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INFORME RELATIVO A LA REUNIÓN DEL GRUPO INFORMAL DE LA COSAC SOBRE POSIBLES MEJORAS EN EL PROCEDIMIENTO DE TARJETA AMARILLA CELEBRADA EN VARSOVIA EL 13 DE MAYO DE 2015

El miércoles 13 de mayo de 2015, el *Sejm* polaco organizó una reunión sobre las posibles mejoras en el procedimiento de tarjeta amarilla, a la que fueron invitados los Presidentes de las Comisiones de Asuntos Europeos de los Parlamentos nacionales de la UE. La convocatoria de este grupo informal fue acordada en la reunión sobre este mismo tema organizada por el Parlamento holandés en la Representación Permanente holandesa en Bruselas el 19 de enero de 2015, en cuyas conclusiones se basó el documento de trabajo en Varsovia. La reunión de este grupo informal tuvo a su vez carácter preparatorio del debate de estas cuestiones previsto en la reunión plenaria de la COSAC que tendría lugar en Riga para los días 31 de mayo y 1 y 2 de junio de 2015.

En representación de las Cortes Generales asistió a esta reunión el **Excmo. Sr. D. José LÓPEZ GARRIDO, diputado miembro de la Comisión Mixta para la UE**, que fue asistido por la Letrada Carmen Sánchez-Abarca Gornals.

El programa, la lista de participantes y el documento de trabajo de esta reunión se adjuntan al presente informe como anexos 1 a 3.

Se resumen a continuación las intervenciones de los participantes en esta reunión, que estuvo marcada por el consenso en la práctica totalidad de las propuestas planteadas por la Presidencia polaca, basadas en el documento de trabajo elaborado por el *Sejm*, así como por el carácter breve de las intervenciones y el consenso en la práctica totalidad de los temas planteados, con escasas excepciones.

La Sra. POMASKA, Presidenta de la Comisión de Asuntos Europeos (CAE) del Sejm polaco, dio por comenzada la reunión a las 10h30, dando la palabra al **Sr. SIKORSKI, Marshal del Sejm polaco**, quien destacó la intensa actividad del Parlamento polaco en materia de control de subsidiariedad, con 12 dictámenes motivados aprobados en el marco de un sistema que forma parte ya de los fundamentos democráticos de la UE, y en el que los Parlamentos nacionales aportan la necesaria legitimidad democrática que echó en falta en las instituciones de la UE.



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Sesión 1. Discusión sobre la cooperación entre los Parlamentos nacionales en asuntos europeos – mejora del uso de los mecanismos disponibles

La Sra. POMASKA, tras presentar el orden del día y no pronunciarse ninguna objeción, lo consideró aprobado y procedió a abrir el debate de esta primera sesión. Citó la carta del Sr. HORSICK, Presidente de la CAE del Parlamento húngaro, quien propuso que el Programa anual de Trabajo de la Comisión europea fuera un punto fijo en el orden del día de la COSAC del primer semestre de cada año, para permitir una mejor coordinación de los Parlamentos nacionales en la selección de prioridades de este programa, y el envío de dichas prioridades a la Comisión europea el 1 de abril de cada año. Destacó en este sentido así mismo el papel del Parlamento líder (*"Champion Parliament"*), que convocaría reuniones de los Parlamentos interesados con el Comisario competente, y coordinaría la información sobre la propuesta concreta, alertando a todos los Parlamentos sobre sus objeciones a dicha iniciativa.

El Sr. ANGEL, Presidente de la CAE del Parlamento de Luxemburgo, que ostentaría la siguiente Presidencia rotatoria del Consejo, preguntó por la conveniencia de optar por dichos plazos, ya que la Comisión europea presenta su programa en noviembre, y sería posible que hubiera una propuesta legislativa en enero, antes del citado plazo previsto en marzo. El Sr. TAVERNE, Presidente de la CAE del Parlamento de Países Bajos, quien tomó en esta reunión el relevo del Sr. LEEGTE, diputado holandés quien había asumido una posición muy activa en la defensa de las propuestas de su Parlamento, señaló con carácter general que todas las propuestas realizadas tendrían un carácter flexible e indicativo, sin limitar en ningún caso la actividad de cada Parlamento. La lista de prioridades, en concreto, ayudaría a los Parlamentos nacionales a identificar los temas de interés común, y la tabla elaborada para 2015 por su Parlamento podría servir de ejemplo para aquellos Parlamentos que aún no la hayan elaborado. Si la COSAC lo acordara, su secretaría, al igual que IPEX, podrían desempeñar un papel en la compilación de las prioridades de los Parlamentos nacionales.

El Sr. MOTA PINTO, Presidente de la Comisión de Asuntos Europeos de la Asamblea portuguesa, expuso en todas sus intervenciones la posición de su Comisión, tras haber debatido en ella el documento de trabajo elaborado por el Sejm polaco para esta reunión. Comenzó destacando las dificultades experimentadas para lograr un encuentro con Comisarios europeos para tratar el Programa anual de Trabajo de la Comisión europea en el primer trimestre de los dos últimos años, e interesándose por la experiencia de otros Parlamentos en este sentido. En cuanto a la lista de prioridades, la consideró interesante, si bien destacó el diverso enfoque de la subsidiariedad por parte de los Parlamentos nacionales, y señaló que su lista de prioridades ya había sido enviada directamente a la Comisión europea. Concluyó mostrando su preocupación por involucrar a demasiados entes en el intercambio de información (IPEX, representantes en Bruselas, COSAC...), preocupación compartida por el Sr. ANGEL.



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El **Sr. WITBRODT, Presidente de la CAE del Senado polaco**, señaló que el interlocutor de la Comisión europea es la COSAC, y propuso que la lista de prioridades no fuera presentada por el Parlamento líder, sino por la COSAC. La **Sra. POMASKA** aclaró que el papel del Parlamento líder estaría relacionado con una iniciativa en particular, no con el envío de prioridades a la Comisión europea.

La **Sra. CIGANE, Presidenta de la CAE del Parlamento letón**, recordó que el Programa anual de Trabajo de la Comisión sería un tema de la siguiente COSAC en Riga, y que se mantendría en la Presidencia luxemburguesa, ya que es un trabajo de largo recorrido. En la COSAC letona se mencionará tanto el Programa de Trabajo anual como plurianual, aunque algunos Parlamentos nacionales han señalado que el procedimiento sería demasiado lento en relación con el programa anual, por lo que sería conveniente crear otro proceso para el programa plurianual. En relación con el contenido de los dictámenes motivados, se preguntó si se referiría sólo a la subsidiariedad o trataría el tema desde una perspectiva más amplia. En relación con la mencionada práctica portuguesa, consideró oportuno preguntar por las prácticas aplicadas en el resto de Parlamentos nacionales para el envío de prioridades del Programa de Trabajo de la Comisión europea. Por último, en relación con las reuniones informales, se preguntó por su regularidad y perspectivas, y mostró interés por centralizar los trabajos de los Parlamentos nacionales en la COSAC, punto en el que fue apoyada por el **Sr. HORSICK** y el **Sr. WITBRODT**, partidarios de explotar al máximo el potencial de la COSAC.

El **Sr. TAVERNE** añadió por su parte que se trataría de contribuir a lo que ya está siendo realizado por los Parlamentos nacionales y aumentar su eficacia, en ningún caso supondría paralizar dichos trabajos. Señaló que COSAC ya es el interlocutor de los Parlamentos nacionales con la Comisión europea, y a través de esta coordinación informal se podría conseguir una mejor reacción de la Comisión europea, evitando incrementar la carga burocrática.

La **Sra. POMASKA** señaló el consenso en destacar la importancia de la COSAC, cuyo papel no sería reducido sino reforzado por las reuniones informales y regulares sobre temas de interés común para ciertos Parlamentos. El mensaje para la Comisión europea debería ser, en efecto, que los Parlamentos nacionales de los 28 Estados miembros trabajan juntos.

En relación con las visitas de los Comisarios a los Parlamentos nacionales, el **Sr. MOTA PINTO** señaló que hay 28 Comisarios, y que sus visitas a las capitales no deberían ser sustituidas por las comparecencias de algunos de ellos en la COSAC. El **Sr. ANGEL** destacó que desde principios de año habían recibido a 5 Comisarios en Luxemburgo, al igual que el Parlamento polaco, mientras que sólo 3 Comisarios habían comparecido ante el Parlamento húngaro, algo que sin embargo fue considerado por el **Sr. HORSICK** como un buen inicio. El **Sr. TAVERNE** cerró las intervenciones sobre esta cuestión expresando su deseo de que las comparecencias de los



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Comisarios fueran acompañadas de respuestas reales a las preocupaciones de los Parlamentos nacionales, tras el negativo ejemplo en este sentido que supuso la reacción de la Comisión europea a la tarjeta amarilla sobre la Fiscalía Europea.

Antes de cerrar esta sesión, la **Sra. POMASKA** recordó que la reunión estaba siendo grabada y retransmitida en línea, y que sería a su vez resumida de cara al pleno de la COSAC en Riga donde continuaría la discusión sobre estos temas.

Sesión 2. Propuestas sobre las posibilidades para los Parlamentos nacionales de controlar el principio de proporcionalidad en los mismos términos que el principio de subsidiariedad.

La **Sra. POMASKA** expuso las líneas principales de la posición polaca en este punto, tal y como aparecen en el documento de trabajo de la reunión.

A favor de un examen paralelo e indisociable del cumplimiento de ambos principios, proporcionalidad y subsidiariedad, se pronunciaron numerosos oradores, como el **Sr. TAVERNE**, la **Sra. CIGANE** y el **Sr. HORSICK**, quien añadió que el control de proporcionalidad es complejo para los Parlamentos nacionales pequeños como el suyo, por falta de medios para llevarlo a cabo. El **Sr. WITBRODT** precisó, al igual que hizo el **Sr. MOTA PINTO**, que la subsidiariedad se evalúa en el marco del control de subsidiariedad, mientras que la proporcionalidad se limitaría al diálogo político.

La **Sra. CIGANE** apoyó por otra parte la propuesta de que si 9 Parlamentos nacionales aprueban dictámenes motivados sobre una propuesta, celebren reuniones con la Comisión europea. Señaló que las contribuciones de la COSAC de Riga se mencionarán las directrices informales para los dictámenes motivados, ya que en general los Parlamentos nacionales se han mostrado favorables a esta propuesta, como hizo expresamente el **Sr. PRODROMOS, Presidente de la CAE del Parlamento chipriota**. En relación con este punto el **Sr. TAVERNE** señaló que dichas directrices servirían por otra parte para presionar a la Comisión europea a dar una respuesta a los Parlamentos nacionales sin limitar la capacidad de acción de cada Cámara, reiterando el carácter informal de todas estas propuestas.

La **Sra. POMASKA** cerró esta sesión sin más comentarios, señalando que las directrices informales serían muy útiles por la necesaria continuidad que aportarían a la labor de los Parlamentos nacionales, dados los frecuentes cambios en las delegaciones de la COSAC.



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Sesión 3. Intercambio de ideas sobre posibles mejoras en la rapidez y contenido de las respuestas de la Comisión europea a los dictámenes motivados e informes enviados por los Parlamentos nacionales

La **Sra. POMASKA** presentó las líneas generales de la posición del *Sejm* en esta materia, señalando que la Comisión europea suele responder de manera formal y general a los dictámenes motivados, sin entrar en una valoración suficiente de las cuestiones planteadas por los Parlamentos nacionales.

El **Sr. HORSICK** mencionó la experiencia de la tarjeta en la propuesta de una Fiscalía Europea, en relación con la cual el dictamen motivado húngaro fue adoptado en octubre 2013, si bien la mayoría de parlamentarios no comprendieron realmente el procedimiento. Dada esa experiencia, y la de los últimos 5 años en todos los Parlamentos nacionales, consideró muy positiva la propuesta de unas directrices sobre el contenido de los dictámenes motivados, y mostró su confianza en que las promesas del **Vicepresidente de la Comisión europea, Sr. TIMMERMANS**, fueran efectivamente cumplidas.

El **Sr. TAVERNE** insistió a su vez en la necesidad de que la Comisión europea mejorara las respuestas a los dictámenes motivados, y por ello este punto debería ser apoyado con una amplia mayoría en la COSAC para enviar un claro mensaje a la Comisión europea.

El **Sr. WITBRODT** cuestionó por su parte la necesidad de unas directrices para los dictámenes motivados, ya que ya existen los criterios formulados por la Comisión europea.

El **Sr. HANNIGAN, Presidente de la CAE del Parlamento irlandés**, coincidió en señalar que sería necesario reaccionar ante las respuestas lentas y generales de la Comisión europea, y propuso un debate con el Vicepresidente TIMMERMANS para conocer es el motivo interno para estas respuestas. En este sentido el **Sr. MOTA PINTO** recordó que ya se plantearon estas quejas a la Comisión Barroso, y lo consideró muy necesario. En relación con las directrices, consideró que podrían limitar las decisiones de los Parlamentos nacionales, y esta es la opinión de su CAE. El diálogo político no implica la obligación de la Comisión europea de responder a los informes de los Parlamentos nacionales, si bien debería incluirse un párrafo señalando la conveniencia de que la Comisión europea contestase también a dichos informes.

La **Sra. CIGANE** señaló que el borrador de Contribución de la COSAC mencionaría dichas directrices informales y no vinculantes, que no deberían confundirse con las directrices internas de la Comisión europea para responder a los dictámenes motivados a las que aludió el **Sr. WITBRODT**. Los Parlamentos nacionales no deberían frustrarse por las respuestas triviales a sus detallados informes, y destacó que las respuestas enviadas por la Comisión Barroso al Parlamento letón fueron consideradas muy positivas y completas. Con frecuencia, los Parlamentos nacionales no saben con certeza cuál ha sido la evaluación de impacto en relación



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con la subsidiariedad que ha realizado la Comisión europea, y sería por ello necesario contar con más información, para ello abogó por mejorar el sistema de IPEX poniendo en común la información compartida por la Comisión europea con todos los Parlamentos nacionales.

El Sr. LÓPEZ GARRIDO, miembro de la Comisión Mixta para la UE de las Cortes Generales, comenzó su intervención felicitando a la Presidencia polaca por la utilidad del documento de trabajo de la reunión, y a todos los participantes, por lo ilustrativo de sus intervenciones. Resumió la posición de las Cortes Generales en relación con los temas mencionados en la reunión, buscando un mínimo común denominador. Sin pretender cambios en el régimen jurídico, consideró que sería necesario un cambio de actitud que sería aceptado por la Comisión europea, en este sentido señaló que hasta 7 Comisarios han visitado las Cortes Generales en los últimos meses. Destacó la dificultad de que visiten los 28 Estados miembros en un periodo corto de tiempo, pero en todo caso esta actitud muestra un cambio en la actitud de la Comisión europea que debe ir acompañado de un cambio en los Parlamentos nacionales. En cuanto al papel de la COSAC, coincidió con la idea de que el Parlamento líder sería no un nuevo actor, sino un coordinador, que sería bienvenido por todos los Parlamentos nacionales, sin sustituir por ello a la COSAC.

El Sr. ANGEL consideró que sería muy interesante solicitar una respuesta colectiva a los dictámenes motivados y por otra parte, en relación con los idiomas, recordó la importancia de publicar un resumen en inglés en IPEX, y la respuesta de la Comisión europea debería a su vez ser resumida en inglés.

Sesión 4. Propuestas en relación con la posible extensión del plazo para la aprobación de dictámenes motivados de 8 a 12 semanas.

La Sra. POMASKA presentó dichas propuestas ya debatidas en previas ediciones de la COSAC, que consistirían en una aplicación flexible de dichos plazos y la exclusión de los festivos y periodos de descanso tanto en los Estados miembros como en las instituciones de la UE.

El Sr. ANGEL recordó que en su intervención en la reunión de Bruselas de 19 de enero invitó a esperar para ver la reacción de la nueva Comisión europea. El hecho de que en las últimas 4 semanas sólo un documento sobre productos genéticamente modificados hubiera sido enviado por la Comisión europea, y en mayo han llegado aún menos propuestas que a principios de año, confirmaría el anuncio del **Vicepresidente TIMMERMANS** de que la Comisión europea legislaría menos. Aceptaría por ello la propuesta polaca, salvo en lo referente a excluir los festivos en los Estados miembros, ya que sería complejo y podría alargar excesivamente el plazo. En este mismo sentido se pronunciaron el **Sr. MOTA PINTO**, el **Sr. HANNIGAN**, el **Sr. HORSICK**, el **Sr. WITBRODT**, la **Sra. CIGANE**, y el **Sr. TAVERNE**. El **Sr. ANGEL**



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concluyó proponiendo que se solicitara a la Comisión europea que aplicara estos mismos plazos para sus respuestas.

La **Sra. POMASKA** valoró muy positivamente la reunión, que de manera breve había logrado debatir todos los temas con un enfoque muy constructivo preparando así el próximo pleno de la COSAC, en la que se presentarán las conclusiones de esta reunión.

La **Sra. CIGANE** cerró el debate en su condición de representante de la Presidencia letona, señalando que el informe de esta reunión informal sería considerado en el primer punto relativo al procedimiento en el pleno de la COSAC en Riga, el 1 de junio de 2015, y que el 2 de junio la reunión se dedicaría al control de subsidiariedad en mayor detalle.

La reunión finalizó a las 12h30, tres horas antes de lo previsto en el programa. Acto seguido, los participantes participaron en la foto de grupo y asistieron a la comida de trabajo ofrecida por el *Sejm* polaco con la que se cerró la jornada.

Carmen Sánchez-Abarca Gornals

Letrada de las Cortes Generales ante la UE

Bruselas, a 14 de mayo de 2015



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ANEXOS

(*lengua inglesa*)

Anexo 1. Programa de la reunión

Draft

PROGRAM OF THE MEETING OF THE WORKING GROUP

on the possible improvements of the yellow card procedure

13 May, 2015, Warsaw

(room 106, building C-D)

Entrance: B II

Arrivals of delegations

(6/8 Wiejska street)

10.30 Opening of the meeting by the Marshal of the Sejm, Mr. Radosław Sikorski

10.45 Discussion on closer involvement and cooperation by national Parliaments in European affairs – better use of the mechanisms available to them

12.00 Proposals of the possibilities for national Parliaments to scrutinize proportionality on an equal footing with subsidiarity principle

13.00 buffet lunch

14.30 Exchange of views on improving the timeliness and quality of the European Commission's response to reasoned opinions and opinions sent by national Parliaments under the political dialogue

15.15 Proposals concerning possibilities of extending the deadline for Reasoned opinions from 8 to 12 weeks

16.00 Conclusions of the debate and adoption of the package of the proposals to be presented to the COSAC

Departure of delegations



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Anexo 2. Lista de participantes en la reunión

Informal Working Group on “yellow card”

Warsaw, 13 May 2015

List of participants

Country		Family name /name	Title	Function
Parliament / Chamber				
Austria				
National Council	Mr	Huetterer Christian	Permanent Representative to the EU	Official
Cyprus				
House of Representatives, Republic of Cyprus	Mr	Prodromou Prodromos	Deputy Chairman of the House Standing Committee on Foreign and European Affairs	Member
House of Representatives, Republic of Cyprus	Mr	Hadjigeorgiou Phivos	European Affairs Officer A'	Official
Czech Republic				
Senate of Parliament of the Czech Republic	Mr	Grinc Jan	Advisor of the Committee on EU Affairs	Official
Denmark				
Folketinget	Mr	Andersen Klaus	Representative of the Danish	Official



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				Parliament to the EU
Estonia				
Parliament of Estonia	Mr	Palling Kalle	Chairman of the EU Affairs Committee	Member
Parliament of Estonia	Ms	Vares Teele	Adviser of the EU Affairs Committee	Official
France				
Assemblée nationale	Mrs	Muscat Marion	Administratrice	Official
Germany				
German Bundestag	Mr	Jaensch Uwe	Senior Advisor	Official
Bundesrat	Mr	Veit Andreas	Deputy Head of the Secretariat of the Committee on European Union Questions	Official
Hungary				
Hungarian National Assembly	Mr	Hörcsik Richárd	Chair of the Committee on European Affairs	Member
Hungarian National Assembly	Ms	Dóczy Zsuzsanna	Adviser of the Committee on European Affairs	Official
Ireland				
Houses of the Oireachtas	Mr	Hannigan Dominic	Chairman of the Joint Committee on EU Affairs	Member
Houses of the Oireachtas	Mr	Keating Derek	Member of the Joint Committee on EU Affairs	Member
Houses of the Oireachtas	Ms	Cashin Fiona	Policy Adviser, Joint Committee on EU Affairs	Official
Houses of the Oireachtas	Ms	Grant Michelle	Committee Secretariat - EU and Intl Relations	Official
Latvia				



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Saeima of the Republic of Latvia	Mrs	Čigâne Lolita	Chairperson of the European Affairs Committee	Member
Saeima of the Republic of Latvia	Ms	Meleško Aleksandra	Legal Adviser of the European Affairs Committee	Official
Saeima of the Republic of Latvia	Mr	Ostrovsks Ēirts	Senior Adviser of the European Affairs Committee	Official
Lithuania				
Seimas of the Republic of Lithuania	Mr	Lydeka Arminas	Deputy Chair of the Committee on European Affairs	Member
Seimas of the Republic of Lithuania	Mr	Maldeikis Matas	Advisor to the Committee on European Affairs	Official
Luxembourg				
Chambre des Députés	Mr	Angel Marc	Chair of the Foreign Affairs Committee	Member
Chambre des Députés	Ms	Barra Isabelle	Deputy Secretary-General	Official
Netherlands				
House of Representatives of the Dutch Parliament	Mr	Taverne Joost	Member	Member
House of Representatives of the Dutch Parliament	Mr	van de Wiel Jos	Staff	Official
Eerste Kamer der Staten-Generaal	Ms	Van den Driessche Ilse	Member of staff of the Standing Committee on European Affairs	Official
Poland				
Sejm	Ms	Pomaska Agnieszka	Chairwoman of the European Union Affairs Committee	Member
Sejm	Mr	Dudzic Adam	Deputy Director of the International Affairs Bureau	Official



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Sejm	Ms	Krawczyk Kaja	Head of the European Union Division	Official
Sejm	Ms	Skrzyńska Magdalena	Expert, European Union Division	Official
Sejm	Ms	Maciejczak Agnieszka	Expert, European Union Division	Official
Senate of the Republic of Poland	Mr	Wittbrodt Edmund	Chairman of the EU Affairs Committee	Member
Senate of the Republic of Poland	Ms	Śmietanko Lidia	Head of the EU Affairs Unit	Official

Portugal

Assembleia da República	Ms	Costa Maria João	Permanente Representative of the Portuguese Parliament to the European Union	Official
Assembleia da República	Mr	Mota Pinto Paulo	Chairman of the European Affairs Committee	Member

Romania

Chamber of Deputies	Mr	Petrea Silviu Dorin	Member of Parliament	Member
Chamber of Deputies	Mrs	Brucher Marina	Secretary of delegation	Official

Spain

Congress of Deputies	Mr	López Garrido José	Deputy Member - Joint Committee for UE Affairs	Member
Congress of Deputies	Ms	Sánchez-Abarca Carmen	Legal advisor of the Cortes Generales for the EU	Official

Sweden

Sveriges riksdag	Mrs	Ohlén Christina	Committee Secretary	Official
The Swedish Parliament	Ms	Spada Livia	EU adviser, EU Coordination	Official

United Kingdom

House of Commons	Ms	Clarkson Sarah	Deputy National Parliament	Official
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House of Lords	Mr	Elizabeth Paul Dowling	Representative National Parliament Liaison Officer	Official
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European Parliament

European Parliament	Ms	Ciuche Diana	EP Member COSAC SECRETARIAT	Official
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European Commission

EU Commission – Secretariat-General	Ms	Zięba Michalina	Co-ordinator for Interinstitutional Relations	Official
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Anexo 3. Documento de trabajo elaborado por el Parlamento polaco

Working Group on the possibility of improving the "yellow card" procedure

Working paper

Introduction

The decision to set up the Working Group was taken at an informal meeting of the Chairpersons of European Affairs Committees of Parliaments of the EU Member States on the Commission Work Programme (CWP) and the "yellow card", held in Brussels on 19 January 2015, which was upheld at the meeting of the Chairpersons of European Affairs Committees (COSAC) of EU Parliaments in Riga on 1-2 February 2014. The Working Group was tasked with exploring the possibility of:

- improving the "yellow card" procedure;
- extending the deadline for reasoned opinions from 8 to 12 weeks within the current Treaties.

The participants of the COSAC Chairpersons meeting in Riga agreed that the work of the Working Group would be headed by Agnieszka Pomaska, Chairperson of the European Union Affairs Committee of the Polish Sejm, with membership composed of interested Chairpersons of European Affairs Committees of Parliaments of the EU Member States and the EP.

The Working Group is to present the results of its work during the COSAC conference in Riga.



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This paper examines the existing practices and presents proposals for:

- I. Closer involvement and cooperation by national Parliaments in European affairs – better use of the mechanisms available to them
- II. Possibilities for national Parliaments to scrutinize proportionality on an equal footing with subsidiarity
- III. Improving the timeliness and quality of the European Commission's response to reasoned opinions and opinions sent by national Parliaments under the political dialogue
- IV. The possibility of extending the deadline for reasoned opinions from 8 to 12 weeks

Closer involvement and cooperation by national Parliaments in European affairs - better use of the mechanisms available to them

Background

The EU law provides for the direct involvement of national Parliaments in the subsidiarity check of an EU draft legislative act both before such act is adopted (*ex ante* scrutiny). The *ex ante* scrutiny procedure is stipulated in Articles 6 and 7 of Protocol No 2 and it provides for the possibility of a draft legislative act being evaluated by national Parliaments (the "yellow" and "orange card" procedures).

The Treaty framework is complemented by internal acts issued by each Parliament/Chamber and declarations by the Commission, the Council and the EP on the manner of dealing with national Parliaments' reasoned opinions transmitted under the procedure set forth in Articles 6 and 7 of Protocol No 2.

According to the data contained in the IPEX database, during 5 years following the entry into force of the Treaty of Lisbon, 2010-2014, national Parliaments issued and submitted **276 reasoned opinions** on the non-compliance of legislative proposals with the principle of subsidiarity and **2521 other opinions and positions to the European Commission; and 297 reasoned opinions and 1606 other documents to the European Parliament¹**

¹ Data for the Commission as at the end of December 2014, based on unofficial information; data for the European Parliament as at 3 March 2015.



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While the Treaty of Lisbon strengthened the role of national Parliaments in the EU legislative process, they scarcely resorted to the "yellow card" procedure during the 5 years and the early warning mechanism was triggered only twice.

The above data shows that there is a need both for better use by national Parliaments of the Treaty provisions concerning subsidiarity and proportionality scrutiny, and for an enhanced cooperation between national Parliaments themselves with a view to making better use of the mechanisms made available to them. The cooperation can be split into three stages:

Stage 1: From the publication of the Commission Work Programme to the end of March (each year)

The European Commission publishes its Work Programmes for the next year in November. Following the publication of the Commission Work Programme, national Parliaments, each in line with its own practice and internal procedure if its Chamber, would carry out a scrutiny of this strategic document and identify proposals they consider most important (or controversial).

What would become an added value is an exchange of opinions on the CWP in the presence of an EU Commissioner who might enhance the understanding of the Parliaments' position as a direct participant of the discussion.

Recent years have seen a growing number of Parliaments/Chambers which carry out an in-depth analysis of the Commission Work Programme. However, not all Parliaments/Chambers have been using this instrument, which makes cooperation with other Parliaments/Chambers in this regard more difficult, and hence does not enable national Parliaments to make full use of their Treaty instruments, weakening their influence on the EU decision-making process. Therefore, in order to increase the influence of national Parliaments on the EU decision-making process, we encourage all Parliaments/Chambers which do not have such a process in place yet, to become involved in the scrutiny of the Commission Work Programme and share information on their own priorities with other Parliaments.

Through individual parliamentary scrutiny of the Work Programme, each national Parliament (and the European Parliament) is able to select dossiers which are subject to political attention and to further scrutiny. This selection process helps to focus politicians' attention and work, which is crucial for effective parliamentary scrutiny – most Parliaments do not have the time or the capacity to scrutinise the bulk of EU proposals.



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National Parliaments would have **time to analyse the Commission Work Programme by the end of March.**

Having chosen their priorities from the Commission Work Programme, **national Parliaments/Chambers would inform other Parliaments/Chambers about them** through national Parliaments' representatives in Brussels and through the COSAC Secretariat and the IPEX Information Officer.

Based on priority proposals selected by national Parliaments/Chambers, a **table of national Parliaments' priorities** for a given year should be developed. The table would be prepared by the IPEX Officer in Brussels based on information received from national Parliaments in Brussels. Each Parliament could both back and withdraw its support for each priority at any time.

On 1 April each year, **the table of priorities of national Parliaments** would be sent to the European Commission. It seems reasonable for a cover letter to be sent by the Presidency parliament on behalf of all national Parliaments/Chambers, as this would be a clear sign of enhanced cooperation. For its part, the COSAC Secretariat should be involved in preparing the letter and keeping deadlines.

Parliaments/Chambers particularly interested in specific draft legislative acts **would agree between themselves which of them is to assume the champion role for a given draft legislative act.** The champion's role would be to track the progress of work on a given proposal, signal the date of publication of the draft legal act to other Parliaments/Chambers, initiate informal meetings with other interested Parliaments/Chambers, with the relevant Commissioners, draw the attention of other Parliaments/Chambers to any issues that may give rise to doubt from the national Parliaments' point of view, etc. The exchange of information between the champion Parliament and other Parliaments should take place through the representatives of national Parliaments in Brussels. **A dedicated closed forum should be set up on the IPEX platform** for the sole use of national Parliaments, which would be administered by the IPEX Officer. The documents posted on the forum should include all documents concerning the Commission Work Programme for a given year (the Commission Work Programme itself, lists of priorities of each national Parliament, a table of priorities of national Parliaments, and any correspondence on national Parliaments' priorities contained in the Commission Work Programme. At the same time, the forum should serve national Parliaments as a place for on-going, quick exchange of information, views and for discussions (mainly informal ones) on the different draft legislative acts in the form of chats.

The forum should operate in parallel with email communication in order to:

- prevent fragmented distribution of information;



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- collect all information on a given draft legal act at a single point;
- enable all Parliaments/Chambers starting work at different dates to efficiently reach all information on a given draft legal act.

Stage 2: From the publication of a draft legislative act to the end of the time limit for the subsidiarity check by national Parliaments

Following the publication of a draft legal act, during the 8 weeks given to Parliaments/Chambers for issuing an opinion on its compliance with the principle of subsidiarity, **the champion Parliament role seems to be of key importance**. If we want to achieve enhanced, effective cooperation, the champion Parliament should:

- engage in drawing the attention of other Parliaments/Chambers to any problems found in a given draft legislative act;
- gather all emerging arguments that could be used by other Parliaments/Chambers in the course of their work on a given draft legal act;
- initiate informal meetings of the interested Parliaments/Chambers with the relevant Commissioners;
- possibly coordinate work on triggering the yellow card mechanism.

Each national Parliament/Chamber issues reasoned opinions in compliance with its internal regulations. Some Parliaments issue reasoned opinions in plenary sessions while in other Parliaments committees are authorised to issue reasoned opinions on behalf of the Chamber. Therefore, it seems impossible to introduce a standard form of reasoned opinion for all Parliaments/Chambers. However, to avoid misunderstandings as to whether a given opinion is a reasoned opinion or only an opinion in the political dialogue, it seems reasonable to **adopt guidelines on the criteria for reasoned opinion both on the contents and scope**. Such guidelines could be adopted by COSAC and communicated for information to the Conference of EU Parliament Speakers.

Stage 3: After 8 weeks - without a yellow card

In the case at least 9 reasoned opinions are issued by national Parliaments/Chambers, the relevant EU Commissioner should meet with the Parliaments that have issued reasoned opinions on a given draft legislative act and discuss with them all issues raising doubts on the part of national Parliaments.

An invitation to a meeting could be sent to the relevant Commissioner by all the interested Parliaments jointly or through the champion Parliament on behalf of all others.

In the course of further work on a proposal, the **Commission should accurately show the impact of reasoned opinions on the final shape of the draft legislative act**.

Summing up the proposals described above, national Parliaments should:



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- ***make an input to the table of national Parliaments' priorities***
- ***agree on choosing of the champion Parliament for respective draft legal acts; role of the champion Parliament will vary depending the stage of a legislative work***
- ***adopt guidelines on the criteria for reasoned opinion both on the contents and scope of a reasoned opinion share the information using both dedicated IPEX forum and mailing communication***

II. Possibilities for national Parliaments to scrutinize proportionality on an equal footing with subsidiarity

Article 5 of the Protocol No 2 to the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality provides that "*Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality.*" Also in terms of the general obligations of institutions (Article 1), the Protocol treats both principles jointly.

The scrutiny of a draft legal act only for its compliance with the principle of subsidiarity, without taking into account the principle of proportionality, seems ineffective and illogical, and it limits national Parliaments' competence with regard to the principle of subsidiarity itself. It also often seems difficult to separate subsidiarity from proportionality, especially where the significance of the provisions of an act is assessed in terms of the achievement of Treaty objectives. Therefore, despite the fact that articles governing the procedure for the scrutiny of draft legislative acts (Articles 6-7), the legislature makes reference to the principle of subsidiarity only, it seems reasonable for national Parliaments/Chambers to be able to analyse proportionality issues at least to the extent to which they can be separated from the subsidiarity scrutiny.

In such a case, we encourage national Parliaments/Chambers to also include in their reasoned opinions relating to non-compliance with the principle of subsidiarity information on the possible non-compliance of the draft legislative act with the principle of proportionality. For its part, the European Commission should also refer in its replies to any reservations concerning the non-compliance with the principle of proportionality.

Also the Friends of Presidency Group, in its final report submitted to the Presidency in December 2014, noted that "*when discussing the annual Commission Work*



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Programme, special attention should be paid on the respect of the principles of subsidiarity and proportionality", treating the two as inseparable principles.

Having also in mind that the European Commission must apply the Treaties, it is not possible within the current legal framework to send reasoned opinions on the non-compliance of draft legislative acts with the principle of proportionality only.

However, having regard to:

- the letter from the First Vice President of the European Commission Frans Timmermans to the College of Commissioners dated 18 December 2014 in which he announced that 'forging a new partnership with national Parliaments is a priority for this Commission' and
- the letter from the First Vice President of the European Commission Frans Timmermans to the Chairperson of the European Affairs Committee of the Latvian Parliament Lolita Čigāne, holding presidency of the COSAC, dated in January 2015, in which he reaffirmed that "This European Commission is firmly committed to forging a new partnership with national Parliaments – by renewing the existing political dialogue" it seems we are at the best moment in time to act in order to improve our cooperation with the European Commission.

In the case at least 9 opinions issued by national Parliaments/Chambers on the breach of the principle of proportionality only, the relevant EU Commissioner should meet with the Parliaments that have issued opinions on a given draft legal legislative act and discuss with them all issues raising doubts on the part of national Parliaments/Chambers.

Proposal for improved cooperation could be the Commission's special approach to national Parliaments' opinions on the breach of the principle of proportionality, especially if reservations in this respect were notified by a substantial number of Parliaments/Chambers.

III. The possibility of improving the timeliness and quality of the European Commission's response to reasoned opinions and opinions sent by national parliaments under the political dialogue

According to the data contained in the IPEX database, during 5 years following the entry into force of the Treaty of Lisbon, 2010-2014, national Parliaments issued and submitted **276 reasoned opinions** on the non-compliance of legislative proposals with



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the principle of subsidiarity and 2521 other opinions and positions to the European Commission; and 297 reasoned opinions and 1606 other documents to the European Parliament².

While the Treaty of Lisbon strengthened the role of national Parliaments in the EU legislative process, they scarcely resorted to the "yellow card" procedure during the 5 years, triggering the early warning mechanism only twice.

The first yellow card referred to COM(2012) 130, i.e. *Proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services*.

12 Parliaments/Chambers (including the Polish Sejm) representing a total of 19 votes sent a reasoned opinion within the time limit, i.e. by 22 May 2012 (the threshold being 18 votes). Following an analysis, the Commission stated that the subsidiarity principle had not been breached. However, facing the prospect of failure to win sufficient political support in the EP and the Council, it decided to withdraw the proposal on 26 September 2012.

National Parliaments received two letters from Vice President of the Commission Maroš Šefčovič: the first one, dated 12 September 2012, announced the withdrawal of the proposal due to a lack of support, and the second one, date 14 March 2013, explained briefly why the Commission believed no subsidiarity breach was involved.

The second yellow card referred to COM(2013) 534, *Proposal for a Council regulation on the establishment of the European Public Prosecutor's Office*. 14 Parliaments/Chambers representing a total of 18 votes sent a reasoned opinion within the time limit, i.e. by 28 October 2013 (the threshold being 14 votes). On 6 November 2013, the Commission confirmed the triggering of the early warning mechanism, and on 12 November 2013 it sent a letter to Speakers of Parliaments confirming, in compliance with the procedure, that the threshold had been reached. On 27 November, the Commission issued Communication COM(2013) 851 to uphold its proposal on the establishment of the European Public Prosecutor's Office as being in compliance with the principle of subsidiarity, and justified its position on 14 pages.

An analysis of all reasoned opinions sent to the European Commission conducted by the Experts from Sejm's Bureau of Research shows that the **main objections of the national Parliaments/Chambers regarding the draft legislative acts concerned:**

² Data for the Commission as at the end of December 2014, based on unofficial information; data for the European Parliament as at 3 March 2015.



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- the belief that the objectives of the proposed regulation cannot be sufficiently achieved by the Member States;
- breach of the principle of proportionality being inseparably connected with the principle of subsidiarity;
- reference to an incorrect legal basis;
- a lack of justification of a draft legislative act or its insufficient justification with regard to its compliance with the principle of subsidiarity;
- the Commission's breach of its mandate to adopt delegated or implementing acts;
- other.

An analysis of the European Commission's replies to reasoned opinions of national Parliaments "leads to the conclusion that in none of the cases scrutinised has the Commission shared the reservations of national Parliaments. Having regard to the large number of the documents reviewed and the fact that the objections concerned mostly the objective of the proposed regulation, which is essential to the assessment of a subsidiarity breach, it is concluded that the Commission generally does not take into account national Parliaments' opinions"³.

The scrutiny of replies from the European Commission to reasoned opinions has led to the following conclusions:

- the Commission usually comments objections contained in reasoned opinions in formal terms;
- its replies usually (with some exceptions) have a high degree of generality;
- they lack a sufficient in-depth assessment of the issues analysed.

In addition, a review of the European Commission's replies to reasoned opinions shows that **the time it takes the Commission to prepare them varies** from two months to about one year, the average time for drawing up a reply being four to five months.

This shows that there is a strong need to improve cooperation with the European Commission regarding its replies to reasoned opinions of national Parliaments. The new opening in relations with national Parliaments, announced by the First Vice President of the Commission Frans Timmermans, raises hopes that the relations will develop in such a manner as to enable national Parliaments to exercise real influence on EU legislation in line with the prerogatives conferred on them in the Treaties.

³ Sejm's Bureau of Research in : "Parlamenty narodowe wobec zasad pomocniczo ci w wietle prawa i praktyki Unii Europejskiej", Wydawnictwo Sejmowe, Warszawa, 2015.



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In the course of its work, the Friends of Presidency Group has also devoted much time to the issue of the European Commission's replies to national Parliaments' reasoned opinions. In its final report for the Presidency in December 2014, it noted the need "*for the Commission to deal with reasoned opinions of national Parliaments initiating the so-called "yellow card" procedure. Several delegations called for a more detailed analysis by the Commission in the event the yellow card procedure is applied, in which analysis the Commission would undertake to carry out an official internal debate, if possible a formal debate by the College, should the yellow card procedure be triggered".*

The intention of the new partnership between the European Commission and national Parliaments would be expressed by the Commission's commitment to:

- ***Reduce the time for the preparation of replies to reasoned opinions to a maximum of 2 months;***
- ***Discuss in detail in its replies all issues raised by national Parliaments in their reasoned opinions;***
- ***Prepare, in addition to individual replies to the Parliaments/Chambers that have sent reasoned opinions, one reply comprising replies to all reservations raised by national Parliaments/Chambers in their reasoned opinions and circulate them to all Parliaments/Chambers of the Member States.***

Such a collective Commission's reply to all reasoned opinions:

- would provide national Parliaments with a complete picture of the quality of the Commission's replies;
- would encourage the Commission to exercise greater diligence in preparing its replies;
- could make it possible to avoid misunderstandings or the Commission being re-appraised by a Parliament/Chamber if a more accurate and exhaustive reply to its reservations were found in such a collective reply .

IV. The possibility of extending the deadline for reasoned opinions from 8 to 12 weeks

For quite some time, national Parliaments have been discussing the extension of the 8-week deadline within which they can scrutinise draft legislative acts for compliance with the principle of subsidiarity.



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The Nineteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny prepared by the COSAC and presented to XLIX COSAC on 23-25 June 2013 in Dublin showed that 1/3 of national Parliaments/Chambers find the 8-week period too short to scrutinise legislative proposals for compliance with the principle of subsidiarity in a reliable manner. In their replies, some of them suggested that a 12-week period for internal parliamentary scrutiny of subsidiarity would be better. At the same time, it was pointed out "*that a longer period would not mean a significant slowing down of the European legislative procedure (given its usual duration), but it would provide enough time for the national Parliaments to thoroughly scrutinise subsidiarity. This could also lead to an improvement in the quality of the reasoned opinions*".

Also in the course of work of the Friends of Presidency Group, the issue of subsidiarity monitoring deadlines was addressed, and a report submitted to the Presidency in December 2014 emphasised that "*a consensus has been achieved on that it is necessary to consider the use of a more flexible interpretation of the respective provisions of the Protocol*".

In light of the Treaties currently in force, it seems impossible to specifically extend the period given to national Parliaments to examine legislative proposals for compliance with the subsidiarity principle from 8 to 12 weeks. However, the European Commission could take a more flexible approach to the existing provisions of the Treaty.

Several arrangements could be adopted, which would enable each 8-week period to be extended by a few days, and in extreme cases even by 10-20 days:

- ***exclude from the 8-week period any holidays in the Member States;***
- ***exclude from the 8-week period the Christmas/New Year break, as is the case with the summer holidays in August;***
- ***exclude from the 8-week period any non-working periods in the EU Institutions.***

Summary

The implementation of the above changes requires determination and commitment on the part of national Parliaments as well as good will on the part of the European Commission. We hope that, together with the European Commission's new opening, we will be able to develop a common model of enhanced cooperation that will enable all the existing instruments and mechanisms to be used more effectively.