

MINUTES OF THE MEETING OF THE XL COSAC
Paris, 3 - 4 November 2008

AGENDA:

1. **Welcome speech** by Mr Gérard LARCHER, Speaker of the *Sénat*, France, and Mr Bernard ACCOYER, Speaker of the *Assemblée nationale*, France
Opening Session of the XL COSAC by Mr Hubert HAENEL, Chairman of the Committee on European Affairs of the *Sénat*, France, and Mr Pierre LEQUILLER, Chairman of the Committee on European Affairs of the *Assemblée nationale*, France
Adoption of the agenda of the XL COSAC
2. **The French Presidency of the European Union**
Guest Speaker: Mr François FILLON, Prime Minister of the French Republic
3. **Presentation of the 10th Bi-annual Report and the results of the working group** on the cooperation between national parliaments in the application of Protocol 2 on the principles of subsidiarity and proportionality
4. **Energy Security and the European Union**
Guest Speaker: Mr Claude MANDIL, former Executive Director of the International Energy Agency
5. **Bringing Europe closer to its citizens. What actions? What role for parliaments?**
Introduction by Mr Pierre LEQUILLER, Chairman of the Committee on European Affairs of the *Assemblée nationale*, France
Guest Speaker: Mr Jean-Pierre JOUYET, Secretary of State for European Affairs of the French Republic
6. **Association of national parliaments to the area of freedom, security and justice, and in particular to the scrutiny of Europol's activities and the evaluation of Eurojust's activities**
Introduction by Mr Hubert HAENEL, Chairman of the Committee on European Affairs of the *Sénat*, France
Guest Speakers: Mr Jacques BARROT, Vice President of the European Commission, Mr Max-Peter RATZEL, Director of Europol, Mr José Luis Lopez DA MOTA, President of the College of Eurojust
7. **Evaluation of the subsidiarity check on the proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation**
8. **Adoption of the Contribution and Conclusions of the XL COSAC**

PROCEEDINGS:

1. Opening session of the XL COSAC and adoption of the agenda of the XL COSAC

Mr Gérard LARCHER, Speaker of the *Sénat* of the French Republic, and Mr Bernard ACCOYER, Speaker of the *Assemblée nationale* of the French Republic, welcomed the participants of the XL COSAC meeting.

Mr LARCHER underlined the concept of subsidiarity which brings Europe closer to its citizens and therefore should be central to the European Union. National parliaments contribute to this process and make the European Union stronger. That is why the future of Europe also depends on the combined efforts of the European Parliament and national parliaments.

Mr ACCOYER underlined the fact the European Union took an active stand during the recent crisis. Europe has to remain at the forefront of the developments, and the national parliaments, as the basis of our democracy, have an essential role to play. The Treaty of Lisbon will bring the necessary stability, efficiency and legitimacy to the actions taken during such crisis.

Mr Hubert HAENEL, Chairman of the Committee on European Affairs of the *Sénat*, and Mr Pierre LEQUILLER, Chairman of the Committee on European Affairs of the *Assemblée nationale*, opened the meeting of the XL COSAC. Mr HAENEL stressed the major role national parliaments play in European affairs complementing the role of the European Parliament. The Chairman informed COSAC about the recent Constitutional reform in France which, *inter alia*, elevated the status of the EU affairs in both Houses of Parliament. According to Mr HAENEL COSAC is a living representation of Europe, united in diversity. Mr LEQUILLER called for the swift completion of the ratification of the Treaty of Lisbon. The Chairman stressed the importance of the work of national parliaments at the national level for the success of the upcoming European elections. According to the Chairman, a low rate of participation in the elections to the European Parliament will be seen as a forth "no" to the new treaty.

The Chairmen also outlined the draft agenda of the XL COSAC, presented the proposed amendments to the agenda and the Troika's decisions regarding them.

The agenda of the XL COSAC was adopted by consensus.

2. The French Presidency of the European Union

Guest Speaker: Mr François FILLON, Prime Minister of the French Republic

Mr. FILLON started by remarking that national parliaments are a crucial element in the European construction as guardians of democracy. Therefore, they should be actively involved in the European decision-making process. They represent different national identities in the European Union which should be respected.

The Prime Minister stressed the importance of the *ratification of the Treaty of Lisbon*. It gives national parliaments a power to control the application of the principle of subsidiarity with regard to all legislative acts, which is a vital link between the Member States and the Institutions of the EU. Moreover, the ongoing crises demonstrate that the existing institutional arrangement has not adapted to the challenges that Europe is faced with.

In the discussion the Prime Minister and the parliamentarians agreed that the EU and the Member States must not put Ireland under pressure because of the results of the June referendum on the Treaty of Lisbon. It has to be understood that new negotiations on the treaty would paralyze further European development. Concerning the roadmap, it is necessary to wait for the Irish

proposal which will be the basis for the Council's decisions on future developments. It was also pointed out that in the ongoing constitutional debates EU successes were not highlighted enough.

Mr FILLON said that he believed that the EU would function better, especially in times of crises, if the Treaty of Lisbon were ratified, especially due to a more stable Presidency of the European Council.

Mr FILLON also stressed that the agenda of the French Presidency had been changed due to the war on our continent, the global financial crisis and the decrease in economic growth. The parliamentarians agreed with him that in such cases it is necessary that the EU speaks with one voice. Tackling such problems jointly is the basis of EU legitimacy.

European unity was demonstrated during the crises in *Georgia*. The EU played an important role in reaching a ceasefire agreement and on the withdrawal of the Russian troops from South Ossetia and Abkhazia. Some parliamentarians, however, pointed out that Russia had not fulfilled its promise and recognized the two states. The Members of Parliament expressed their concern regarding the EU strategic partnership dialogue with Russia, stressing that the EU should not only be concerned with the economy but also with morality. When asked to comment on how the events affected the EU *relations with Russia* Mr FILLON said that Russia is a strategic partner of the EU but the EU has to be firm on its principles. Only a united EU can be strong enough in the dialogue with Russia that has to be maintained.

The Prime Minister also stressed the importance of European military capabilities. The military budget of the Member States is equivalent to 40% of the military budget of the United States of America. The EU needs a better planning, coordination, joint production and cannot only rely on the capabilities of the Member States.

The EU demonstrated good cooperation in fighting the *financial crisis*. Therefore protectionist measures should be avoided. The Eurogroup adopted measures to restore the confidence of the citizens in financial institutions. At the upcoming EU-US summit, the Presidency intends to propose the setting up of a new international financial order based on a more regulated and transparent international financial system. The Prime Minister mentioned as an example, the fight against tax heavens and more regulated bonuses for traders and executives.

When commenting on the question regarding the approaching G20 Summit, the Prime Minister was of the opinion that the overhaul of the institution is needed to reflect the current situation as its structure is still based on historic circumstances.

The Prime Minister also commented on the upcoming US Presidential elections by saying that the EU and the USA will cooperate in various areas regardless of the outcome of the elections.

The EU has to reach an agreement on the fight against *climate change* by the end of this year otherwise the 2009 World Climate Conference in Copenhagen would be meaningless. The Presidency will intensify consultations in order to try to find the solution suitable to the European industry and the Member States without diminishing European ambitions.

The parliamentarians raised the point that even in financially critical times the environment should not be neglected. More efforts, which are presently almost non-existent, must be put into solving the problems of the industry pollution.

When asked to comment on the *Union for the Mediterranean*, Mr FILLON stressed that this Union is a response to the global fight against terrorism. It will be a forum where countries of the EU and the Mediterranean region could work together on concrete projects.

The Prime Minister also promised that the French Presidency will pay attention to the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2008) 229) and will see to it that the European Court of Justice jurisprudence is respected.

Mr FILLON also stressed two other achievements of the French Presidency: the progress in Immigration and Asylum Policy and the Health Check of the Common Agricultural Policy which is expected to be completed by the end of this year.

3. Presentation of the 10th Bi-annual Report and the results of the working group on the cooperation between national parliaments in the application of Protocol 2 on the principles of subsidiarity and proportionality

Mr HAENEL welcomed the 10th Bi-annual Report drafted by the COSAC Secretariat. The Report is divided into four chapters: 1) The Treaty of Lisbon and its Ratification - Expectations of National Parliaments and the European Parliament, 2) Report on the Results of the Working Group of the National Parliaments' Representatives to the EU on the Implementation of the Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon, 3) Involvement of Parliaments of the European Union in European Defence Policy, and 4) Scrutiny of the Agreements Negotiated by the European Community.

The Chairman invited delegations to share their views on Chapter 2 of the Report, which presents the ideas of national parliaments for a better cooperation on the application of Protocol 2 of the Treaty of Lisbon on the principles of subsidiarity and proportionality. He introduced the debate by noting that there is a clear agreement on promoting more extensive use of the IPEX database and a shared interest to exchange information in advance of formally adopting reasoned opinions. The Chairman pointed out that Chapter 2 presents other proposals for a better cooperation on the application of Protocol 2 of the Treaty of Lisbon, and that these are more difficult to decide upon.

As regards informal exchange of information on the results of national parliaments' scrutiny activities, most delegations supported the use of the network of national parliaments' staff based in Brussels. The Dutch delegation argued that if the informal exchange indicated subsidiarity concerns, COSAC should be able to meet in a political formation within the 8 week period. This subformation would meet on a pragmatic and flexible ad hoc basis. The Danish delegation was in favour of the possibility of calling ad hoc meetings on the level of parliamentarians in case a "yellow card" or an "orange card" threshold is reached. However, many delegations called for keeping the current format of COSAC meetings and were against increased frequency of the COSAC meetings as well as against the idea that COSAC should be divided into subformations.

It was stressed that establishing structures, which would involve only national parliaments and exclude the European Parliament, is not in the spirit of COSAC.

There was wide agreement that COSAC should not only focus on monitoring the compliance of proposals with the principle of subsidiarity, but rather carry out debates on current EU policy topics. Some delegations called for establishing common approaches to the scrutiny of subsidiarity, which national parliaments would use when preparing their reasoned opinions. Many delegations echoed the appeal that COSAC meetings should reserve a time slot for discussions on specific dossiers, which are of topical concern in national parliaments. It was stressed that the direct communication of national parliaments with the European Commission is an important contribution to improving policymaking in the EU.

4. Energy Security and the European Union

Guest Speaker: Mr Claude MANDIL, former Executive Director of the International Energy Agency

Mr MANDIL was asked by the French Government to write a report on Energy Security and the European Union before the start of the French Presidency. The report was published in April 2008. Mr. MANDIL expressed his satisfaction to find most of its contents in the Presidency conclusions of the Brussels European Council of 15 and 16 October 2008.

Mr MANDIL recalled the long term risks (climate change) and the short term risks (disruptions to supplies); he underlined the importance of diversifying energy sources and supply routes. Concerning energy independence, he highlighted that the big issue does not relate to oil supply (as alternatives exist) but to electricity supply (exposure to disruptions) where lack of investment in production and transportation becomes problematic. The challenge is to tackle the common risk with solidarity and by all the Member States assuming joint responsibility. Moreover, transparency concerning stocks, imports and exports is necessary. Only a political will, however, can meet the current requirement for mutualisation, and can achieve a common internal energy market that could create the conditions for a collective decision (i.e. reduction of consumption by each country to help a country experiencing energy shortages). Mr MANDIL also underlined the complexity of the relationship with Russia regarding gas: the EU depends on Russia for 25% of its gas supply, and therefore should refrain from jeopardising the relations with Russia.

The importance of reconsidering this topic in 2009 was stressed in order to be able to implement a climate change strategy (renewable energy, CO2 capture). This cannot be postponed otherwise - though many changes have been noticed since 2007 - the need for infrastructure will not be satisfied (wind and sun energy). The situation could become extremely critical (regulation and price transparency). Even if each energy source has disadvantages, diversification is a necessity; crisis mechanisms have to be found to allow the EU to tackle supply problems. Energy efficiency must be the goal, and energy dependence towards Gazprom should be avoided (e.g. by alternative supplies from Libya, Iran or Qatar).

The XL COSAC paid tribute to Lord Julian GRENFELL who is retiring from the post of the Chairman of the Committee on European Union of the UK House of Lords and for whom this COSAC meeting was the last meeting which he attended in this capacity.

5. Bringing Europe closer to its citizens. What actions? What role for parliaments?

Introduction by Mr Pierre LEQUILLER, Chairman of the Committee on European Affairs of the *Assemblée nationale*, France

Guest Speaker: Mr Jean-Pierre JOUYET, Secretary of State for European Affairs of the French Republic

Mr LEQUILLER introduced the topic by firstly underlining the importance of an increased participation of citizens in European affairs ("bringing Europe closer to the citizens") and secondly by highlighting the role Members of Parliaments play as interlocutors between European and national politics. He suggested that national parliaments and the European Parliament should establish close networks at committee level. The distance between EU institutions and national parliaments is still too large and must be overcome. In this sense he proposed a yearly "*state of the Union*" debate with Members of the European Parliament and national parliaments to exchange views about the general development of the European Union.

With regard to the current financial and economic turmoil Mr JOUYET pointed out that the added value the EU brings to its citizens is becoming more evident in times of crisis. During these times it is apparent that the EU is the only actor which can give answers to the great challenges of our times. Recent surveys show that citizens especially approve of joint European action in times of crisis. According to the Secretary of State the strengthening of the European citizenship is a key element of bringing the EU closer to its citizens. The practical achievements of European integration in everyday life must become more visible and must be further developed. By way of example he mentioned practical measures in relation to consumer protection, mobile communication, protection against natural disasters, family law. With a view to the future development of the citizens' dimension in the European Union he called for more mobility and additional budgetary resources with regard to the establishment of an internal market for labour and education. He appealed to parliamentarians both at the national and European level that their debates should become less technical and abstract, but rather more political.

In the ensuing debate the access to documents, as a step to increase transparency, was highlighted as an important measure to avoid estranging citizens from the European Union. In a number of contributions the need to intensify the bringing together of Members of national parliaments and the European Parliament was emphasized. Echoing the remarks of Mr JOUYET and the suggestions made by Mr LEQUILLER there was also a call for an intensified political debate within COSAC.

6. Association of national parliaments to the area of freedom, security and justice, and in particular to the scrutiny of Europol's activities and the evaluation of Eurojust's activities

Introduction by Mr Hubert HAENEL, Chairman of the Committee on European Affairs of the *Sénat* of the French Republic

Guest Speakers: Mr Jacques BARROT, Vice President of the European Commission, Mr Max-Peter RATZEL, Director of Europol, Mr José Luis LOPES DA MOTA, President of the College of Eurojust

Mr Hubert HAENEL opened this part of the debate by underlining the general importance of the police and judicial cooperation for EU citizens. He introduced the role of Europol and Eurojust in this regard and recalled several ideas of organizing a better parliamentary scrutiny of Europol especially the one proposed in 2002 by the European Commission under which a joint parliamentary committee of representatives of the European Parliament and of national parliaments could be created¹. This joint committee would have examined the questions related to Europol and would have conducted the “*hearings*” of Europol’s Director². The Treaty of Lisbon revives the idea of including national parliaments into the abovementioned control, but it gives no indication of its form. Without anticipating the coming into force of the Treaty of Lisbon, Mr HAENEL opened the debate about the possible forms of cooperation between national parliaments and the European Parliament on these matters.

Mr Jacques BARROT gave some practical examples showing that in the EU all the EU rights given to the EU citizens also require adequate EU-level solutions. The solutions do not have to be necessarily of legal nature while the cooperation, coordination and mutual trust are of the highest importance. Mr BARROT mentioned that the priorities of the area of freedom, security and justice for the *post*-Hague period need to be decided and informed that the European Commission will come up with its proposals in this area in May 2009. He emphasized the important role of national parliaments in the communication with the public, in control of the balance of the security and freedoms and, what is mainly important for the successful functioning of the EU legislation, in the control of the implementation of the EU legislation. He underlined that the European Commission respects the need to strengthen the democratic control of Europol and Eurojust by national parliaments and reminded COSAC representatives of their strong role in the area of freedom, security and justice with regard to the scrutinising its compliance with the principle of subsidiarity.

Mr Max-Peter RATZEL reminded Members that mutual trust is the prerequisite for an effective cooperation. He said that Europol has a big potential but unfortunately not the appropriate legal framework or adequate information from the Member States. He stressed that as far as the Treaty of Lisbon is concerned Europol supports the democratic control by national parliaments. Mr RATZEL announced his intention to attend meetings of the European Parliament and national parliaments, his openness to regularly attend plenary meetings of COSAC, and to pay more attention to the compliance of new EU initiatives with the principle of subsidiarity.

Mr José Luis LOPES DA MOTA indicated that the criminal/judicial policy plays a key role in the area of freedom, security and justice and shared some of his ideas on the association of national parliaments to the evaluation of the activities of Eurojust. Eurojust is composed of 27 national members who have different responsibilities in their Member States and are consequently subject to different forms of evaluation. Mr LOPES DA MOTA suggested that some common criteria and standards for the evaluation of Eurojust and its national members

¹ Cf. Communication from the Commission to the European Parliament and the Council "Democratic Control over Europol" (COM/2002/0095 final).

² This measure was however modified during the negotiations at the Council and the reference to national parliaments was removed from the text of the document.

could be useful. Mr LOPES DA MOTA noted the possibility of creating a European Public Prosecutor's Office as it is specified in Article 86 of the Treaty of Lisbon.

During the debate a number of delegations welcomed the topic, stressed the importance of the democratic control of Europol and Eurojust and suggested possible cooperation of national parliaments and the European Parliament aiming at a better democratic control of Europol and Eurojust. The COSAC representatives took advantage of the debate to inform the colleagues about the priorities and practices in their national parliaments. Their contributions demonstrated different approaches to the parliamentary scrutiny of the activities of Europol and Eurojust, but at the same time a common interest for a better democratic control and respect for principle of subsidiarity.

Mr LOPES DA MOTA pointed out the lack of information sharing among the Member States authorities and Eurojust. He stressed that there is one pillar that is still missing for more effective work of Eurojust and that is the national pillar. As a consequence he called on COSAC representatives to pay more attention to the implementation of the existing legislative framework of Eurojust at the national level.

Some delegations supported Mr RATZEL and Mr LOPES DA MOTA in their intention to reinforce the competencies of Europol and Eurojust underlining the compliance with the principle of subsidiarity and importance of the democratic control of their activities. The European Parliament confirmed its intention to create the joint committee composed of the Members of the European Parliament and national parliaments.

Other important topics falling into the area of freedom, security and justice, such as human trafficking, PNR (Passenger name record) or counterfeit and piracy were mentioned by some delegations. The COSAC representatives expressed interest to continue this discussion in order to come up with a common solution for a better democratic control and to improve the balance between security and freedoms.

7. Evaluation of the subsidiarity check on the proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

Mr HAENEL, Chairman of the Committee on European Affairs of the French *Sénat*, recalled the decision of the COSAC Chairpersons of 18 February 2008 in Ljubljana to conduct a subsidiarity check on the Proposal for a Directive implementing the principle of equal treatment outside employment. The Commission published the proposal on 2 July 2008 under the title of Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The COSAC Secretariat received replies from a total of 32 parliaments or chambers from 22 Member States, which participated in the check. However, by the agreed deadline, which was 8 weeks after the transmission of the last linguistic version of the proposal to national parliaments, 17 parliamentary chambers from 13 Member States had concluded the check and sent their reports to the COSAC Secretariat.

Only the Irish *Houses of the Oireachtas* indicated a possible breach of the subsidiarity principle. The next subsidiarity check should be initiated in December 2008, when the Commission's Proposal for a Directive of the European Parliament and of the Council on standards of quality and safety for the donations, procurement, testing, preservation, transport and characterisation of human organs will be published. A decision on subsidiarity checks in 2009 will be adopted during the Czech Presidency. Mr HAENEL welcomed an informal indication of the Commission to take the parliamentary recess into account, if it would coincide with the 8 weeks period to submit a reasoned opinion. In this case additional time for the presentation of reasoned opinions would be welcome.

In the debate several delegations referred to the abovementioned indication of the Commission. They claimed that it would be of utmost importance that also the two legislators at the European level, the Council and the European Parliament take the parliamentary recess in the Member States into account. Several delegations suggested an adoption of a common definition of the principle of subsidiarity. However, at the same time other delegations deemed this to be a very difficult task, recalling the essentially political nature of the principle of subsidiarity. In this connection some delegations stressed the importance of the objectives, stated in the preamble of the Commission's proposal for the evaluation of the compliance with the principle of subsidiarity. The debate ended with the acknowledgement of the usefulness of the "early warning mechanism" as one of the tools allowing national parliaments to participate in the legislative process at the European Union level.

8. Adoption of the Contribution and Conclusions of the XL COSAC

Before the XL COSAC meeting the French Presidency put forward a draft Contribution and Conclusions of the Conference. After a short debate on the proposals of national parliaments and the European Parliament to amend the presented drafts, the Conference adopted the Contribution and Conclusions of the XL COSAC by consensus.

Both documents are attached to these minutes.