

XXXIV COSAC LONDON OCTOBER 2005

PARLIAMENTARY ASPECTS OF THE CONSTITUTIONAL TREATY

UK PRESIDENCY NOTE ON SUBSIDIARITY

The European Council has called for “a period of reflection ... to enable a broad debate to take place” concerning the future of the European Union and the Constitutional Treaty. It is therefore important that COSAC should not at this stage make assumptions about whether the Treaty will be ratified. Commissioner Wallström told the Chairpersons in July that the Commission would find it difficult at present to respond to anything described as a “pilot project” for the Treaty’s subsidiarity early-warning mechanism, since this could be seen as anticipating ratification of the Treaty, but that it would be willing to cooperate with national parliaments as regards their scrutiny of subsidiarity more generally.

For these reasons the Presidency considers that it would not be appropriate at present to conduct a second pilot project based on the subsidiarity early-warning mechanism set out in the Constitutional Treaty, as called for at the XXXIII COSAC in Luxembourg in May. On the other hand, the Presidency notes that national parliaments already have a role in scrutiny of EU legislation, recognised in the Amsterdam Treaty’s Protocol on the Role of National Parliaments. The principle of subsidiarity is already set out in Article 5 of the EC Treaty, supplemented by a Protocol to the Amsterdam Treaty. More than half of the national parliaments already monitor whether EU legislation complies with the principle of subsidiarity.¹

It would therefore be important for COSAC to discuss how scrutiny of subsidiarity by national parliaments could be improved, and how national parliaments which wish to do so could coordinate that scrutiny among themselves to increase its impact. The balance of opinion among the COSAC chairpersons in July appeared to be in favour of such an approach, which could not be regarded as anticipating the provisions of the Constitutional Treaty. **It is in this spirit that the Presidency hopes COSAC will debate the issue of subsidiarity.**

The questions which arise for debate therefore include:

1. Does COSAC agree that national parliaments should seek to improve their scrutiny of subsidiarity on the basis of their existing powers and role?

¹ Responses to the questionnaire for COSAC’s 4th biannual report show that the following national parliaments already do so: Austria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy (when considering the Commission’s Annual Work Programme), Lithuania, Malta, the Netherlands, Portugal and the UK. In addition, the Latvian Parliament is currently considering a mechanism for monitoring subsidiarity; the Slovakian Parliament is expecting to do so in the future; and the Joint Committee on EU Affairs of the Spanish Parliament intends to set up a working group to consider the issue.

2. Does COSAC agree that this should be done by selecting a specific Commission proposal or proposals in order that those national parliaments which wish to do so should be able to co-ordinate their efforts and so that individual parliaments or chambers can test their internal procedures for scrutinising proposals within a defined period of time?
3. If so, how should such an exercise be organised? In particular, what should the timing be?
4. Should proportionality be covered as well as subsidiarity?
5. What proposal, or proposals, should be selected?

The UK Presidency's views on these questions are as follows:

- Procedures which help national parliaments to voice any concerns about subsidiarity and to coordinate their activities in this respect would be a logical extension of the provisions of the Amsterdam Protocols and would provide national parliaments with a more effective collective voice in European affairs. National parliaments already have the power to scrutinise legislation for compliance with the principles of proportionality and subsidiarity, and, as indicated above, more than half of the national parliaments already have procedures for doing so. No treaty change is required, either for national parliaments to present their views to the Commission or for the Commission to respond to such views, and no anticipation of the Constitutional Treaty is involved.
- Selecting a specific Commission proposal or proposals will enable national parliaments and chambers which wish to participate in the exercise to test their systems for reaching decisions on subsidiarity and proportionality.
- The exercise should be carried out with due respect for national parliaments' internal work programmes, legal frameworks and traditions.
- The exercise should be called a "subsidiarity and proportionality check" rather than a pilot project.
- The existing Protocol on the Role of National Parliaments provides that six weeks should elapse between a proposal being made available in all languages to the European Parliament and the Council and being placed on a Council agenda for decision. The Presidency believes that national parliaments should seek to comply with this timescale when submitting their views on subsidiarity and proportionality, and that the following procedure should apply:
 - i. After consulting the Troika, the Presidency should designate a proposal as the subject of the check at the time of its publication by the Commission, if possible having identified it in advance on the basis of the Commission's annual work programme;
 - ii. the six-week period should begin when the proposal has been published in all languages;
 - iii. the COSAC secretariat should circulate the English and French versions to all national parliaments immediately and the other language versions to the relevant national parliaments as they appear, and should inform all national parliaments in due course of when the six-week period will end; and
 - iv. national parliaments or chambers should send any comments on subsidiarity or proportionality directly to the Commission within the six-week period, copying those comments to the COSAC secretariat for onward transmission to all national

- parliaments; the exercise would therefore involve an exchange of information between parliaments as well allowing parliaments to test their own procedures.
- v. Alternatively, comments could be sent first to the COSAC secretariat for immediate distribution to national parliaments and for forwarding with a summary to the Commission at the end of the six-week period. Any summary document produced by the COSAC secretariat would in no way bind national parliaments or prejudge their position.
 - The Presidency believes that monitoring proportionality is as much a part of national parliaments' role as monitoring subsidiarity, and that both should be covered in the subsidiarity and proportionality check, but that national parliaments should distinguish clearly whether their comments relate to subsidiarity or proportionality.
 - It follows from the suggestion made above that a proposal can be selected only at the time of its publication by the Commission. However, it may be possible to identify potentially suitable proposals in advance (e.g. by using the Commission's work programme or other planning documents such as the Hague Programme). The UK Presidency would welcome suggestions of proposals that could provide a suitable basis for the check outlined above.

The UK Presidency accordingly invites COSAC to consider whether a test of procedures for monitoring subsidiarity and proportionality should be undertaken along the lines proposed above.

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28 September 2005