

Speech by Lord Boswell to the Conference of Speakers of the European Union Parliaments

Debate – Five Years after the coming into force of the Treaty of Lisbon: Lessons of Subsidiarity Checks in Parliaments

Vilnius, 6–8 April 2014

It is a pleasure to return to the Seimas, following an excellent COSAC conference here in October 2013. This time, I am speaking on behalf of the Speaker of the House of Lords, Baroness D’Souza, who sends her best wishes for the success of the conference.

I am particularly grateful for the opportunity to speak in this debate because the House of Lords EU Committee, which I chair, has recently conducted an inquiry, and published a report, on the role of national parliaments in the European Union. In this inquiry, one of our most useful meetings was with around a hundred delegates to October’s COSAC conference, in a meeting room just across the way from this hall.

Our key conclusion was that the EU needs national parliaments to play a more active role. This can be done, quickly and practically and without the need for treaty change, if we as parliamentarians have sufficient determination to see that it happens.

We do not see this as a power grab. A greater role for national parliaments should not lead to a lesser role for any of the EU institutions.

Today I am of course going to focus on subsidiarity, but we must bear in mind that the subsidiarity check is only one tool in the toolkit for national parliaments. Our report also makes suggestions about other areas, including better dialogue between national parliaments and the EU institutions notably the Commission; and improved inter-parliamentary co-operation, including with the European Parliament. Like others have done, we stress the importance of constructive engagement, including by giving a group of national parliaments the right to put forward policy or legislative suggestions through a ‘Green Card’ mechanism.

The reasoned opinion procedure is, potentially, a valuable mechanism to help national parliaments to contribute effectively to improving the quality of EU law. It is not yet working as well as it should. This is the right time to review it and improve it.

From the coming into force of the Lisbon Treaty in December 2009, until the end of 2013, the Commission issued 454 draft legislative acts which were eligible for the reasoned opinion procedure. But in all that time, across all the national chambers of the Union, only 260 reasoned opinions were issued, and only two Yellow Cards triggered. As we all know, in the first case the Commission withdrew their proposal – but claimed that this was nothing to do with the Yellow Card – and in the second case the Commission completely dismissed the Yellow card.

In our report we put forward a menu of possible improvements to the subsidiarity check procedure, but in this short speech I will highlight only three.

First, the scope of the procedure is overly restrictive.

It should be extended to cover the principle of proportionality. This is nothing new: the Protocol to the Treaties which sets out the reasoned opinion procedure is actually the “Protocol on the application of the principles of subsidiarity *and proportionality*”. Extending the procedure to cover proportionality would make it explicit that national parliaments should also check that “the content and form of Union action” does “not exceed what is necessary to achieve the objectives of the Treaties”.

The procedure should also cover legal base, so that national parliaments could confirm that each proposal has an appropriate basis under the EU Treaties.

Second, the current time limit for issuing a reasoned opinion, 8 weeks, is too restrictive.

While 8 weeks is usually just about enough time for an individual chamber to complete its work, it leaves no time for parliamentarians to discuss these complicated and important policies with other parliaments. The time limit should be extended.

Finally, the effect of the current procedure is too weak.

The Yellow Card on the major proposal to create a European Public Prosecutor’s Office was treated by the Commission as nothing more than a small bump in the road. It hardly slowed the Commission down at all.

National parliaments are uniquely well placed to understand and represent the views of the citizens of the Member States of the Union, and their concerns should not be dismissed so lightly. When a Yellow Card is issued, the Commission should either withdraw the proposal, or substantially amend it in order to meet the concerns that have been expressed.

The key elements of the subsidiarity check procedure are set out in the EU Treaties, and they could only formally be changed through treaty revision. But it would be possible for the Council and the Commission to agree improvements to the subsidiarity check procedure. The treaties could then catch up in due course with this evolving practice, as so often happens in other areas.

I hope that as a result of this debate, we will be able to take forward important changes to the role of national parliaments in the EU.