

**The new model for relations between national Parliaments and the European Parliament
after the entry into force of the Treaty of Lisbon**

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Mister Chairman, let me first congratulate you on a very well organized and interesting conference. I would also like to thank you for the outstanding and welcoming reception we received from you, your colleagues and the Spanish Presidency in the beautiful city of Madrid and Sunday evening in Toledo. Secondly I thank you for your honourable invitation to speak here today on the subject of a new model for relations between national Parliaments and the European Parliament after the entry into force of the Treaty of Lisbon.

Speaking as fourth speaker after the interesting and enlightening contributions of such eminent parliamentarians as Elmar Brok, José Maria Gil-Robles Y Gil-Delgado and Vitalino Canas I feel myself a bit like the sixth wife of the English king Henry VIII, Katherine Parr, who spoke the famous words: “I am aware that something is expected from me, but how can I make a difference.” Katherine Parr was one of the few wives of Henry VIII who didn’t get her head chopped off. That is a consoling thought.

Be that as it may, I do not intend my contribution, here today, to make a difference solely for the purpose of making a difference. What I do hope is that my observations on the subject at hand will contribute to the subsequent discussion.

When I got the invitation to speak on the subject I was slightly taken aback by the wording on the agenda. The agenda speaks of the new model while I am of the opinion that in this COSAC plenary meeting we will be discussing a new model. Why else have four different speakers from different political groups? Conclusion 1.2 of the XLII (42e) COSAC in Stockholm last October calls on the Spanish Presidency to reflect on possible forms of future parliamentary cooperation. I do hope our Spanish hosts will forgive me if I treat the subject as such: we discuss a new model for relations between national Parliaments and the European Parliament after the entry into force of the Treaty of Lisbon. Once the COSAC plenary meeting is in agreement which course to take in relations between national Parliaments and the European Parliament, we can speak of the model. And that is, as I understand it, the purpose of this item on the agenda.

So I will be giving my ideas on the subject from a liberal point of view and on top of that – and I fear that for some of you the combination might be toxic – as a member of a Dutch parliamentary body, namely the Senate. But I want it to be perfectly clear that my contribution is a personal one.

First I will reflect shortly on the considerations that have led to the provisions and arrangements on inter-parliamentary cooperation in the Lisbon Treaty. Then I will give my views on the role of COSAC concerning the legislative part of inter-parliamentary cooperation, more precisely the principle of subsidiarity. Subsequently I will go into the role COSAC could possibly have in the inter-parliamentary cooperation on Justice and Home Affairs and Common Foreign, Security and Defence Policy.

As I said, before going into detail on the various possibilities to create an effective model for cooperation, I would like to consider the general context of the matter at hand.

The provisions and arrangements in the Treaty of Lisbon through which the national Parliaments and the European Parliament are given more powers as parliamentary bodies in the European Union were effected in light of the general concern about the lack of democratic legitimacy in the European Union.

These provisions and arrangements reflect the attempt to strengthen the relationship of the European citizens with the European Union. To some this statement may sound paradoxical because in some circles the new provisions and arrangements, namely those in which more power is granted to the national parliaments, are taken to mean a weakening instead of a strengthening of the European institutions, first of all the European Parliament. Unfortunately we have to note that in spite of the vast expansion of the powers of the European Parliament there still is a disconnect between European citizens and the European Parliament. I am sad to conclude that this is a fact of life but we cannot ignore this condition.

The question is how to reconnect the citizens of Europe with the European project. In my view national Parliaments are a necessary link between national citizens and European institutions, the European Parliament most and for all. By strengthening the involvement of national Parliaments with European decision-making the likelihood of European issues gaining some prominence in the public debate will be increased in my opinion.

I am aware that to some degree too much consultation could be detrimental to this essential process of strengthening relations between national Parliaments and European institutions, namely the European Parliament. I concur with those who hold this opinion, amongst others the Dutch Tweede and Eerste Kamer that is the Dutch House of Representatives and the Senate. The keyword in using the powers that are granted to the national Parliaments and the European Parliament in the provisions and arrangements of the Treaty of Lisbon on inter-parliamentary cooperation is 'wise restraint'. Parliaments are ill-advised to exploit (abuse) the new possibilities. By making use of existing consultation modes national Parliaments and the European Parliament could make more out of their cooperation than by setting up evermore new activities.

We also abandon the notion that decision-making at the national level and at the European level are in some sort of zero sum relationship, in the sense that any increase of power at the national level will necessarily be detrimental to the power at the European level. On the contrary, increase of power at the national level is complimentary to the power at the European level. The two powers combined could greatly contribute to diminishing the still existing – although reduced by the Lisbon Treaty - democratic deficit in Europe.

I make the case for a good interplay between the national level and the European level. COSAC may be seen as highly instrumental in serving this goal.

In defining a new model for relations between national Parliaments and the European Parliament we cannot and must not ignore the fact that the powers of the European Parliament vis-à-vis the Union, although vastly expanded under the Lisbon Treaty, are not as strong as those of the national Parliaments vis-à-vis their respective governments. Parliaments have a dual function: to legislate and to control government. For the European Parliament it is hard to give substance to this last function, because the European Parliament doesn't have a clear opponent. In the Union

there is a diffuse pattern of authority. The European Union represents a system of governance without government: there is no concentration of power in one body.

Having said this I come to the second part of my contribution to this debate.

How can we practically implement cooperation between the national Parliaments and the European Parliament in the context of COSAC?

First of all we must distinguish between legislative decision-making on the one hand and the scrutiny of political choices on the other.

When I speak of legislative decision-making the principles of ‘subsidiarity’ and ‘proportionality’ as mentioned in art. 5 of the Treaty on the European Union spring to mind. Since 2004 we have held eight subsidiarity checks in COSAC up to the entry into force of the Lisbon Treaty.

Last October, at the COSAC plenary meeting under the Swedish Presidency, discussion arose as to whether COSAC’s priority should be subsidiarity checks.

My opinion is that while we should not let go of this important control mechanism – obviously the yellow card procedure and the orange card procedure necessitate inter-parliamentary cooperation -, at the same time we ought to make use of COSAC for other debates on subjects as made possible by the Lisbon Treaty.

How can we organize COSAC’s role in checking legislative proposals on the principles of subsidiarity and proportionality without making it a priority? The purpose of the subsidiarity check is, very coarsely put, that we do not want legislation on the European level if the issue for which legislation is drafted can equally well or better be dealt with at the national level. Have the eight subsidiarity checks been successful? In my opinion: yes, in the sense that through COSAC an effective *modus operandi* has been established.

More and more, IPEX has turned out to be a useful instrument for consultation and exchanging views and best practices. The reports by the COSAC secretariat are very much appreciated. None of the subsidiarity checks however resulted in yellow or orange card procedures. We all know that at the time these instruments were not yet applicable, but that is neither here nor there.

I repeat my question: how can we organize COSAC’s role in subsidiarity checks without making it a priority in COSAC? Bearing in mind the purpose of the subsidiarity check, namely that we don’t want legislation on the European level that can be better dealt with on the national level, I think the eight-week procedure should be considered as a last resource and only be used on an ad hoc basis.

In my opinion it is far more effective to select one or two Green or White papers or other proposals from the yearly Legislation and Working Programme of the Commission on the contents of which a majority of Parliaments hold the view that legislation ensuing from these Papers would almost surely touch upon the principles of subsidiarity and proportionality. The contents of this Green or White paper could then be discussed in COSAC. This pre-legislative debate of the national Parliaments and the European Parliament could give guidance to the respective governments of the member states and the European Commission. It could avert European legislation coming in conflict with the principle of subsidiarity. A debate of this sort would hold the middle between a discussion on legislation, or better legislative perspectives, and

a discussion on policy, which would make it more meaningful than the current subsidiarity check in COSAC.

Legislation eventually ensuing from the Green or White paper can later on be followed in COSAC, notably through IPEX. If necessary the eight week subsidiarity check can be performed. After legislation is put in place at the European level and implemented at the national level, a post-legislative debate could be held in COSAC, discussing the results of the evaluation of the legislation.

I am convinced that if COSAC should adopt this procedure COSAC would contribute greatly in diminishing the gap between the European citizens and the European Union. COSAC would do what she is meant for.

The next question is which role COSAC could have in the non-legislative interparliamentary cooperation on Justice and Home Affairs, the internal affairs of the European Union, and which role in Common Foreign, Security and Defence Policy, the external affairs of the European Union?

I will first address the non-legislative internal affairs of the European Union in the area of Freedom, Security and Justice.

The Lisbon Treaty provides for national Parliaments to be involved, together with the European Parliament, in the scrutiny of the activities of Europol and the evaluation of the activities of Eurojust. Here lies a task ahead for COSAC. The scrutiny of Europol and the evaluation of Eurojust should be on the agenda of COSAC on a regular basis. If and when Europol and/or Eurojust are on the agenda of COSAC, COSAC is well advised to invite members of the special committees of all Parliaments in order to have a well-informed discussion that is focused on the key issues. Exchange of opinions between the various members of national Parliaments and the European Parliament before the regular COSAC meeting at which Europol and/or Eurojust is put on the agenda could take place by making use of IPEX or other means of electronic communication. In my opinion extra meetings or conferences should be avoided at all times. There is enough time for an in depth discussion at a regular plenary COSAC meeting if taken into account when drafting the agenda.

In my opinion the position of COSAC in Common Foreign, Security and Defence Policy is a different one in the sense that these matters should not be discussed in COSAC. I am aware that my opinion is contrary to the suggestions of the French Senate and the Spanish Presidency. But nevertheless I feel very strongly about this. And I will explain why.

First of all, because of the intergovernmental character of the Common Foreign, Security and Defence Policy the responsibility for this policy area lies with the national Parliaments. I bring to your attention article 14 of one of the Declarations annexed to the Treaty of Lisbon. This article reaffirms the position of the national Parliaments on Common Foreign, Security and Defence Policy and states that the powers of the European Parliament are not extended by the provisions of the Treaty.

Secondly, art. 10 of Protocol 1 is ambiguous. For those who are in favour of COSAC discussing matters of Common Foreign, Security and Defence Policy art. 10 seems to provide the opening to do this. At the same time art. 10 states that contributions from the conference shall not bind

Parliaments and shall not prejudge their position. What then is the purpose of these conferences also bearing in mind art. 14 of the Declaration I just talked about?

Thirdly, discussions on Common Foreign, Security and Defence Policy should be held in the specialized conferences of COFACC and CODAC.

And last but not least, more conferences and meetings would not convince the European citizens that their interests are well taken care of. On the contrary, it would more likely lead to more irritation with the public than enthusiasm. Moreover, more conferences would also mean more expenses.

Of course, on a subject like the European External Action Service (EEAS) the European Parliament also has responsibilities together with the national Parliaments. These matters can be discussed jointly, but then again I refer to the specialized conference of COFACC.

To conclude:

The inter-parliamentary cooperation between national Parliaments and the European Parliament in COSAC could get more substance and would be more effective vis-à-vis national governments and the European Commission if discussions on legislation with a focus on the principles of subsidiarity and proportionality would start at an early stage in a pre-legislative debate on selected proposals from the yearly Legislation and Working Programme of the Commission and be finalized in a post-legislative debate.

Scrutiny of Europol and evaluation of Eurojust should take place in COSAC on a regular basis, preferably in the presence of members of special committees of all Parliaments.

COSAC should not hold discussions or organize extra conferences on Common Foreign, Security and Defence Policy as there are specialized conferences for these policy areas, namely COFACC and CODAC.

We must avoid starting up new conferences and consultations as this would in all probability not contribute to the essential process of strengthening relations between national Parliaments and the European Parliament. IPEX and other forms of electronic communication are the answer.

Finally, COSAC should be used for what she is meant for and should not try to become some sort of European Senate.

We must never forget the reason for inter-parliamentary cooperation between national Parliaments and the European Parliament, namely to reconnect the citizens of Europe with the European project.