

EVOLUTION OF COSAC OVER THE LAST 20 YEARS

by

MR HUBERT HAENEL,
CHAIRPERSON OF THE EUROPEAN AFFAIRS COMMITTEE OF THE FRENCH SENATE

and

MR HERMAN DE CROO,
***CHAIRPERSON OF THE FEDERAL ADVISORY COMMITTEE ON EUROPEAN AFFAIRS
OF THE BELGIAN HOUSE OF REPRESENTATIVES***

MINISTER OF STATE

a) Establishment of COSAC¹

The idea of periodically bringing together the Committees of national parliaments specialized in European affairs was first mooted at the Conference of the Speakers of the Parliaments of the European Union held in Madrid in May 1989.

Using the conclusions of this conference of Speakers as a basis, the first meeting of these Committees took place in Paris in November 1989. It was entitled the 'Inter-parliamentary Conference of Bodies specialized in European Affairs'.

Since then, a conference of this type has been held every six months in the country holding the Presidency of the European Union.

The establishment of COSAC² must therefore be situated within the historical context of the early 1990s. On the one hand, the implosion of the Communist system in central and eastern Europe prompted debate on the development of European integration. On the other hand, the new geo-political situation instilled in European political leaders an ambition to set up a genuine political union. An inter-governmental conference (IGC) was accordingly called in 1990, which led to the Treaty of Maastricht (1993). At the same time, national parliaments were becoming aware of the European democratic deficit

¹ For a comprehensive description of the evolution of COSAC, see Knudsen, M and Carl Y, *COSAC – its role to date and its potential in the future*, in Barrett, G (ed.), *National Parliaments and the European Union*, Clarus Press, 2008, pp. 455-483.

² The French acronym of the *Conférence des organes spécialisés dans les affaires communautaires*, known in English as the Conference of Committees of Parliaments of the European Union.

triggered by the absence of parliamentary control, with numerous decisions taken at a European level evading the control of the European Parliament and of national parliaments. As a consequence a form of inter-parliamentary cooperation – this cooperation would turn into COSAC in 1991 – was put in place with a view to strengthening parliamentary control of the process of European decision-making. The Conference adopted its Rules of Procedure and was named COSAC in Luxembourg in 1991. Discussion on the role of COSAC and of national parliaments has always taken place in parallel with the debate on institutional changes to the EU; for example, COSAC and the role of national parliaments has been on the agenda of each IGC (four meetings to date). COSAC has been given an increasingly important role by each amended Treaty and in 1997, it was incorporated in the Union's primary law by a Protocol annexed to the Treaty of Amsterdam.

Protocol n°13
on the role of the national parliaments in the European Union
(extracts)

(...)

“II. The Conference of European Affairs Committees

4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the EU institutions, in particular on the basis of draft legal texts which Representatives of Governments of the Member States may decide by common accord to forward to it, in view of the nature of its subject matter.

5. COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this paragraph.

6. COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.

7. Contributions made by COSAC shall in no way bind national parliaments or prejudice their position.”

COSAC gathers six representatives of each national parliament and six Members of the European Parliament. In this way, the Member States are placed on an equal footing. Three observers from the parliaments of each candidate country are also invited to meetings.

b) Report on the period 1989-2008

During the period 1989-2002, COSAC took a restrictive view of its role and slowly came to be a forum for dialogue between representatives of parliaments and the Presidency of the Union (national Ministers). The European Commission has also taken part on certain issues.

Furthermore, COSAC has helped to develop the reciprocal exchange of information between parliaments on the means to control governments' actions on European issues (best practices).

The prevailing position within COSAC is that each parliament must control its own government in respect of European matters.

However, it has only marginally permitted the expression of any collective views by national parliaments. Even though opportunities to do so are set out in the Treaty of Amsterdam, any progress on this point has been blocked by the consensus rule governing all COSAC decisions.

Moreover, many delegations expressed reservations about COSAC's enhanced role, with some fearing that it would compete with national parliaments, and others afraid that it would compete with the European Parliament.

As COSAC was not established on a representative basis, it never succeeded in acting as a political forum.

c) The 2003 turning-point

The change in attitudes brought about by the collective working within the Convention on the Future of Europe – together with the perseverance of the Danish Parliament, which succeeded both in bringing together parliaments that were in favour of a more effective COSAC and in persuading the others – led to the adoption of a reform to COSAC Rules of Procedure in 2003; these put an end to the general application of the consensus rule. It may still be used when amending the Rules of Procedure, but it no longer applies to COSAC's contributions.

The rule now states that *'In general COSAC shall seek to adopt contributions by broad consensus. If this is not possible, contributions shall be adopted with a qualified majority of at least 3/4 of the votes cast. The majority of 3/4 of the votes cast must at the same time constitute at least half of all votes. Each delegation has two votes. After adoption, the contribution is published in the Official Journal of the European Union'*.

This ability to adopt contributions has turned COSAC into a political forum that can articulate views and formulate opinions as a decision-making body.

In practice, the possibility of moving to a majority vote has not yet been used, but it has changed the climate in which meetings take place: there is now an overwhelming majority of parliaments that want to see COSAC play a more active role. This was not the case during the 1990s.

Generally speaking, COSAC meetings over the last few years have produced more significant results : they include the adoption of a code of conduct on relations between parliaments and governments when examining European issues; the establishment, at our insistence, of a permanent secretariat (Athens, 2003) designed to improve the way that meetings are prepared, to facilitate the exchange of information between participating parliaments, and to present a report every six months on *'developments in European Union procedures and practices relevant to parliamentary scrutiny'*; and the scrutiny of draft legislation (selected from the European Commission's legislative programme) with regard to the principle of subsidiarity by all national parliaments.

Although the scope of inter-parliamentary cooperation organised within COSAC remains limited, it has still managed to break free from the stagnation that had previously characterised it, and has gradually managed to focus on missions where it can be particularly helpful. It is worth noting in this connection that in the Conference's meetings, the theme of subsidiarity has played a growing role in its work responding to the need for inter-parliamentary concertation in this field.

The Protocol on the Application of the Principles of Subsidiarity and Proportionality, which is annexed to the Treaty of Lisbon, and the 2006 'Barroso initiative' (i.e. the informal dialogue between the European Commission and national parliaments that anticipated the implementation of the Protocol – this dialogue will be continued alongside rigorous scrutiny of subsidiarity according to the

protocol) were decisive steps in interparliamentary cooperation, and gave COSAC a substantive function.

d) Perspectives

Protocol No 1 of the Treaty of Lisbon amends the provisions on COSAC. These are covered in Article 10 of the Protocol as follows:

‘A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.’

The new Protocol gives COSAC a more generalist role: whereas the old Protocol urged the Conference to focus on certain areas (the issues of freedom, security and justice; fundamental rights; and the application of the principle of subsidiarity), there is no such indication in the new one.

There is no mention of the Council’s ability to ‘transmit’ draft legislation to COSAC. This right has never been used.

The new Protocol gives COSAC’s role an official status with regard to the exchange of information and good practices between parliaments. It is important to note that this role has been extended to the “specialized committees” of national parliaments. The door is therefore open for conferences that bring together delegates from these specialized committees to take place under the aegis of COSAC.

The new Protocol also leaves open the possibility for COSAC to organise conferences on particular issues in addition to its ordinary meetings. This suggests that COSAC’s composition will have to adapt as a result. One issue in particular is referred to that relating to matters of foreign policy, security and defence. This factor will need to be taken into account when consideration is given to the future of inter-parliamentary control at European level in this field.

Lastly, it should be borne in mind that, unlike the previous Protocol, the new one leaves open the question of COSAC’s name, and

thereby provides an opportunity to come up with one that the public opinion will be able to understand more easily.

Over the last 20 years, COSAC efforts were made towards a greater involvement of national parliaments in European construction, and this greater involvement meant introducing an inter-parliamentary dimension at the European level. National parliaments that work in isolation would indeed not be able to control the European actions of governments that work together on the Council.

The Treaty of Lisbon acknowledges this need: Article 12 of the Treaty on European Union states that, *'National Parliaments contribute actively to the good functioning of the Union... by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.'*

Inter-parliamentary cooperation within the Union has grown enormously over the last 20 years, and now takes a wide variety of forms:

- the Conference of the Speakers of the Parliaments of the European Union ;
- COSAC, including a plenary meeting and a meeting at the chairperson's level every six months;
- the Assembly of WEU (the European inter-parliamentary assembly on security and defence);
- Conventions tasked with drafting amendments to Treaties;
- meetings of the Chairpersons of competent committees in national parliaments focusing on specific issues under the aegis of the parliament of the Member State holding the Presidency of the European Union ;
- meetings of committees of the European Parliament that are open to national parliamentarians ;
- inter-parliamentary meetings organised jointly by the European Parliament and the parliament of the Member State holding the Presidency of the European Union.

However, these uncoordinated – and often hardly visible – forms of cooperation fall far short of having any real influence on the way

that the EU functions. Only COSAC, by virtue of the fact that it is recognised in the Treaties, has succeeded in playing some sort of part over the years. Rationalisation of inter-parliamentary cooperation based specifically on COSAC (this is what the new Protocol on National Parliaments suggests) would genuinely enable national parliaments to make a greater impact collectively.

The history of COSAC over the last 20 years interestingly illustrates how difficult the emergence of new political institutions is.

During the first ten years of its existence, COSAC was mainly concerned with defining its own position and its identity in relation to other institutions: one only has to think of its initial rivalry with the European Parliament, the resistance of the latter, and a fear that this kind of cooperation could be institutionalised and turn into a European Senate.

As early as 1993, proposals were made to provide COSAC with a small permanent secretariat, but it was not until 2003 at the Athens meeting that the secretariat was finally set up. From then COSAC has been able to concentrate on European issues that were central to the Convention aimed at establishing a European Constitution.

The subsidiarity and proportionality procedures introduced by the European Convention constitute a prerogative for national parliaments and have furnished COSAC with an important dynamic. The concrete implementation of the procedure was largely determined within COSAC through comparative studies and the exchange of good practices.

Both at European level and in national parliaments, there is sometimes evidence of a degree of contempt for COSAC, even for those who are aware of its existence.

Nonetheless, COSAC has made a substantial contribution to the creation of a parliamentary community and space within the EU, and this has led to the parliamentarisation of the European decision-making process, and therefore to democratisation.

COSAC's contribution has been threefold: dialogue between national parliaments and European institutions has become a reality, whereas European institutions used to closet themselves in a classic *Trias politica*; COSAC has become the expression of deliberative democracy, and national parliaments have been recognised by European institutions as key actors in a multi-level system of governance – which, after all, is what the European Union is; and national parliaments have gained direct access

to European documents over time: whereas parliaments were initially informed about European affairs by their respective governments (the Declaration in the Treaty of Maastricht), they are now directly informed about all legislative proposals by the European institutions (Treaty of Lisbon). This can only foster the autonomy of parliaments vis-à-vis their government in such a way that independent parliamentary control may be now possible. But has that not produced a new paradox? As European integration has progressed, there has been a substantial transfer of competences towards the European Union, but this has also opened up new perspectives for national parliaments in the way they organise internally.

During this period of crisis currently gripping our countries, there is an even greater need for an ambitious conception of the role of parliaments and of inter-parliamentary cooperation. It is one of the routes at our disposal for establishing the concept of Europe more deeply, making it more legitimate, and bringing it closer to citizens.