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Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union

Keywords: COSAC, European Union, national parliaments, parliamentary oversight function, executive power

Słowa kluczowe: COSAC, Unia Europejska, parlamenty narodowe, funkcję kontrolną parlamentu, władza wykonawcza

Abstract

The article presents one of the institutions of international cooperation of the member states of the European Union – Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC). COSAC is an important element of the so-called parliamentary diplomacy. The article presents the reasons for the creation of the Conference and the principles of its functioning, as well as impact on the implementation of the control function of national parliaments in regard to their own executive bodies.

Streszczenie

Konferencja Komisji do Spraw Unijnych Parlamentów Unii Europejskiej

Artykuł przedstawia jedną z instytucji współpracy międzynarodowej w państwach członkowskich Unii Europejskiej – Konferencji Komisji do Spraw Unijnych Parlamentów Unii Europejskiej (COSAC). COSAC jest istotnym elementem tzw. dyplomacji parlamentar-

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nej. W artykule ukazane zostały przyczyny powstania Konferencji oraz zasady jej funkcjonowania i wpływ na realizację funkcji kontrolnej parlamentów narodowych wobec własnych organów władzy wykonawczej.

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I.

In international relations, states are usually represented by executive organs, i.e. entities authorized to conduct foreign policy. The role of legislature was usually very limited in this respect. However, in the second half of the 20th century, this situation began to change significantly, there was a clear increase in activity conducted by national parliaments². Mechanisms of permanent inter-parliamentary cooperation have been created, which are of crucial political significance³.

In the case of the national parliaments of EU member states, their cooperation has a much more important role to play. It should be remembered that obtaining new competences by national parliaments, enabling them to formally participate in the decision-making process at the EU level, was not tantamount to guaranteeing them an actual place in the process of creating European law. Therefore, the real and effective use of the granted powers depends not only on the preparation and implementation of appropriate instrumentation at the national level, but also requires creating mechanisms for permanent and effective cooperation between the national parliaments of the member states, as well as between national parliaments and the European Parliament. At the same time, it is worth noting that the fields of necessary cooperation outlined in such way (both horizontal – between national parliaments and vertical – between national parliaments and the European Parliament) will also pose certain dangers⁴. While in terms of horizontal co-

² M. Słok-Wódkowska, *Współpraca międzynarodowa parlamentów państw europejskich – wybrane aspekty*, [in:] *Państwo i terytorium w prawie międzynarodowym*, eds. J. Menkes, E. Cała-Wacinkiewicz, Warsaw 2015, p. 433.

³ M. Florczak-Wątor, P. Czarny, *Międzynarodowa współpraca Sejmu RP*, Warsaw 2012, p. 10.

⁴ Martin Westlake drew attention to this issue already in 1995, arguing that inter-parliamentary cooperation mechanisms will, however, be used instrumentally. M. Westlake,

operation this may manifest itself as a kind of rivalry between national parliaments in demonstrating their efficiency in using the competences granted, which – in the end – can only increase their effectiveness, considered both as isolated cases in relation to individual parliaments, as well as in the context of all national parliaments. However, in relation to vertical cooperation, the potential for divergence is much more extensive, and the consequences can be more severe. In particular, an advanced competition may occur in the desire to obtain a mandate to democratically legitimise European integration⁵. The source literature also argues that the level of institutional cooperation between the European Parliament and national parliaments is largely dependent on the level of political culture in the country, as well as the political provenance of the party dominating the national parliament⁶.

At the same time, it should be emphasized that while the idea of inter-parliamentary cooperation in itself is already rooted in the tradition of the European Communities/European Union, there are still no effective mechanisms for its implementation. The principles of inter-parliamentary cooperation have not yet been specified in European legal norms. Its basic assumptions are included in Article 12 TEU and in the protocols annexed to the Lisbon Treaty. Specification of the principles of inter-parliamentary cooperation was left to the activity of national parliaments themselves, depending on their will and needs. At the same time, it should be noted that of the many forms of institutional inter-parliamentary cooperation within the European Union, only the functioning of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) was regulated in primary legal norms⁷.

The European Parliament, the National Parliaments and the 1996 Intergovernmental Conference, "Political Quarterly" 1995, vol. 66, No. 1, p. 59.

⁵ K. Auel, T. Christiansen, *After Lisbon. National Parliaments in the European Union*, "West European Politics" 2015, vol. 38, No. 2, p. 261.

⁶ T. Winzen, C. Roederer-Rynning, F. Schimmelfennig, *Parliamentary co-evolution: national parliamentary reactions to the empowerment of the European Parliament*, "Journal of European Public Policy" 2015, vol. 22, No. 1, p. 78.

⁷ The COSAC acronym comes from the originally used French name *Conférence des Organes Spécialisés dans les Affaires Communautaires* (Conference of Community and European Affairs Committees).

II.

Laurent Fabius, the Chairman of the French National Assembly at that time, came forward with the initiative in terms of creating COSAC. The first decisions on establishing a permanent mechanism for cooperation between parliamentary committees were made in Paris on November 16–17, 1989⁸. It was accepted then that the purpose of the Conferences would be to create a functional information exchange system between specialized entities dealing with European affairs in national parliaments.

The first Conference (called *Assises*, or Congress) took place in 1990. However, it was a very poorly evaluated project. The participating parliamentarians emphasized that the deliberations were dominated by the prevalent thesis about the need for representatives of the national parliaments to support the European Parliament⁹. However, despite the reservations it was a significant attempt to search for, still yet informal then, plane of “joint control of national parliaments over the creation of the Community law”¹⁰. Subsequent meetings within COSAC resulted in a strong emphasis on the need to expand the competences of this institution. After the entry into force of the Maastricht Treaty, the Conference began to deal not only with matters concerning the Communities, but also with tasks related to the functioning of the entire European Union¹¹.

The principles of the functioning of COSAC are currently described in the Rules of Procedure adopted during XLV meeting in Budapest on May 29–31, 2011¹². According to the Article 1 of the Rules of Procedure, the main goal of COSAC is to enable a regular exchange of views, without prejudicing the com-

⁸ A. Maurer, *COSAC, national parliaments and their contribution to a European strong public*, <http://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/COSAC.pdf> (13.09.2019).

⁹ T. Bergman, *National parliaments and EU Affairs Committees: notes on empirical variation and competing explanations*, “Journal of European Public Policy” 1997, vol. 4, No. 3, p. 376.

¹⁰ R. Grzeszczak, *Kierunki rozwoju europejskiej współpracy międzyparlamentarnej*, [in:] *Europejska współpraca międzyparlamentarna. Kierunki rozwoju*, “Zeszyty OIDE” 2005, No. 5, p. 29.

¹¹ H. Haenel, H. de Croo, *Evolution of COSAC over the last 20 years*, http://oide.sejm.gov.pl/oide/images/files/international/cosac_20years.pdf (13.09.2019).

¹² Rules of Procedure of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (OJ of the EU C 229/01 of 4.08.2011).

petences of the parliamentary bodies of the European Union. Under the Treaty of Lisbon, the Conference also has the power to submit to the European Parliament, the Council of the European Union and the European Commission any contributions, and to support the exchange of information and best practices between national parliaments and the European Parliament. COSAC can also organized inter-parliamentary conferences on topics of its choice, in particular in the field of common foreign and security policy, as well as common security and defense policy. The Rules of Procedure of the Conference also emphasize the sovereignty of the member states, which is also expressed in the aspect of the autonomy of national parliaments (contributions submitted by COSAC are therefore not binding in any way for national parliaments).

III.

The Rules of Procedure specify the organization of COSAC in a very casuistic way. It consists of representatives of national parliaments, and each parliament is represented by up to six members of its EU affairs committee (or committees). The European Parliament has the same number of representatives as well. The national parliaments of the member states have complete freedom in determining the personal composition of their delegation. Parliamentarians from countries applying for the European Union membership may also participate in COSAC meetings. Three members of parliament of every candidate country are invited to participate in plenary and extraordinary meetings. However, they are there as observers, so they do not have the right to vote. Deputies from candidate countries – two from each parliament – are invited to meetings of chairpersons of committees for union affairs as well. Representatives of the General Secretariat of the Council of the European Union and the European Commission as well as observers from the embassies of the member states of the European Union may also participate in COSAC meetings as observers. It is also possible to invite, after consulting the Presidential Troika (“three”), observers from other national parliaments as well as experts and special guests¹³.

¹³ Article 3 of the COSAC rules.

Members of COSAC work during meetings, which – as a rule – are public, unless established otherwise¹⁴. They are convened by the current Presidency Parliament and usually take place in the country of it. Exceptions are extraordinary meetings, meetings of the chairpersons, meetings of the COSAC Presidential Troika and meetings of working groups, which may also take place in other places not specified in the rules. The COSAC work schedule is prepared long-term and updated on an ongoing basis, considering the work programme of individual parliaments of the member states. The order of business is established well in advance – “Before the last plenary meeting of each year the delegations shall indicate the subjects, they propose be dealt with the following year”¹⁵. There is one plenary meeting held during each Presidency – that is, within six months. When organising its meetings, COSAC is obliged to consider the work plans of national parliaments, dates of elections and public holidays in individual member states of the European Union. This gives each member state the opportunity to actively participate in the work of the Commission and enables avoiding discrimination in convening meetings. The date of the next meeting is established and announced at the latest by the date of the preceding meeting – that is at least six months in advance. COSAC may also gather at extraordinary meetings, the convening of which may be decided by an absolute majority of the chairpersons of the committees for union affairs of national parliaments and representatives of the European Parliament.

Before every plenary meeting, a preparatory meeting is held for the chairpersons of the committees for union affairs and representatives of the European Parliament, in agreement with the Presidential Troika of the Conference¹⁶. Each parliament delegates two representatives to it. Meetings of the chairpersons can also be ad-hoc, extraordinary in nature. COSAC can set up its working groups. They are appointed to study a particular issue linked with the activities of the community. The secretariat for the working groups set up by COSAC is provided by the secretariats of the Presidency Parliament assisted by the secretariat of the Conference¹⁷.

¹⁴ Article 3 paragraph 4 of the COSAC rules.

¹⁵ Article 5 paragraph 1 of the COSAC rules.

¹⁶ Article 2 paragraphs 1–3 of the COSAC rules.

¹⁷ Article 2 paragraph 6 of the COSAC rules.

The Rules specify in detail the procedure regarding the adoption of contributions that may be submitted by COSAC to the European Parliament, the Council and the Commission according with the Protocol on the role of national parliaments in the European Union annexed to the Lisbon Treaty¹⁸. Draft contributions are communicated to the delegations for scrutiny and possible remarks. The final draft is drawn up at the preparatory meeting of the chairpersons, contains observations and remarks raised by individual delegations and declarations concerning the vote. The Rules assume that contributions will be adopted by a broad consensus, therefore the aim of the Conference is to seek the common position. If attempts to reach an agreement are not successful, contributions are adopted by a qualified majority of 3/4 of the votes cast, where the majority constitutes at least half of all votes. Each delegation has two votes. After the final determination of the contributions, the Conference sends them to the Presidents of the European Parliament, the Council of the European Union and the European Commission so they can respond to them.

The COSAC Rules also casuistically regulate the role of the Presidency Parliament of the Conference at a given time and its parliamentary commission for union affairs. The Rules impose numerous obligations on the committee, mainly related to the preparation of documents and organization of COSAC meetings. The secretariat of the Presidency Parliament, assisted by the COSAC secretariat, prepares the documents necessary for the meetings of the Conference. The chairperson of the committee for union affairs of the Presidency Parliament presides over the meetings, proposes the timetable and establishes the length of speeches. He is also obliged to present the conclusions of the debate, previously drawn up by the Presidential Troika. The secretariat of the Presidency Parliament is also required to prepare minutes of the meeting based on a draft submitted by the COSAC secretariat and – with the assistance of the COSAC secretariat – to provide secretariat for the activities of the Conference during its term¹⁹.

¹⁸ Article 7 paragraph 2 of the COSAC rules.

¹⁹ Article 7 paragraphs 3–8 of the COSAC rules.

IV.

The practical results of the functioning of COSAC should be regarded as positive. The conference acts as an inter-parliamentary forum for dialogue and exchange of experiences and opinions. It also forms a structure that can formalise the means and topics for the discussion, which seems particularly important in such a networked structure of inter-parliamentary cooperation²⁰.

It is thanks to the COSAC's activity that the so-called Copenhagen parliamentary guidelines specifying characteristic minimum standards for ensuring effective parliamentary scrutiny of the executive in the matters regarding – at that time – the Community²¹. The guidelines have been updated in a certain way in Hague, during the Conference of the Presidents of EU Parliaments²², and then amended by the “Guidelines for inter-parliamentary cooperation in the European Union” adopted in Lisbon in 2008²³.

The guidelines set out the main objectives that should be achieved through the assumed mechanisms of inter-parliamentary cooperation. These include, among others, the need to provide information and strengthen parliamentary scrutiny in all areas of EU competence and to enable effective execution of parliamentary competences in EU matters, in particular regarding national parliaments controlling the application of the principles of subsidiarity and proportionality.

It should also be emphasized that the introduction of effective mechanisms for inter-parliamentary cooperation can not only contribute to strengthening parliament's position regarding its own executive but will also increase the possibilities for effective functioning of parliamentary opposition. In every parliament, in order to perform the control function, access to full and reliable information is necessary, but parliamentarians are forced to rely heavily on government documentation due to time constraints and highly specialized

²⁰ S. Piedrafito, *EU Democratic Legitimacy and National Parliaments*, <https://www.ceps.eu/publications/eu-democratic-legitimacy-and-national-parliaments> (13.09.2019).

²¹ http://oide.sejm.gov.pl/oide/images/files/international/cosac_kopenhaskie_wytyczne_parlamentarne.pdf (10.09.2019).

²² http://oide.sejm.gov.pl/oide/images/files/international/konferencja_wytyczne_haga.pdf (13.09.2019).

²³ http://oide.sejm.gov.pl/oide/images/files/international/koferencja_wytyczne_po_lizbonie_new.pdf (13.09.2019).

issues regulated by European law. And these restrictions are not reduced even by the introduction in the Treaty of Lisbon of the principle of transferring documents to national parliaments directly by EU bodies. Knowledge about the negotiating position of governmental bodies (as well as about the line of negotiations adopted by other member states) must be provided by the executive. And subsequently, both the information provided, and the effects of the planned activities must be verified by parliamentarians. However, while deputies from the ruling party can also use additional, very often informal sources of information, for opposition deputies the abilities for verifying the correctness of data provided by the government to the parliament are very limited. In this situation, effective international cooperation significantly extends access to non-rationed sources of information and gives a chance – for all parliamentarians, regardless of party affiliations – an opportunity for real control over the activities of the executive²⁴. Thus, inter-parliamentary cooperation between parliamentarians of the member states of the European Union has important goals to achieve, to the benefit of both the member states and the EU itself, therefore it should be appreciated and receive institutional support.

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²⁴ On the impact of the international activity of parliamentarians on the traditional functions of parliaments see also L. Redei, *The European Parliament as a diplomatic precedent setter: the case of parliamentary relations with Kosovo*, [in:] *European Parliament and its international relations*, eds. S. Stelios, I. Daniela, London 2015, p. 279.

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