@ipex.eu](mailto:centralsupport@ipex.eu)).

### *Reasoned opinions*

Under Article 6 of the Protocol, any national parliament or any chamber of a national parliament may, within the 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. It will be for each national parliament or any chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers.

National parliaments taking part in the current subsidiarity check are asked to transmit their findings to the above mentioned EU Institutions and to the COSAC Secretariat.

For that purpose, the following addresses should be used:

**Commission:** [sg-national-parliaments@ec.europa.eu](mailto:sg-national-parliaments@ec.europa.eu)

**European Parliament:** [ep-np@europarl.europa.eu](mailto:ep-np@europarl.europa.eu)

**Council:** [sgc.cosac@consilium.europa.eu](mailto:sgc.cosac@consilium.europa.eu)

**COSAC Secretariat:** [secretariat@cosac.eu](mailto:secretariat@cosac.eu)

### **3. Evaluation of the subsidiarity check**

To facilitate the evaluation of the subsidiarity check at the XL COSAC meeting in Paris, national parliaments are, on behalf of the French Presidency, kindly asked to reply to the following questions and send their answers to the COSAC Secretariat ([secretariat@cosac.eu](mailto:secretariat@cosac.eu)).

#### *Procedures:*

1. What was the procedure used to conduct the subsidiarity check?
  - a. Which committees were involved?
  - b. Was the plenary involved?
  - c. Which administrative services of your parliament were involved?
  - d. What was the chronology of events?
  - e. Did your government provide any information as part of the scrutiny process?
  - f. In case of a bicameral system, did you coordinate with the other chamber?
  - g. Did you consult regional parliaments with legislative powers?
  - h. Did you make use of any external expertise?
2. Did you cooperate with other national parliaments in the process? If so, by what means (the COSAC Secretariat, IPEX, permanent representatives of national parliaments in Brussels)?
3. Did you publicise your findings (e.g. in a special press release)?

4. Has your parliament lately adapted its procedures with regard to subsidiarity check mechanism as foreseen in the Treaty of Lisbon; or is it planning to do so?

*Findings:*

5. Did you find any breach of the subsidiarity principle?
6. Did you adopt a reasoned opinion on the Proposal? (If so, please enclose a copy )
7. Did you find the Commission's justification with regard to the subsidiarity principle satisfactory?
8. Did you encounter any specific difficulties during the examination?
9. Any other comments?

*Key dates*

- Publication of the Commission Proposal: 2 July 2008.
- Official launch of the check: when translations of the Proposal into all the official languages of the EU are available (according to the information from the Commission, this will be in the second half of July 2008).
- Send reasoned opinions to the EU Institutions within eight weeks of the official launch of the check.
- Send reasoned opinions and answers to the above questions to the COSAC Secretariat within eight weeks of the official launch of the check.

*The COSAC Secretariat will inform national parliaments of the exact dates of the start and the finish of the subsidiarity check.*