

Chamber of Deputies of the Grand Duchy of Luxembourg

COSAC Working Group Meeting

30 October 2015

Minutes

Opening of the meeting

The Chairman of the Committee on Foreign and European Affairs, Defence, Cooperation and Immigration of the Chamber of Deputies, Mr Marc Angel, welcomed the delegates at the meeting of the COSAC working group.

Mr Angel briefly reminded the participants of COSAC's decision to invite the Luxembourg Presidency to set up a working group on strengthening the political dialogue by introducing a "green card" and improving the reasoned opinion procedure, "yellow card". During the COSAC Chairpersons meeting in July in Luxembourg the delegates debated on some aspects of the working group such as composition, scope, language regime and frequency of meetings. Mr Angel also informed the delegates that he received two letters; one from the Czech Senate and another one from the Cyprus Parliament mentioning that it was better to organise such kind of working group meetings in the margin of COSAC meetings, in order to reduce and to avoid additional out-of home days for MPs. Mr Angel underlined that this meeting was an exception as it was a "kick off meeting" only meant to start discussions. The subsequent meetings would indeed be organised in the margin of COSAC meetings.

Mr Angel also took the opportunity to thank Mr Edmund Wittbrodt, Chairman of the EU Affairs Committee of the Polish Senate, for his long commitment to COSAC during the past 10 years. Mr Wittbrodt decided not to run for the recent parliamentary elections in Poland and therefore this meeting might be the last COSAC meeting he attends.

Session I on the "green card" (strengthened political dialogue)

Mr Angel reminded the delegates that the idea of introducing a "green card" gradually took form during an informal meeting organised on 19 January 2015 in Brussels by the Dutch delegation and during the last COSAC meetings. Moreover, Mr Angel declared that Lord Boswell's initiative on the reduction of food waste was signed by 17 Parliaments/Chambers. He also notified the delegates of a new initiative introduced by Lolita Čigāne from the *Saeima* of Latvia on the audiovisual media service directive. This informal meeting would take place in Riga on 16 November.

Finally, Mr Angel invited Mrs Auroi, Chair of the European Affairs Committee of the French *Assemblée nationale*, to take the floor in order to present to the delegates a draft "green card" on corporate social responsibility.

Mrs Auroi thanked Mr Angel for organising this working group meeting as it was an opportunity for the delegations to improve dialogue.

First of all, she stated that the first initiative proposed by Lord Boswell had been very efficient as it was going to be embodied in the French law. Mrs Auroi specified that when there is a reflection at EU level, it is also useful at the national level.

Mrs Auroi explained that she submitted this proposal concerning corporate social responsibility after the collapse of the Rana plaza in Bangladesh. Mrs Auroi underlined that without fixed rules, multinationals were not aware of what their subsidiaries and subcontractors did. Moreover, she emphasised that the bill on corporate social responsibility should be embodied in European law. The enterprises that have their headquarters in Member States, except for the smallest one, should have their duty of due diligence with respect to their subsidiaries and subcontractors. Setting binding rules would prevent any kind of risks for employees and local communities. In order to ensure that these legal obligations are effective, they should possibly be backed by sanctions.

Mrs Auroi quoted as an example India, where multinational enterprises have a corporate social responsibility following which 2% of the revenues must be used for social or environmental actions allowing them to support educational projects. Mrs Auroi also mentioned the example of “Michelin”, a company based in her constituency, which also has a branch in the South of India and where it funds villages in the area producing renewables in order to provide for gas and electricity to villagers. Mrs Auroi underlined that this was a concrete example of interactions of corporate social responsibility. Moreover, she added that corporate social responsibility could also be of interest for the companies as they could benefit from costs reduction in risk management and in the management of human resources as well as in innovation capacity.

Finally, Mrs Auroi explained that the project of a “green card” was just a basis that could be reviewed, questioned or amended. However, she clearly emphasised that her aim was to push the European Commission to take into account this topic as it was an important issue for all Member States and that if there would be common rules on this topic, the EU would be stronger.

Following these preliminary remarks, Mr Angel opened the floor for discussion on Mrs Auroi’s proposal.

The Italian delegation asked for some clarifications on this initiative, particularly on how it was different from the additional taxation of companies. The Italian delegate expressed his concern that this “green card” could be understood as an additional tax on companies.

Ms Auroi explained that this initiative had not the aim to be an additional tax but that it proposed to introduce a charter for multinationals in which they commit to know what their subsidiaries and subcontractors do in full respect of the international rules. It strengthens the financial reporting as it is organised today and it gives a moral responsibility to multinationals making them accountable for what their subsidiaries and subcontractors do in third countries. Ms Auroi suggested having this European initiative because it had more effectiveness at EU level than at national level. She also expressed her willingness to travel to each country in order to present the development of this bill in France. She clarified that the bill has been adopted by the *Assemblée nationale* and it was now examined by the *Sénat*.

Mr William Cash, Chair of the European Scrutiny Committee of the UK *House of Commons*, expressed his concerns regarding Ms Auroi’s proposal as he thought that this initiative went too far in

interference with individual Member States companies. Furthermore, Mr Cash doubted that the initiative was legally feasible. He also added that if this initiative was to be transposed into a legal requirement for all European countries, the net result would be severe interferences through the EU into the external activities of the individual Member States.

Mr Philippe Mahoux, Chair of the Federal Consultative Committee on European Affairs of the Belgian *Sénat*, evoked that the reasoning behind this proposal is very interesting. However, he added that this was a “test proposal” and that the long-term idea was to define the procedures of a “green card”.

Ms Auroi replied underlining that this initiative should allow national Parliaments to check how they can get the attention of the European Commission on some topics and then afterwards enter the usual procedural framework of the European Union. She also reminded that Mr Jean-Claude Juncker, President of the European Commission, confirmed to re-launch the social dimension in Europe by next year. In this respect, Ms Auroi thought that this topic was even more relevant for the Commission and the European Union.

Mr Angel affirmed that these three “test proposals” were a good start in order to enhance the political dialogue with the Commission.

During his intervention, Mr Angel also informed that a chapter of the 24th Bi-annual Report, which will be presented as usual during the next COSAC plenary, focuses on the “green card” (enhanced political dialogue) and aims at complementing the information given in the previous Bi-annual Reports by Parliaments/Chambers on their positions and views regarding the scope and procedural framework of the “green card”, while ensuring its compliance with the existing Treaty provisions and with the inter-institutional balance of powers.

Mr Angel reminded that on 16 October, the COSAC secretariat forwarded a short preliminary note on the replies to the questionnaire on the basis of which the Bi-annual Report was drafted. The questions mainly focused on the scope and the procedural framework of the “green card”.

Mr Angel then summarised the replies of the Parliaments/Chamber.

Concerning the scope of the “green card”, a large majority of responding Parliaments/Chambers agree that a “green card” could suggest new legislation, amendments to existing legislation and to repeal existing legislation. A small majority would even support suggestions to amend or repeal delegated or implementing acts.

Regarding a minimum threshold for the introduction of a “green card”, a large majority of Parliaments/Chambers having responded are in favour of introducing a minimum threshold which should moreover always be the same. However, it is less clear which threshold it should be (1/4 or 1/3 were mentioned, but only by 5 or 6 out 23 replies respectively). In the case the threshold is not reached, a majority of respondent are in favour of sending the text to the European Commission as a joint text by participating Parliaments/Chambers without considering it as a “green card”.

Concerning the setting of a deadline and a timeframe, a large majority of answering Parliaments/Chambers consider:

- that a deadline should be set, but the respondents are divided over the question if it should be the same deadline for every “green card” or not;

- that a timeframe should be set, but there is no clear majority on the fact that it should be between 16 weeks and 6 months.

Concerning the amendments, nearly all Parliaments/Chambers having replied to the questionnaire approve the possibility to introduce amendments to the initial text and nearly all the respondents agree that the deadline for amendments should be decided by the initiating Parliament.

Regarding the withdrawal, a majority of respondents consider that Parliaments/Chambers should be allowed to withdraw from a “green card” at any stage.

Concerning the specific form, a small majority of respondents want to see a specific form adopted, including a summary of the reasons behind the proposed action, the anticipated benefits, a legal base and the preferred type of legislation.

Regarding consultation, a small majority of respondents considers that consultation between interested Parliaments/Chambers should be left to the initiating Parliament’s choice.

Mr Angel concluded that there seemed to be wide support among responding Parliaments/Chambers as to what concerns the scope of the “green card”. On the procedural questions there was a clear willingness of a number of Parliaments/Chambers to proceed in a flexible way, while following a couple of set elements such as respecting a certain threshold.

Following these preliminary remarks, Mr Angel opened the floor for discussion. The ensuing discussions saw contributions from 17 delegates.

Mr Philippe Mahoux, Chair of the Federal Consultative Committee on European Affairs of the Belgian *Sénat*, informed the delegates that its chamber was not able to respond to the questionnaire but that they voted an “information report”, which included information on the requirements for transposing standard-settings texts into the national Belgian law. In this “information report”, the Belgian Senate supports a “green card” that could suggest new legislation and amend existing legislation. Regarding the minimum threshold, the Belgian Senate was in favour of introducing a minimum threshold of 1/3. Mr Mahoux indicated that the Senate extensively discussed the issue whether the European Parliament should then have the same right of initiative as the national Parliaments.

Mr Angel thanked Mr Mahoux for bringing up this important question and informed the delegates that the European Parliament was going to participate in the LIV COSAC plenary in Luxembourg, so it could be included in the discussions. Furthermore, Mr Angel pointed out that the European Parliament had the opportunity through initiative reports to request the Commission to legislate.

Mr Tuur Elzinga, Chair of the Standing Committee on European Affairs from the Dutch *Eerste Kamer*, stated that the Senate did not yet have a single position on the “green card” because they felt that there was a lack of information or even commitment, which would be necessary at this level. Nevertheless, they largely discussed this topic in the Standing Committee on European Affairs and a large majority agreed that there shouldn’t be any Treaty changes. Mr Elzinga pointed out that the “green card” should be seen as an instrument within the enhanced political dialogue and therefore it should not be formalised too much. Finally, Mr Elzinga underlined that the Dutch Senate saw the “green card” as an informal enhanced political dialogue and the guidelines should be voluntarily and not binding.

Baroness Rosalind Scott, Member of the European Union Committee of the UK *House of Lords*, emphasised that the scope of the “green card” should include non-legislative measures as well. She quoted the example of the “green card” on reduction of food waste that asked for the creation of a horizontal working group. As for the deadline, Baroness Scott underlined that it should be set by the initiating Parliament/Chamber because this allowed for negotiations which could take longer for more complex proposals. For the same reason, Baroness Scott thinks that a Parliament/Chamber should be able to withdraw in case it does not longer agree with an amended proposal. Regarding consultation, Baroness Scott underlined that the less formal the “green card” was, the better it would be and the more chance it would have to be successful.

In his reply, Mr Angel underlined that during the COSAC Chairpersons meeting in July in Luxembourg, the European Commission reacted positively on enhancing the political dialogue. Mr Angel reminded that the Vice-President of the European Commission had clearly stated that there would be no Treaty changes. Mr Angel also remarked that, when taking into account all the replies of Chambers/Parliaments, it comes out very clearly that the majority of the Parliaments/Chambers did not want a formal or binding character of the “green card” and they saw it as a collective exercise in the context of enhanced political dialogue.

Mr Jean Bizet, Chair of the European Affairs Committee of the French *Sénat*, affirmed that his Chamber strongly supported the implementation of a “green card” but that the accent should be put on “flexibility” and “responsiveness”.

Mr Richard Hörcsik, Chair of the European Affairs Committee of the Hungarian *Országgyűlés*, was pleased to read in the European Commission's work program about the renewed commitment to political dialogue and that a strong voice will be ensured for national Parliaments in the European policy making. In his view this was a positive sign for the future of a “green card”. Moreover, he looked forward to the European Commission's reply on the “green card” on food waste which was also supported by the Hungarian National Assembly. Mr Hörcsik underlined that the reply of the European Commission should be carefully examined in order to see to what extent it incorporated national Parliament's views and suggestions in its final proposal. This analytical exercise could be very useful for further “green card” proposals. Mr Hörcsik also added that by establishing a minimum threshold for introducing a “green card”, the common views of national Parliaments could be more efficiently emphasised. In addition, Mr Hörcsik underlined that the minimum threshold should be the same for every “green card” and that in case the threshold was not reached, the proposal should be sent to the European Commission as a joint text by participating Parliaments/Chambers without considering it as a “green card”.

Mr Edmund Wittbrodt, Chairman of the European Union Affairs Committee of the Polish *Senat*, declared that the Polish Senate strongly supported the idea of an informal enhanced political dialogue. Mr Wittbrodt reminded the delegates of the constitutional problem in Poland where such a right of initiative did not exist. Nevertheless, he put forward that national Parliaments should concentrate on a limited number of cases. Regarding the minimum threshold, Mr Wittbrodt affirmed that if the threshold was not reached the proposal should still be sent to the European Commission.

In his reply to Mr Wittbrodt's intervention, Mr Angel underlined again that there was a wide consensus concerning the case if the threshold was not reached, the proposal can still be sent to the European Commission as joint text by participating Parliaments/Chambers without considering it as a “green card”. Furthermore, Mr Angel agreed on the fact that COSAC and the working group needed

to follow the reactions of the European Commission on the “green card” initiative on food waste and the new “green card” proposed by the French Assembly.

Mr Christian Petry, Member of the German *Bundestag*, clearly emphasised that the *Bundestag* did not want any Treaty changes but supported the idea of a more open and enhanced dialogue resulting in a better implication of national Parliaments in the European legislative procedure. However, Mr Petry underlined the importance of a better coordination and cooperation with the European Parliament.

Mr Angel agreed with Mr Petry on the necessity of coordination and cooperation with the European Parliament regarding the “green card” and he emphasised again the large consensus among the delegations to not proceed to any Treaty changes.

Ms Marit Maij, Member of the Standing Committee on European Affairs of the Dutch *Tweede Kamer*, mentioned that the *Tweede Kamer* shared this feeling of enhancing the political dialogue without any Treaty changes. Moreover, she affirmed that this enhanced political dialogue should not be interpreted as a right of initiative on behalf of national Parliaments. Regarding the scope, she added that it should be broad. On the threshold, Ms Maij announced that the *Tweede Kamer* had not come to a consensus but that the *Kamer* felt that the initiative had more weight when there were more Parliaments participating. Finally, Ms Maij concluded that it would be better to have some kind of standardisation without having a fixed format.

Mr Peter Luykx, Member of the Belgian *Chambre des représentants*, welcomed the initiative of a “green card” which could give to national and regional Parliaments a more important role in the European decision making process. Regarding the pilot proposal on food waste, it did not take sufficiently into account internal delineation of competences within Member States such as Belgium, which could not participate in that “green card” because of the Belgian institutional landscape. Therefore, Mr Luykx underlined the necessity to keep in mind the constitutional specificities of Member States when discussing on “green card” procedures. Regarding the threshold, the Belgian Federal Parliament would like to wait for the results of this working group, before taking any position. However, Mr Luykx expressed very clearly that the “green card” should not be formalised too much and has to have general rules.

Mr Angel thanked Mr Luykx for reminding the delegates for considering the Constitution and the different institutional landscapes of the Member States.

Mr Paolo Tancredi, Vice-Chair of the European Affairs Committee of the Italian *Camera dei deputati*, took the floor to express its support for the proposal to establish a “green card” as he believed that it will contribute to reinforce the democratic legitimacy of Europe’s decision making process. Indeed, he underlined that this initiative would enhance the proactive role of national Parliaments. Moreover, Mr Tancredi underlined that the experience with the scrutiny of subsidiarity showed that over-elaborated rules and procedures mostly complicate rather than simplify the achievement of the proposed objectives. Finally, Mr Tancredi accentuated that the establishment of a “green card” procedure required a favourable attitude of the European Commission.

Mr William Cash, Chair of the European Scrutiny Committee of the UK *House of Commons*, expressed his gladness regarding the enthusiasm shown by the other delegates on the informality of the procedures of a “green card”. Moreover he added that he was most surprised of the responses concerning the scope of the “green card” where 18 out of 22 respondents agreed that a “green card” could suggest repealing existing legislation. Mr Cash pointed out that there seemed to be a desire to

invade the *acquis* by a very large majority and that people were concerned on the fact that some of the legislation needed to be repealed.

Ms Danielle Auroi, Chair of the European Affairs Committee of the French *Assemblée nationale*, emphasised the need for flexible and informal procedures in order to not engage in any Treaty changes. Moreover she added that a minimum threshold of 1/3 seemed to be reasonable. Ms Auroi suggested that more focus should be put on how national Parliaments can better coordinate with the European Parliament in order to foster the logic of cooperation and coordination, without entering into competition.

Mr Angel agreed with Ms Auroi on the importance of coordination with the European Parliament at the COSAC level. However he pointed out that this coordination logic with the European Parliament was also very important between the European Affairs Committees of national Parliaments.

Ms Mihaela Popa, Vice-President of the EU Affairs Committee of the Romanian *Senat*, emphasised the need to support the improvement of cooperation and communication between national Parliaments and the European institutions in the framework of the current Treaties. Ms Popa underlined that the actions of national Parliaments in the decision-making procedure within the EU should be consolidated but according to the current mechanism, which should be fully used before proposing new instruments. A way to consolidate the political dialogue was to increase the quality of contributions during the current parliamentary scrutiny of EU legislation.

Mr Dominic Hannigan, Chair of the Irish *Houses of the Oireachtas* Joint Committee on European Union Affairs, informed that due to internal procedures the *Oireachtas* could not sign Lord Boswell's letter to President Juncker directly but sent a letter of support later on. However, Mr Hannigan clearly stressed that its Parliament fully supported the idea of introducing a clearly structured "green card" without engaging into a Treaty change and introducing a right of initiative. Moreover, Mr Hannigan informed that he intended to put a technical motion to the Parliament to get their support in the near future.

Mr Roberto Cociancich, Member of the EU Policies Committee of the Italian *Senato della Repubblica*, informed the delegates that the Senate fully supported Lord Boswell's initiative. However he clarified that it was better to shape the scope of the "green card" in order to avoid any misunderstandings among national Parliaments and with the European institutions. Mr Cociancich underlined that the Italian Senate did not think it was necessary to lay down a formal procedure nor a minimum threshold.

Mr Emanuel Öz, Member of the European Affairs Committee of the Swedish *Riksdag*, indicated its Parliament had not yet adopted a formal position but it was following the issue very closely. Mr Öz underlined that national Parliaments should examine and investigate the forms for a "green card" and set up rules for this procedure. He underlined that there should be clear guidelines before making important decisions. Moreover, Mr Öz emphasised that Parliaments should take into consideration all the problems that could emanate from a "green card" procedure and see if this procedure would lead to an increased administrative burden. He also noted that not all the Chambers/Parliaments responded to the questionnaire and he considered that before taking any final statement, it was important to hear those Chambers/Parliaments. Finally, Mr Öz concluded by stating that national Parliaments already have tools within the subsidiarity control mechanism and the yellow card procedure and these tools should be used to their fullest extent before discussing to create further tools.

Mr Angel reminded that at this stage only 12 out of 41 Parliaments/Chambers had already adopted an official position on the “green card” procedure and that the scope of this working group was to provide more information to the Parliaments/Chambers.

Mr Dorin Silviu Petrea, Member of the European Affairs Committee of the Romanian *Camera Deputaților*, indicated that their time and resources were limited. This was also the reason why they didn’t participate to the “green card” on food waste reduction. Nevertheless, they did not exclude the participation of this collective exercise which provided opportunities for national Parliaments to play a more important role in shaping EU policies. Finally, Mr Petrea didn’t believe that the European Commission would consider a “green card” if the number of participating Parliaments/Chambers is low. Therefore he proposed a participation of 80% of the Parliaments/Chambers.

Mr Jean Bizet, Chair of the European Affairs Committee of the *French Sénat*, underlined that the “green card” should not be too formalised and that it had to respect all the provisions of the Treaties. Furthermore, Mr Bizet clearly pointed out the importance to adopt a flexible and responsive procedure in order to enable a better dialogue.

In conclusion Mr Angel thanked all the delegates for their constructive interventions and for the useful proposals submitted via the questionnaire. Mr Angel proposed to continue the discussions in the framework of COSAC and analyse the possibilities of coming together again as a working group during the LIV COSAC plenary or during the Dutch Presidency in 2016.

Mr Angel declared that there seemed to be consensus on the scope and the minimum threshold of the “green card” as well as to the fact that if a minimum threshold is not reached, the “green card” should still be sent to the European Commission. Moreover, Mr Angel welcomed the two new proposals for a “green card” and looked forward to the outcome of the meeting in Riga on 16 November proposed by Ms Lolita Čigāne. Mr Angel underlined that it was an interesting format to first discuss the directive among national Parliaments and then see which direction the “green card” should take. Furthermore, Mr Angel accentuated that many delegates underlined the importance of cooperation and dialogue with the European Parliament and to closely follow the reactions of the European Commission concerning the first draft proposal of the “green card”.

Finally, Mr Angel mentioned that the Luxembourg Presidency has the aim to facilitate all further discussion on the “green card” and thanked the Dutch Presidency for already agreeing on taking over the work done until now.

Session II on the “yellow card”

Mr Marc Angel opened the session devoted to the “yellow card” procedure by recalling that earlier informal meetings on the issue had been organised in January by the Dutch delegation in Brussels and in May by the Polish delegation in Warsaw.

During both meetings, discussions were centred on improving the “yellow card” procedure and on exploring the possibility of extending the deadline for reasoned opinions from 8 to 12 weeks, within the current treaties. Mr Angel recalled that European Commissioner for Better Regulation and Interinstitutional Relations, Mr Frans Timmermans, indicated during the Meeting of the Chairpersons of COSAC in July in Luxembourg that there would be no Treaty change on this issue.

Subsequently, Mr Angel evoked the contribution of the LIII COSAC adopted in Riga, which stated that COSAC would welcome better cooperation and coordination between national Parliaments in the conduct of subsidiarity checks. He mentioned that COSAC also discussed the possibility of elaborating informal guidelines on the conduct of subsidiarity assessments and the reasoned opinion procedure in order to render the exercise more efficient and effective.

Drawing on the results of the 23rd COSAC Bi-annual Report, Mr Angel asserted that a majority of responding Parliaments/Chambers supported the idea of elaborating a voluntary, non-binding set of best practices and guidelines. However, they also expressed a clear preference not to standardise the format in which reasoned opinions and political dialogue contributions should be drafted and submitted to the European Commission.

Mr Angel summarised the replies to the questionnaire for the 24th Bi-annual Report, which addressed the nature of the voluntary guidelines and best practices, as follows:

A large majority of responding Parliaments/Chambers favoured improvements without Treaty change. However, it was less clear on what points improvements should be made:

- 10 out of 27 replies stressed the need for improvement of the Commission's answers to reasoned opinions.
- 9 out of 27 replies asked for an extension or adjustment of the current 8-week-deadline.

Further, 9 out of 35 respondents indicated that they had established criteria for deciding whether the principle of subsidiarity has been breached (such as definitions and criteria in Article 5 TEU and/or Protocol 2; appropriateness of the choice of the proposal's legal basis, etc.) and 19 out of 33 respondents stressed that they drafted reasoned opinions according to an internal set form (though allowing some flexibility).

6 out of 33 respondents have defined criteria for separating the principle of subsidiarity and the principle of proportionality.

Identified best practices include, among many others, a clear indication that the document was a reasoned opinion and a clear motivation of the violation.

A large majority of respondents stressed that the following elements should be part of a "yellow card":

- A mention of the legislative proposal the reasoned opinion refers to,
- A clear indication that the text is a reasoned opinion,
- An English translation or summary,
- A summary of the argumentation,
- The legal basis,
- A motivation.

A majority of respondents would favour excluding from the 8-week-period the period from mid-December to New Year's break as well as the recess periods in the EU institutions. They also advocate for the European Commission to communicate the exact dates of periods excluded from the 8-week-period.

Following these preliminary remarks, Mr Angel opened the floor for discussion.

Mr Richárd Hörcsik, Chair of the European Affairs Committee of the Hungarian *Országgyűlés*, mentioned two legislative proposals of the European Commission discussed and examined by several national Parliaments: the proposal on GMOs issued on 22 April 2015, on which several reasoned opinions have been adopted, and the proposal on the establishment of a permanent relocation scheme, whose subsidiarity control deadline expired on 9 November 2015.

Mr Hörcsik stated that the reasoned opinion tool was applied in the Hungarian Parliament in case of draft legal acts of outstanding and strategic importance for Hungary. In the case of the crisis relocation mechanism, he said that the breach of the principle of subsidiarity was observed by the Visegrád Parliaments, which adopted reasoned opinions in the framework of the political dialogue.

He declared that in this case even if the amount of the reasoned opinions did not reach the necessary threshold to trigger the “yellow card” procedure, they conveyed a clear message to European legislative institutions.

Mr Hörcsik gave some details on the Hungarian National Assembly’s subsidiarity check regarding the European crisis relocation mechanism and expressed his hope that the final vote on the reasoned opinion would take place on 3 November in plenary. Mr Hörcsik summarised the arguments put forward in the reasoned opinion, whose detailed version is available on the Platform for EU Interparliamentary Exchange (IPEX), as follows: 1) The article used as a legal basis by the European Commission is not appropriate; 2) The exercise of the European Commission’s competence exceeds the limitations enshrined in the mentioned article; 3) The more efficient procedure and the added-value of the eventual application of the crisis relocation mechanism are not sufficiently justified by the European Commission; 4) It considers that the European Commission intends to present a new reform of the Dublin Regulation by March 2016.

Mr Hörcsik acknowledged that the Slovak *Národná rada* and the Czech *Senát* and *Poslanecká sněmovna* have adopted reasoned opinions on the issue and that together with the Hungarian *Országgyűlés* this added up to 6 votes.

Anticipating the next COSAC meetings, Mr Angel recalled that the COSAC Plenary of 30 November and 1 December in Luxembourg will dedicate a full morning to the discussion on the European Agenda of Migration with one panel on “Common asylum policy and legal migration policy” and a second one on the “Fight against irregular migration and securing Europe’s external borders”.

Mr William Cash, Chair of the European Scrutiny Committee of the UK *House of Commons*, expressed his concern after having listened what the Hungarian delegation had said on subsidiarity and asserted he would ask his legal advisors to look at the issue at the light of what has been said. Mr Cash considered that a lot of people misunderstood some of the genuine concerns of the Hungarian people in these matters.

Regarding the guidelines for the “yellow card”, he congratulated the Secretariat’s preparatory work and considered the number of respondents to the questionnaire made the results extremely effective.

Baroness Rosalind Scott, Member of the European Union Committee of the UK *House of Lords*, considered that the picture of the survey on the “yellow card” was less clear than in the “green card”

survey. She noted that 25 out of 30 respondents wanted improvement, but that no consensus emerged on exactly what those improvements should be.

Baroness Scott expressed her surprise regarding the fact that the extension of the 8-week-deadline was mentioned by only 9 out of 27 States because, as the *House of Lords* conducted its survey on the role of national Parliaments in the EU, it was a topic that came from voices right across the EU. She acknowledged positively the great support for the exclusion of recesses and breaks.

Baroness Scott shared her perplexity at the view of the section on criteria for violation of the principle of subsidiarity: only 9 out of 35 say they have established criteria and only 6 out of 33 say they have criteria for separating subsidiarity and proportionality. However, she observed that 19 have an internal form, which is set out, and asked on what base the form is filled in if no criteria were decided for the assessment of subsidiarity and proportionality.

Finally, she recalled the very poor record of the European Commission with regard to taking these proposals seriously, considered that it is not a respectful way to treat each other and called to be much tougher with the European Commission. Baroness Scott also saw a role for Governments, which, while negotiating at the Council, should be tougher on the European Commission, in terms of getting further explanations, when they know that their Parliaments have adopted reasoned opinions on the matter.

Mr Angel recalled that the perception dated back to the former European Commission and that the current Commission has shown a very different approach, also by visiting national Parliaments, as Mr Timmermans did in July at the COSAC Chairpersons meeting. He underlined that COSAC should indeed be tough on the European Commission but that it should also give it a chance and observe how it drafts its new answers to Parliaments' proposals.

Mr Fidas Sarikas, Member of the Standing Committee on Foreign and European Affairs of the Cypriot *Vouli ton Antiprosopon*, called the European Commission to consider in detail the contributions of national Parliaments and to reflect on their reasoning.

Regarding the 8-week-period, Mr Sarikas observed that its relevance could vary according to the submitted legislative proposal. In many cases, this period of time could be considered sufficient; however, more time should be available for control of more complex proposals.

Mr Sarikas declared that the Cypriot Parliament was in favour of conducting proportionality control on equal footing with subsidiarity control, which it already did when controlling legislative proposals, as it considered that both are inseparable in practice.

Nonetheless, Mr Sarikas mentioned that his Parliament's position is that any development on proportionality control should not hinder the submission of reasoned opinions on the basis of the subsidiarity control.

Ms Danielle Auroi, Chair of the European Affairs Committee of the French *Assemblée nationale*, declared that her Parliament did not use the "yellow card" procedure frequently, as it considered that it did not work properly and that formalism was rather counterproductive. She mentioned the proposal on the European Public Prosecutor's Office on which British colleagues and the French *Sénat* had adopted reasoned opinions, while using fairly opposed arguments.

Ms Auroi shared her support for most of the proposals made for the improvement of the “yellow card” procedure, while expressing two reserves.

Firstly, regarding the summary or translation in English, Ms Auroi considered that English and French were the two classical diplomatic languages and that the translation and summaries should be presented in both languages, or in all languages of EU Parliaments, which would be an even more satisfactory solution and would allow better reactivity of the Parliaments.

Secondly, Ms Auroi identified some suspicion of the European Parliament towards the involvement of national Parliaments, in particular with respect to the European Parliament’s proposal providing for a description of national Parliaments’ position in every legal document published in the Official Journal. Ms Auroi considered this an act of defiance rather than an act of trust. Therefore, Ms Auroi argued that the debate should be focused on how to use the “yellow card” more restrictively but also more clearly, and on how to reinsure the European Parliament on the fact that national Parliaments conduct subsidiarity controls for the right purpose and not in an abusive way.

Mr Angel welcomed Ms Auroi’s mentioning of the two diplomatic languages; however, he specified that English translations and summaries were a manner of improving communication through IPEX and for Parliaments to understand the opinions adopted by others. Indeed, translations in French or other languages would be welcomed, because it was necessary for other Parliaments to at least understand the aim of opinions adopted.

Mr Angel then gave the floor to Ms Agnieszka Pomaska, Chairwoman of the European Union Affairs Committee of the Polish *Sejm*, whom he congratulated for her re-election. Regarding the subsidiarity check on the relocation scheme mentioned by Mr Hörsik, Ms Pomaska explained that the Polish *Sejm* and *Senat* were unable to approve the reasoned opinion because of procedural reasons related to elections and the 8-week-deadline. She pointed out that she proposed an opinion, which considered that the legal basis used for the relocation scheme was wrong, agreeing with the view of the Hungarian delegation.

On the improvement of the “yellow card” procedure, Ms Pomaska signaled her support for the identified points, underlining that it is very useful for many Parliaments to have a longer period of time than the 8-week-deadline in order to adopt reasoned opinions.

Mr Philippe Mahoux, Chair of the Federal Consultative Committee on European Affairs of the Belgian *Sénat*, expressed the view that, in matters of formalisation, a distinction should be made between proportionality and subsidiarity control. Mr Mahoux considered that a legal reasoning was fundamental to assess subsidiarity. On the other hand, argumentation on the respect of the principle of proportionality relied rather on appreciations, which are not fully related to legal considerations. Mr Mahoux recalled that the Lisbon Treaty included a distinction between subsidiarity and proportionality, despite Parliaments’ efforts to gain equal judgement ability on both principles.

Mr Mahoux supported Ms Auroi’s position on the necessity of summaries and translations at least in both English and French languages.

He also observed that national Parliaments felt overall under pressure because of the 8-week-period and that a good solution might lie between 8 and 12 weeks for the adoption of reasoned opinions.

Ms Marit Maij, Member of the Standing Committee on European Affairs of the Dutch *Tweede Kamer*, shared the thought that the “yellow card” procedure could be improved from the side of the

European Commission and of national Parliaments. She mentioned that besides subsidiarity, her Parliament would also welcome a proportionality test. Ms Maij reflected that both terms were sometimes mixed up and that the issue at stake was to define them well at first.

Ms Maij said that her Parliament was in favour of an improvement of the guidelines, even if they were informal and non-binding, as well as for an extension of the deadline from 8 weeks to 12, for internal reasons but also to facilitate contacts with other Parliaments.

She acknowledged that improving the answers of the European Commission was a good thing but that, on the side of the Parliaments, information sharing should be enhanced as well and that clear texts should be adopted.

Mr Roberto Cociancich, Member of the EU Policies Committee of the Italian *Senato della Repubblica* explained that his Parliament used the necessity test and the European added-value test to assess the compliance of a draft legislative proposal with the principle of subsidiarity. He declared that these parameters were enshrined in the technical definition of the principle of subsidiarity and that they offered a solid framework for its application, as stated also by the European Commission in its 19th Report on subsidiarity and proportionality.

Mr Cociancich argued that the problems of the “yellow card” were not only based upon the difficulties of the procedural requirements of the Treaty, relating to time limits, thresholds, difficulties in distinguishing subsidiarity and proportionality and legal basis. According to him, the difficulties were also clear when considering that the procedure had been only twice successfully triggered: for the Monti II Regulation and for the European Public Prosecutor’s Office.

He affirmed that formulating guidelines and identifying best practices could allow Parliaments to better express their positions. In his view, these requirements should include that the opinion clearly states that the proposal is in breach of Protocol n° 2 on subsidiarity.

Mr Cociancich disapproved the allegation according to which requirements should be fixed in order to decide on the violation of the principles of subsidiarity, such as appropriateness of the choice of the legal basis or the lack of the impact assessment. In his view, these should be left to the autonomous decision of Parliaments and Chambers, in the expectation of an eventual statement of the Court of Justice of the EU.

Mr Cociancich argued that the need of rendering the “yellow card” procedure more efficient and more effective passes through the mentioned formal procedure but also through a strategic use of the COSAC itself, being a political body able of going well beyond the technicalities of the Treaties. He considered that a stronger Europeanisation of national Parliaments required their association with a political engine that operates autonomously in a European body, as COSAC, but which also had its connections in each Parliament through the Committees on European affairs.

Ms Mihaela Popa, Vice-President of the EU Affairs Committee of the Romanian *Senat*, argued that the “yellow card” procedure should be improved through four points: 1) the need of better and more detailed explanations by the European Commission in its proposals regarding the compliance with the principles of subsidiarity and proportionality, 2) publishing and highlighting on IPEX the decisions of the Court of Justice of the EU and the decisions of the Committee of Regions regarding breaches of the principle of subsidiarity; 3) organising a consultation forum on IPEX for exchange of arguments on the breach of the principle of subsidiarity, long before issuing a reasoned opinion, 4) the necessity of

informing on the risk of the draft EU legislative act passing in its initial form beside the subsidiarity breach.

Mr Hörcsik reacted to the contribution of the Dutch delegation and considered that two questions had to be addressed.

Firstly, what can national Parliaments do for the improvement of the “yellow card” procedure without Treaty change? To this respect, Mr Hörcsik argued that reasoned opinions should include: 1) a brief summary of the contested proposal; 2) a clear and concise summary of reasons of the breach of the principle of subsidiarity; 3) the elaboration of sufficient arguments in order to argue the breach of the principle; 4) a summary of the argumentation; 5) a clear structure; 6) a clear indication that the text is a reasoned opinion; 7) the legal basis and 8) a summary in English of the reasoned opinion.

Secondly, what can the European Commission do for the improvement of the “yellow card” procedure without Treaty change? Mr Hörcsik mentioned the improvement and relevance of the answers of the European Commission but also a better justification regarding the observance of the principle of subsidiarity. Mr Hörcsik considered that this would contribute to the general improvement of subsidiarity control and avoid cases such as the European Public Prosecutor’s Office proposal. In addition, he considered that more and detailed information should be provided by the European Commission to the national Parliaments bi-annually on the upcoming legislative proposals falling into the scope of Protocol 2. Regarding the 8-week-period, Mr Hörcsik declared that the Hungarian Parliament favoured the exclusion of the following periods: Mid-December to New Year’s break and recess periods in the EU institutions. He also pointed out that proper administration cannot be ensured during the recess periods of the national Parliaments.

Ms Evangelia Karakosta, Member of the Greek *Vouli ton Ellinon*, who participated for the first time in a COSAC meeting, expressed her intention to observe and draw experience from the work that had been done in previous meetings. She outlined that the Hellenic Parliament had dealt in the last years with an extraordinary workload and conditions due to the economic crisis. But following the recent elections and the formation of the new Parliament, she said that Greece moves towards greater stability. Ms Karakosta expressed the willingness of her Committee to intensify its work on the scrutiny of European decisions and to take part actively to initiatives in the context of the enhanced political dialogue. She conveyed the strong commitment of the new Chair of the European Affairs Committee, Mr Anastasios Kourakis, who will participate to the COSAC Plenary, to cooperate closely with all COSAC delegates.

Mr Angel welcomed Ms Karakosta personally to the COSAC family and looked forward to cooperation and meeting the new members of her delegation.

Mr Emanuel Öz, Member of European Affairs Committee of the Swedish *Riksdag*, expressed his agreement with most of the points outlined on improving the “yellow card” procedure. He shared the agreement of his Parliament on the fact that the subsidiarity control procedure was inefficient in its current form, he welcomed therefore the discussion. Mr Öz mentioned the following points: 1) The Commission should provide more detailed information when it sends out its proposals in order to make sure that they are in balance with the subsidiarity principle. Mr Öz pointed out that some proposals have not been reasoned at all; 2) The 8-week-deadline should be extended; 3) Communication between national Parliaments should be increased and improved, as it is one of the

most important issues at stake now; 4) Finally, IPEX should also be improved as the information is not always available in English and is sometimes missing for some Parliaments.

In conclusion and in view of the results of the debate, Mr Angel suggested including in the draft COSAC conclusions and contributions, to be adopted at the next Plenary in Luxembourg, some of the best practices and non-binding voluntary guidelines on which delegates were able to find consensus, while noting that this was also subject to approval by the troika, consisting of the Dutch, Latvian and Luxembourg delegations as well as the European Parliament. The points referred to by Mr Angel were:

- A mention of the legislative proposal the reasoned opinion refers to;
- A clear indication that the text is a reasoned opinion;
- An courtesy translation or summary in English or/and French;
- A summary of the argumentation;
- The legal basis;
- A motivation.

Mr Angel made the point that delegates should not forget that a better “yellow card” procedure required to consider the European Commission’s role. Mr Angel took notice that delegates expected an improvement of the answers of the European Commission to the opinions of national Parliaments. He considered it would be interesting to hear what the European Commission thought of an extension of the 8-week-deadline.

Finally, Mr Angel drew the attention of the delegates on a proposal submitted by the European Parliament, which foresees that each legislative act published in the Official Journal should include a note mentioning the national Parliaments having reacted to the Commission’s proposal and those having raised subsidiarity concerns. While admitting that initiatives by a single Parliament are usually not put forward, he described the idea as interesting and called to discuss it with colleagues from the European Parliament.

Mr Angel closed the session after thanking all speakers for their constructive remarks and inviting all colleagues to the COSAC Plenary on 30 November and 1 December in Luxembourg.