

## COSAC Working Group Meeting on the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”

*Monday 26 March 2018, 10.00 - 13.00, European Parliament, Brussels*

Chair: Mr Kristian VIGENIN, Chair of the Committee on European Affairs and Oversight of the European Funds, National Assembly of the Republic of Bulgaria

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### **Opening remarks by Chair**

The Chair opened the meeting by welcoming participants to the meeting set up by the Bulgarian Presidency following the previous COSAC to facilitate discussions related to the work of the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”.

Following a video message by Ms Mairead McGUINNESS which put emphasis on the link with the citizen, the Chair informed participants that it was yet to be decided whether a second meeting was necessary. If delegates were to agree on such a meeting, it would be held in Sofia on 17 June just before the plenary COSAC.

The Chair referred to the letters sent by Dr Reinhold LOPATKA, as well as other input submitted by the Dutch and Danish parliaments and the Czech *Senát*, relating to the work of the Task Force. He also briefed the participants about some of the main contributions by the Committee of the Regions.

In particular, the Chair outlined some of the ideas found therein:

- extending the deadline from 8 to 12 weeks. Eight weeks were not considered enough, especially during holidays and recession periods. It has been pointed out that legally speaking, these deadlines cannot be changed without amendment of treaties, but exclusions of above periods deserves further consideration.
- Experience has also shown that the current thresholds are difficult to reach, with no orange cards and only three yellow cards submitted: the thresholds may thus need to be lowered.
- The possibility of establishing a second subsidiary check, the so-called late card, to take into account the entire legislative cycle: proposals may change, requiring fresh scrutiny, perhaps at the end of negotiation between the Commission, the European Parliament and the Council.
- With regard to the green card, it is suggested to extend the possibility for national Parliaments to make non-binding proposals and thus address the reactive role currently played by national Parliaments.
- Increase focus on proportionality.
- Improve how contributions are dealt with. Responses are mostly formally correct but also slightly dismissive.
- Improve the impact assessment which should demonstrate a clear European added value.
- Early involvement of national parliaments in the legislative process.
- A clear definition of subsidiarity.

### **Session I on practical ways to improve the procedure outlined in Protocol №2 of the TFEU**

Ms Eva KJER HANSEN, Danish *Folketing*, welcomed the great opportunity to meet and discuss how to improve the participation in the process at EU level, and urged colleagues to respond in a clear and courageous manner. She questioned whether subsidiarity had been a safeguard to Member States' powers, and claimed that the establishment of the yellow card has not proved to be a very useful

tool. Only on three occasions has this been invoked and in all three cases the yellow cards were rejected.

Ms HANSEN said that a right of initiative would be welcome, and dismissed criticism that this would threaten the Commission's own right of initiative. National Parliaments need to have this right that other bodies like the European Parliament and even citizens themselves have.

Ms HANSEN also called for an extension of the deadline from 8 to 12 weeks which would allow national Parliaments to conduct a proper examination of the proposals.

She said that national Parliaments must be prepared to engage in EU decision making at the EU level, and should not hesitate to invite Commissioners to give briefings about legislative proposals.

Moreover, she urged national Parliaments to contribute positively to the European legislative process by issuing reasoned opinions on the substance of EU proposals. She suggested to enhance the scope of the yellow card procedure to include a substantial review and a review of its compliance with the principles of proportionality and conferred powers, given that these two principles were so closely intertwined with the subsidiarity principle that most parliaments confused them.<sup>1</sup>

Ms HANSEN stated that democratic legitimacy was bound to become an important issue as Europe strived toward further integration and called on the Commission to ensure that national Parliaments were included in deciding the future of the Union.

Mr Bastiaan VAN APELDOORN, Dutch *Eerste Kamer*, speaking on behalf of both chambers, said it was important to enhance the legitimacy of EU decision making, and there was much room for improvement in this area. From the Dutch perspective, the task force should not be seen as an end point, he stressed.

In this regard, there were a number of proposals where value added could be found, such as the extension of the deadline, which, if not possible to achieve through Treaty change, could take the form of a *de facto* extension by excluding the recess periods.

With regard to proportionality, this must be included in the scrutiny process but there should also be political room for interpretation left to national Parliaments.

Mr VAN APELDOORN also said that his Parliament emphasised the need to ensure that the Commission replied in a timely manner. The Commission should also explain, if and when it comes up with new proposals, how subsidiarity concerns had been addressed, and these explanations should be clear and explicit. He also expressed support for the letter sent by the Czech *Senát*.

Mr Václav HAMPL, Czech *Senát*, thanked all the Parliaments/Chambers that had signed the letter.

He recalled some of the points brought forth therein, such as not counting the recess periods in the calculation of the scrutiny deadline, as well as introducing a deadline for the Commission to reply to national Parliaments, also taking into account recess periods. He lamented the poor impact of reasoned opinions on proposals, claiming that this demotivated national Parliaments.

In this regard, he stressed the need to have concrete explanations of how a proposal was changed if a significant number of reasoned opinions had been submitted. The explanations should be included in the explanatory memoranda since these were translated into all official languages.

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<sup>1</sup> This paragraph has been added following a special request by the Danish *Folketing*.

Mr HAMPL referred to two points raised in Dr Lopatka's text: one related to delegated acts, the frequency of which was too high and in clear conflict with the principle of subsidiarity; and the other relating to how directives were implemented into national law: often times they were very explicit and very specific and the Commission insisted on having them reflected almost ad verbatim in national law. This was not how directives were originally meant to be applied.

Mr Szymon SZYNKOWSKI VEL SEK, Polish *Sejm*, said the EU was in need of strong legitimacy that it currently lacked. National Parliaments should be able to respond to amendments and solutions not limited to complaints, but should also be more involved in the whole legislative process, including during the preparation of green and white books. Mr SZYNKOWSKI also stressed that the Commission should reply to reasoned opinions concretely and without delay.

He further argued that the yellow card should not be treated by the Commission as a problem but as a chance to solve the problem of democratic legitimacy.

National MPs also needed more information on how the opinions of national Parliaments were being included in the work of the European Parliament.

He concluded by stating that the green card and red card procedures should be introduced.

Mr Marc ANGEL, Luxembourg *Chambre des Députés*, was supportive of the Czech paper which correctly summarized what had been discussed and decided during previous COSAC meetings.

Mr ANGEL supported the idea that the Task Force should not be an end to the discussion. He also agreed to an extension of the deadline but this should be a *de facto* extension to take into account the recession periods. He advised not to focus the debate on possible treaty changes. Rather, efforts should be increased to ensure better efficacy, and in this regard suggested that IPEX should be used more.

Mr ANGEL enquired about the European Parliament's refusal to nominate three members to the Task Force.

To this Mr VIGENIN replied that no official response had been received in connection with the European Parliament's arguments not to participate in the Task Force, but hoped that the latter would support its work.

Ms Margarida MARQUES, Portuguese *Assembleia da República*, welcomed all opportunities to talk about this subject, and thanked the Czech, Danish and Dutch Parliaments, as well as the current and future Presidency for their commitment. She agreed that national Parliaments should also be involved in the preparation of green and white books, and should participate in the early stages of the legislative process, stating that such exercise democratised the workings of the European Union, and stressed the need for there to be more efforts toward bringing the EU closer to the citizen.

Ms MARQUES said it was clear that the yellow and orange card procedures were not very efficient, and that all these efforts needed to be developed within the framework of the treaties. She informed colleagues that the Portuguese Parliament was planning to set up a committee to follow the negotiations of the next MFF after 2020. She also pointed out that the Portuguese Parliament had invited Commissioners to meetings of the committee to discuss the upcoming MFF.

Ms Roxana MINZATU, Romanian *Camera Deputaţilor*, expressed her support for anything which promoted legitimacy and brought the EU closer to the citizen. She said that the Commission should find a proper tool to discuss subsidiarity issues with national Parliaments, and added that the

exclusion of recess periods can be done as it had a precedence. She also called for a modification of Article 7 of Protocol 2 (TFEU).

Mr Thorsten FREI, German *Bundestag*, said that extending the deadline was absolutely necessary. Eight weeks posed problems to many countries as there were public holidays to take into consideration, as well as the fact that national Parliaments could be busy dealing with internal affairs, etc. He added that the threshold should change, as 1/3 was too much, and it would be right to reduce it to 1/4.

He also called for a better cooperation, because only then could we effectively assert our rights in the context of subsidiarity.

Mr Guido WOLF, German *Bundesrat*, picked up on the question of why EP Members were not participating in the Task Force, and expressed his hope that the European Parliament would indeed support the work of the Task Force. Nevertheless, the lack of participation signalled a problem, since it came across as if the European Parliament was not committing to the work of national Parliaments. Mr JÜNCKER had already stressed the importance of getting national Parliaments on board, for instance to commit more resources in the next MFF. However, it would be hard to convince Parliaments of passing tasks on to the level where they are appropriate. When opening the discussion of the MFF it would be necessary to make it clear to citizens that Parliaments were determined to reduce the work of Europe to tasks that are inherently European tasks and to delegate back tasks that belong to national and regional Parliaments.

Mr WOLF expressed his agreement on extending the deadline, stating that Christmas recess and summer recess should be left out of the calculation.

Mr Stefan SCHENNACH, Austrian *Bundesrat*, wanted to explore the reasons why the European Parliament had taken this attitude toward the Task Force. He agreed that the eight week period was too short to establish communication with different levels of governance. Mr SCHENNACH also addressed the question of hidden delegated acts whereby he pointed out that it would be unfair to have to set up a special committee in order to find all these hidden acts. He also called for a reduction in the threshold, and claimed that COSAC was not doing its work properly: the platform had to be renewed in order to work as a platform for dialogue.

Mr SCHENNACH said that he had never read a letter by the Commission that properly addressed the reasoned opinions sent by national Parliaments. He stressed that COSAC needed to be restructured to be a platform for work.

As part of preparations for the Presidency, a number of Austrian MEPs were visiting the Austrian Parliament. Many were not aware of reasoned opinions submitted by national Parliaments, and some were not even aware of the positions national Parliaments have with regard to legislative proposals.

Mr VIGENIN agreed that there was a need to strengthen the role of COSAC and was ready to support any initiatives as part of the Troika.

Mr Adam KALOUS, Czech *Poslanecká sněmovna*, expressed his support for the Czech *Senát*'s letter and for the exclusion of recess periods from the deadline.

He referred to the Visegrád Four meeting on 25 December 2017 in Hungary which stated that since subsidiarity control is carried out by national Parliaments as political institutions it necessarily has political and economic content besides purely legal considerations.

Mr Toomas VITSUT, Estonian *Riigikogu*, said the Czech *Senát*'s letter provided a good basis for discussion. Additional time could be helpful in some instances, and the period from mid-December to early January should be excluded from the counting of deadline.

He stated that the Commission should concentrate on how subsidiarity concerns were being dealt with. An additional deadline should be set for the Commission to respond to reasoned opinions.

Mr VITSUT said that subsidiarity should be seen both as a political and legal concept, and agreed with the views expressed by the Committee of Regions to include different aspects in reasoned opinions even if they don't line up with the legal definition of reasoned opinions.

Mr HAMPL reacted to Ms MARQUES by saying that there were other options available instead of opening treaties, as most proposals did not need opening of treaties. There was a lot that the Commission could do to deal with these unilaterally.

Mr Gerard CRAUGHWELL, Irish *Houses of Oireachtas*, agreed that now was not the time to open treaties, and said that everything should be done in an informal way.

Mr Jonas GUNNARSSON, Swedish *Riksdagen*, pointed to a number of available tools that should be used better, and stressed that national Parliaments should do their own homework better.

Ms HANSEN agreed that there should be no talk of treaty change. She stated that the most important message was that this had to do with substance: a change in the threshold or deadline meant nothing if there was no impact on the substance. Furthermore, the Commission should treat the input of national Parliaments in the same manner whether it was a political or legal point.

Mr VAN APELDOORN asked about the procedure to be followed, and also enquired about the work of the Task Force. He recalled that in Malta Mr Frans TIMMERMANS had already stated that the treaty was the final point of reference when it came to deadlines.

Mr ANGEL said the biggest challenge during the subsidiarity check was to involve sectoral committees, to which Mr VIGENIN replied that different Parliaments had different traditions when it came to working methods.

Ms Soraya RODRIGUEZ, Spanish *Cortes Generales*, hailed this opportunity as an important step for the contribution on the debate on the future of the EU. She stressed that national Parliaments were strategic allies of the Commission in achieving the objective of bringing the EU closer to the citizens. She also agreed that there was room to modify current procedures without opening the treaties.

Mr VIGENIN reminded participants that this was an exchange of views and there was no intention to vote on any conclusions. Nevertheless, there had been general agreement on some issues which could therefore be presented at the next meeting of the Task Force, and they could also be included in the COSAC contributions in June, which would take place before the final two meetings of the Task Force.

Mr VIGENIN noted that feedback from Task Force members was to be found on the website of the Task Force, while committing himself to send any additional information as necessary. He also reminded colleagues of the possibility of a second meeting of the working group.

## **Session II on possible policy areas where decision-making and/or implementation can be redelegated to Member States**

Mr VIGENIN introduced the topic, welcoming the choice of the Task Force to hold a first meeting (27 April) on the procedure of how to identify policy areas where decision-making and/or

implementation could be redelegated to the national level, followed by a concrete discussion of each policy area at a subsequent meeting. He recalled the Commission's willingness to obtain concrete results and called on national Parliaments to use the current opportunity. The Chair informed participants that the Commission's Secretary General informed COREPER I that national governments would be invited by mid-April to present 3 topics/policy areas where decision-making and/or implementation can be redelegated to the national level; he suggested national Parliaments could get in touch with the governments, and coordinate on this issue, should an official request be sent.

Mr HAMPL said that it would be quite difficult to redelegate whole policy areas; rather, aspects that breeched the principle of subsidiarity within each policy area should be identified.

Mr Vitalino CANAS, Portuguese *Assembleia da República*, questioned the usefulness of addressing that topic at this point in time and said the majority of his colleagues would not like to see redelegation, but rather a better functioning of of the current distribution of competences.

Mr ANGEL called for clearer definitions of competences, but warned that discussion should not turn into one which invited less solidarity in Europe.

Mr SCHENNACH informed participants that his Chamber had no concrete proposals either. He referred to the Task Force's mandate and the Commission's commitment to focus on 'big things' in the policy making; he agreed that the Euroskeptical parties could interpret that as taking decision-making rights back and ask for less solidarity. He contended it was important to guarantee the sovereignty of the EU and that the current weaknesses in the decision-making, such as the excessive use of delegated acts, were addressed. Under the current treaties, clear competences remained national.

Mr SZYNKOWSKI VEL SEKL expressed his surprise that so many competences were expanded beyond the provision of the treaties in the past and stressed that the EU should not act without a proper legal basis. In his view, the protection of life (abortion and the rights of the unborn child) or the reform of the legal system should be reserved to the national level, as the Commission was the mere guardian of the treaties and the ownership of the treaties belonged to the Member States.

Mr GUNNARSSON recalled that the EU was a value-based community, which transcended the treaties, and this meant that it was right to criticise actions taken by Member States, acknowledging that there were different approaches in different counties which needed to be respected as long as the same goal is achieved.

Ms MARQUES, supported that last intervention and argued that the quality and relevance of legislation was more important than redelegation. In her view the discussion on redelegation should be embedded in the one of the MFF where new priorities and competences would be added. She called on COSAC to work more with Mr TIMMERMANS rather than the Secretary General of the Commission.

Mr CRAUGHWELL agreed the debate could breed euroskepticism. Rather than worrying on policy areas where competences could be devolved, he called for more efforts to render the negotiation process more transparent for the EU and quit the blame-game national governments have been playing at home. He warned that, as Brexit had shown, not including the citizens in the EU project could lead to the collapse of the Union.

MR VIGENIN stated that it could be argued that such a discussion could also contribute to improving the EU, in a pro-European approach. He committed to inform the Task Force on the outcome of the discussion, namely that: the debate should be on the 'big issues' the Commission could focus on;

that the redelegation would concern elements/aspects of particular policy areas, rather than whole policy areas; that the discussion should avoid fueling euroscepticism.

On the follow-up of the meeting, he suggested holding a second meeting of the working group, on 17 June, ahead of COSAC. He informed that the point on the task Force was on the COSAC agenda and that a panel composed of MEPs, MPs, including MPs of a federal parliament was foreseen.

Mr Angel welcomed the proposal as it would enable an exchange of views on the draft report of the Task Force, due by the end of April. Ms HANSEN stated that given the consensus on the dysfunctions of the subsidiarity principle and the common difficulty of identifying competences to be devolved, also shown by the ECJ stance of the matter or the position of the UK, which called for arrangements for cooperation in all areas, holding a second meeting depended on the outcome of the next two meetings of the Task Force. She called for involving national Parliaments on the daily legislative work, beyond subsidiarity which was never a great tool.

Mr VIGENIN suggested to put the matter to the consideration of the Troika, representing national Parliaments in the Task Force, after its meeting of 27 April. Based on the outcome of that meeting, the Troika would decide if the working group should be reconvened in June and the details would be enclosed in the invitation letter to the COSAC meeting.