

COSAC CHAIRPERSONS MEETING LONDON JULY 2005

NOTE BY THE UK PRESIDENCY

POINTS FOR DEBATES ON THE CONSTITUTIONAL TREATY AND COMMISSION ANNUAL WORK PROGRAMME

Introduction

The agenda for the Chairpersons meeting provides for a general debate before lunch on the parliamentary aspects of the future of the constitutional treaty; and for debate after lunch with Commissioner Wallström on:

- i) the way forward for the subsidiarity mechanism and the possible second pilot; and
- ii) methods of scrutiny of the annual work programme of the Commission.

This note provides some background to help inform these debates.

Before lunch: debate on Parliamentary aspects of the future of the Constitutional Treaty

The European Council has called for “a period of reflection ...to enable a broad debate to take place”. The UK Presidency of COSAC believes that COSAC has a role to play in this debate, in discussing parliamentary aspects of the future of the constitutional treaty and in particular the subsidiarity early warning mechanism, on which more is said below.

The Presidency also believes that reflection does not mean inactivity. National parliaments already have a role in scrutiny of EU legislation, as set out in the Protocol on National Parliaments appended to the Treaty of Amsterdam. The Presidency therefore considers that it is appropriate for COSAC to discuss how such scrutiny can be enhanced; and that such a debate can take place both without any view being formed on whether the Constitutional Treaty will in fact be ratified and without any anticipation of its provisions. Any such discussion will of course also be sensitive to the political reality that the Constitutional Treaty represented a package of provisions which were presented as a whole.

It is in this spirit that the Presidency hopes COSAC will debate these issues at the Chairpersons meeting.

After lunch debate i) - The way forward for the subsidiarity mechanism and the possible second pilot

It is in this area that the issue for discussion is most clearly focussed. The questions which arise for debate might include:

1. Do COSAC Chairpersons agree that the proposed subsidiarity early warning mechanism would be a useful enhancement of their existing scrutiny role?
2. Do COSAC Chairpersons agree that some or all of the elements of the proposed early warning mechanism are capable of being taken forward without ratification of the Constitutional Treaty?
3. If so, do COSAC Chairpersons agree that it is both practically and politically possible to take some or all such elements forward without ratification of the Treaty?

4. If so, what elements of the proposed mechanism should be so proceeded with and when?
5. Are there any modifications which might be made to the mechanism set out in the Protocols to the Treaty?

The UK Presidency believes that the answer to these questions is as follows:

- A mechanism allowing parliaments to voice concerns about subsidiarity would represent a logical extension of the provisions of the Amsterdam Protocol and would provide national parliaments with a more effective collective voice in European affairs. National parliaments already have the power to scrutinise legislation for compliance with the principles of proportionality and subsidiarity - and indeed around half of the national parliaments already operate procedures for monitoring subsidiarity¹.
- No Treaty change is required for parliaments to submit views on subsidiarity questions to the Commission, nor for the Commission to provide information to national parliaments.
- The IPEX system will provide an information exchange giving national parliaments the means to share information about possible subsidiarity concerns, so a practical tool will exist to facilitate any operation, partial or otherwise, of a form of subsidiarity early warning mechanism
- Discussion with Commissioner Wallström will allow COSAC Chairpersons to consider how far the Commission might be prepared to go in providing qualitative and quantitative subsidiarity assessments and in responding to subsidiarity concerns submitted by national parliaments.
- Issues about the right of raising a case with the Court of Justice, as proposed under Article 8 of the Protocol on Subsidiarity annexed to the Constitutional Treaty, are, however, more complex as their very interpretation may differ between Member States. In the view of the UK Presidency this issue is best left aside for the moment.

The UK Presidency accordingly invites the COSAC Chairpersons to discuss with Commissioner Wallström how far it might be possible, both politically and practically, to develop a form of subsidiarity monitoring along the lines proposed by the Constitutional Treaty as an extension of the existing scrutiny role of national parliaments set out in the Amsterdam Protocol.

Possible second pilot

The Presidency invites the COSAC Chairpersons to debate the proposal for a second pilot, as agreed in Luxembourg, against this background and in particular to consider the following questions:

- Is it possible to conduct a second pilot project framed within the terms of the existing Treaty and scrutiny provisions without seeming either to anticipate the Constitutional Treaty or to assume that it will never be ratified?
- If so, what form should the pilot project take? In what ways should it differ from the first pilot project?

¹ COSAC's 3rd biannual report (chapter 4, pp.77-79) showed that the following national parliaments already do so: Austria, Czech Republic (Chamber of Deputies), Denmark, Finland, France, Germany, Ireland, Italy (when considering the Commission's Annual Work Programme) Latvia, Lithuania, the Netherlands, Sweden and the UK.

- What would the best timing be? Should the timing be determined by the publication of a Commission proposal identified in advance and by the six-week period envisaged in the Constitutional Treaty?
- What topic should be covered?

In the light of the debate on these questions the Presidency would propose, in consultation with the other members of the Presidential Troika, to place a more specific proposal on the agenda for discussion at the full COSAC in October.

After lunch debate ii) - Methods of Scrutiny of the Commission's Annual Work Programme

In accordance with Article 7.1.A of the Rules of Procedure, the Presidency invites the COSAC Chairpersons to exchange information on how the Commission's Annual Work Programme is scrutinised by national parliaments. It is *not* intended to have a debate on the *contents* of the 2005 or 2006 Work Programme.

In the UK the process is as follows:

- The Annual Policy Strategy and the Work Programme are deposited for scrutiny by both Houses along with an explanatory memorandum from the Government as part of the routine deposit of documents
- The European Union Committee in the Lords and the European Scrutiny Committee in the Commons consider the documents separately but in the same timescale and with close collaboration and exchange of information between officials
- Both Committees take evidence from the Commission and publish reports of that evidence; further evidence is sought by the Lords Committee via the UK Parliament website
- With the exception of 2005 (when the usual timetable was not followed because of the appointment of a new Commission) the Committees aim to report in the autumn after the Work Programme had been published and can also do so earlier in the year on the basis of the Annual Policy Strategy for the next year
- Both Committees consider that scrutiny of the Work Programme is very effective as an example of upstream scrutiny allowing issues to be examined at a very early stage and in particular allowing an opportunity to identify potential subsidiarity problems and (in the Commons) to present the contents of the Work Programme to sectoral committees in a more accessible form.

Examples of the Committees' reports can be found on the UK Parliament website:

www.parliament.uk/escom, under heading 'Major Reports';

<http://www.publications.parliament.uk/pa/ld200203/ldselect/ldcom/200/200.pdf>

The UK Presidency looks forward to hearing during the COSAC Chairpersons debate what experiences other parliaments have of scrutiny of the Work Programme; and from the Commission their view on the role of national parliaments in the scrutiny of the Work Programme.

JIMMY HOOD MP, Chairman European Scrutiny Committee, House of Commons

LORD GRENFELL, Chairman European Union Committee, House of Lords

11 July 2005