

Zentrum für Europäische Integrationsforschung  
Center for European Integration Studies  
Rheinische Friedrich-Wilhelms-Universität Bonn

Jürgen Mittag

**Escaping the Legitimacy-  
Accountability-Trap?**  
Perspectives of Parliamentary  
Participation in European  
Security and Defence Policy

Discussion Paper

C161  
2006

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ISSN 1435-3288

ISBN 3-936183-61-9

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Zentrum für Europäische Integrationsforschung  
Center for European Integration Studies  
Rheinische Friedrich-Wilhelms-Universität Bonn

Walter-Flex-Straße 3  
D-53113 Bonn  
Germany

Tel.: +49-228-73-4952  
Fax: +49-228-73-1788  
<http://www.zei.de>

Jürgen Mittag, 1970; Studies in political science, history and German literature at the Universities of Cologne, Bonn and Oxford 1992-1997, PhD from the University of Cologne in 2000; from 1997-2003 research assistant at the Jean Monnet-Chair for Political Science of the University of Cologne; since 2003 Senior lecturer (Akademischer Rat) at the Institute for Social Movements of the Ruhr-University Bochum; Major Fields of Research: Multi-level governance, Parliamentarism and the role of parties in European integration, political systems and social movements in Europe; recent publications: Fifteen Into One? The European Union and Member States, Manchester 2003 (ed. with W. Wessels and A. Maurer); "Der kölsche Europäer". Friedrich Carl von Oppenheim und die europäische Einigung, Münster 2005.

*Jürgen Mittag*

## **Escaping the Legitimacy-Accountability-Trap?**

Perspectives of Parliamentary Participation in  
European Security and Defence Policy

### ***Introduction***

Since the early 1980s foreign and security policy has attracted growing attention at the European level. To an increasing extent European summits and Intergovernmental Conferences have dealt with foreign affairs and provided the European Union with new powers.<sup>1</sup> Throughout the last years the formation of the European Security and Defence Policy (ESDP) has belonged to the most prominent and dynamical developments of European integration. From an academic point of view the European Security and Defence Policy has been analysed as “the ultimate challenge”,<sup>2</sup> while it is

- 1 See basically Wolfgang Wessels/David Allen/Reinhardt Rummel (eds.): *Die Europäische Politische Zusammenarbeit*, Bonn 1978; Simon Nutall: *European Political Co-Operation*, Oxford 1992; Elfriede Regelsberger/Philippe de Schoutheete de Ter-varent/Wolfgang Wessels (eds.): *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, Boulder 1997; Ben Soetendorp: *Foreign Policy in the European Union. Theory, History and Practice*, London 1999 and Simon Nutall: *European Foreign Policy*, Oxford 2000.
- 2 Jolyon Howorth: *European integration and defence: the ultimate challenge?* Chaillot Paper 43, Paris 2000.

regarded among political actors “to be one of [the] main projects of the EU in coming years”.<sup>3</sup>

Reasons bringing security and defence policy to the European level could be traced back to three major considerations. 1) Previous European defence institutions – namely WEU and ESDI within the NATO – have not been considered as effective. The embarrassment caused by the failing of European bodies and institutions in the crisis of former Yugoslavia in the 1990s, particularly in Kosovo, forced the EU member states to look for more coherent alternatives. 2) In view of its economic power the European Union has developed to a relevant player in the international system. The engagement in single market related fields such as trade or development policy is closely interwoven with foreign matters. Hence, the European Union can no longer reject the need to play a more capable and visible role in the international system including security and defence issues. 3) Confronted with reduced national (defence) budgets the European Union is increasingly considered by its member states as a framework for a stronger and more efficient involvement of nation states in international affairs. Based on these notions, the European Union in the past years has introduced European Security and Defence Policy in addition to the already existing elements of Common Foreign and Security Policy (CFSP).<sup>4</sup>

Starting with a brief overview on recent developments and missions in ESDP this paper first raises the question of public support in this policy field focussing on the discussion about legitimacy. Stressing the role of parliaments, the study then analyses the current institutional arrangements for ESDP at the EU level in terms of legitimacy or – more concretely – voice, scrutiny, transparency and accountability. Based on an analysis

3 Speech by Javier Solana at the 40th Commanders Conference of the German Bundeswehr in Bonn, 11 October 2005.

4 Cf. for the political and academic debate on these aspects Hans-Georg Ehrhart (eds.): *Die Europäische Sicherheits- und Verteidigungspolitik. Positionen, Perzeptionen, Probleme, Perspektiven*, Baden-Baden 2002; Werner Hoyer/Gerd F. Kaldrack (eds.): *Europäische Sicherheits- und Verteidigungspolitik (ESVP). Der Weg zu integrierten Streitkräften?*, Baden-Baden 2002; Erich Reiter/Reinhardt Rummel/Peter Schmidt (eds.): *Europas ferne Streitmacht. Chance und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP*, Hamburg 2002.

where parliaments at the EU level come in and where their room for manoeuvre is limited the paper concludes with ten options for prospective parliamentary participation in ESDP.

### ***Patterns of Institutionalisation and Differentiation***

At the summit in Cologne on 3/4 June 1999, the heads of state and government of the EU-member states agreed on a declaration which can be considered as the “naissance” of an autonomous ESDP stating: “We, the members of the European Council, are resolved that the European Union shall play its full role on the international stage. To that end, we intend to give the European Union the necessary means and capabilities to assume its responsibilities regarding a common European policy on security and defence”.<sup>5</sup> As regards the aims formulated at the Franco-British Summit in St. Malo in December 1998, it has been decided in Cologne to create new permanent political and military bodies within the Council structure in order to provide military expertise and support to the ESDP. Half a year later, the presidency conclusions at the European Council in Helsinki on 10/11 December 1999 recalled the guiding principles agreed in Cologne. The headline goal of establishing the framework for independent EU-missions and the so-called Rapid Reaction Forces (RPF) demonstrate a milestone in the process of political integration. In response to international crisis, the member states committed to the target of being able “by 2003, to deploy within 60 days and sustain for at least one year military forces of up to 50.000-60.000 persons capable of the full range of Petersberg tasks”.<sup>6</sup>

Based on these decisions, new institutions have been created in the following months such as the military committee, the military staff, and, above all, the new coordination centre of ESDP: the Political and Security Com-

5 Declaration of the European Council on strengthening the Common European Policy on Security and Defence, quoted in: Maartje Rutten (ed.): From St-Malo to Nice. European Defence: Core Documents, Chaillot Paper 47, p. 41.

6 It also has been officially stressed that this would “not imply the creation of a European army”. Presidency Conclusions of the European Council of Helsinki, 11 December 1999, quoted in: Maartje Rutten (ed.): From St-Malo to Nice. European Defence: Core Documents, Chaillot Paper 47, p. 82.

mittee (PSC). Besides its military dimension the ESDP included as well civilian capacities. In June 2000 the European Council in Feira decided to provide by 2003 “up to 5.000 police officers for international missions across the range of conflict prevention and crisis management operations”.<sup>7</sup> In Nice, the European Council officially approved the presidency report on a European Security and Defence Policy. The Nice treaty provided the legal basis for the Political and Security Committee (Article 25 TEU) which was made responsible for both CFSP and ESDP.<sup>8</sup> Despite the fact that CFSP and ESDP still follow intergovernmental rules, the invention of a new institutional set-up has shifted the decision-making process at least partially to the EU level in Brussels.

Since the coming-into-force of the Nice Treaty in February 2003, the institutional alteration has lost dynamic. The proposals of the European Convention and the Treaty establishing a Constitution for Europe, however, would have produced several innovations for provisions within the Common Foreign and Security Policy and ESDP such as the creation of the post of a Union Minister for Foreign Affairs, the preparatory work on the setting of an external action service, the solidarity clause, the extension of the Petersberg tasks and new possibilities of flexibility for the member states to cooperate more closely in the field of defence.<sup>9</sup> Further decisions to de-

7 Presidency Conclusions on the European Council of Santa Maria da Feira, 20 June 2000, quoted in: Maartje Rutten (eds.): From St-Malo to Nice, European Defence: Core Documents, Chaillot Paper 47, p.120.

8 According to the treaty provisions, the PSC has three major tasks: “Monitoring potential crisis situations affecting the EU, helping to formulate EU foreign and security policies and, during a future crisis situation, contributing to decisions about the political control and strategic decisions of any EU-organised operations.” Presidency Conclusions on the European Council of Nice, 9 December 2000, quoted in: Maartje Rutten (eds.): From St-Malo to Nice, European Defence: Core Documents, Chaillot Paper 47, p. 191f.

9 Cf. Franco Algieri/Thomas Bauer: Eine Frage der Macht: Die EU auf dem Weg zum sicherheits- und verteidigungspolitischen Akteur mit globaler Reichweite, in: Werner Weidenfeld (ed.): Die Europäische Verfassung in der Analyse, Gütersloh 2005, pp. 205-227; Udo Diedrichs/Mathias Jopp: Die Sicherheits- und Verteidigungspolitik der EU nach dem Verfassungsvertrag: Innovationen, Experimente, Impulse, in: Mathias Jopp/Saskia Matl (eds.): Der Vertrag über eine Verfassung für Europa – Analysen zur Konstitutionalisierung der EU, Baden-Baden 2005, pp. 343-366.

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velop security and defence policy have been taken although the war in Iraq and particularly the so-called Brussels “praline summit” in April 2003 – where perspectives for an autonomous operational military command outside the Nato structure were debated – revealed deep-rooted controversies between the EU member states: In December 2003 the European Council approved the proposal for a “European Security Strategy” which has been drafted by the High Representative Javier Solana in order to exploit a convincing case for more coherence, capability and forward thinking in countering new security threats. In July 2004 the “European Defence Agency” has been established by a Joint Action of the Council of Ministers in order to enhance potential in development, research and acquisition. The most recent progress was the decision on the so-called “battle groups” which should reinforce the ESDP militarily.

Even more noteworthy than the institutional dynamic of the European Security and Defence Policy is the operational progress. In summer 2006 the EU can look already upon nine ongoing and five completed missions. On 1 January 2003 the EU has started to deploy 395 police officers to Bosnia-Herzegovina to replace the International Police Task Force for civil crisis management of the United Nations in Bosnia-Herzegovina. In March 2003 the EU-foreign ministers have decided to take over the NATO-Mission “Allied Harmony” in Macedonia by EU-units. This mission would have been the first armed action in the framework of the ESDP, if the EU had not decided on 12 June 2003 to deploy a 1.500-man troop that was mainly comprised of French soldiers to be in Congo until 1 September 2003. In this framework the EU military forces worked under French command without relying on NATO equipment. In addition to these actions a growing number of missions has already been carried out or is planned for the near future as the succeeding table illustrates.

Ongoing Missions	Completed Missions
EU Police Mission in Bosnia-Herzegovina (EUPM) since 1 January 2003	EU Military Operation in former Yugoslav Republic of Macedonia (CONCORDIA) 31 March 2003 until 15 December 2003
EU Military Operation in Bosnia and Herzegovina (EUFOR-ALTHEA) since 2 December 2004	EU Police Mission in the former Yugoslav Republic of Macedonia (PROXIMA) 15 December 2003 until 14 December 2005
EU Police Mission in Kinshasa (EUPOL "Kinshasa") since April 2005	EU Military Operation in Democratic Republic of Congo (ARTEMIS) 12 June 2003 until 1 September 2003
EU security sector reform mission in the Democratic Republic of the Congo (EUSEC DR Congo) since 8 June 2005 (12 months)	EU Rule of Law Mission in Georgia (EUJUST THEMIS) 16 July 2004 until 15 July 2005
EU Integrated Rule of Law Mission for Iraq (EUJUST LEX) since 1 July 2005	EU Police Advisory Team in the Former Yugoslav Republic of Macedonia (EUPAT) 15 December 2005 until 14 June 2006
EU Support to AMIS II (Darfur) since 18 July 2005	
EU Monitoring Mission in Aceh (AMM) since 15 September 2005	
EU Border Assistance Mission at Rafah Crossing Point in the Palestinian Territories (EU BAM Rafah) since 30 November 2005	
EU Police Mission in the Palestinian Territories (EUPOL COPPS) since 1 January 2006	
[EU support to the United Nations' mission in the Democratic Republic of Congo] (EUFOR RD Congo) expected for July 2006	

Source: Own compilation based on information by the Council of the European Union.

At the latest the setting-up of autonomous rapid reaction forces has brought an end to the long-lasting debate on EU's categorization as solely civilian power. Though the EU follows primarily an approach known as "soft power" – intending to have a say without displaying military force – ESDP has transformed the European Union to a stronger actor in international politics, even in the military field, understood mainly as crisis management rather than territorial defence. The inventing of new bodies at the European level and the strengthening of EU's role in international affairs, however,



was not appreciated by all sides. On the one hand, serious concern has been expressed that the EU is militarily not prepared to fulfil the high expectations. Therefore an “expectation-capability-gap”<sup>10</sup> has been discussed for many years. On the other hand, most recently the question of democratic control and public support has produced severe concerns in terms of legitimacy and accountability in the political and academic world.<sup>11</sup>

### ***The Legitimacy-Accountability-Gap***

At first sight, public support for ESDP does not cause a problem at all. According to Eurobarometer 64 in autumn 2005 around 68% of all EU citizens were in favour of the principle of a common foreign policy, while just 21% were against it. A security and defence policy carried out at the EU level even obtains a stronger support: More than 77% of the respondents declared themselves in favour compared to 15% against.<sup>12</sup> At second view, however, the perception of ESDP might be regarded differently taking into consideration that a growing number of actions and activities in security and defence matters has to be accepted and supported by the citizens. Particularly with regard to the accomplished and ongoing EU missions it appears almost certain that the involvement of the European Union in various crisis states might lead sooner or later to political troubles when unpopular actions have to be taken, operations fail or even soldiers lose their lives.<sup>13</sup> The fundamental assumption of this paper is – in view of the Balkan crisis in the 1990s and the desperate search for troops for the 2006 Congo mis-

10 Cf. especially Christopher Hill: The Capability Expectation Gap, or Conceptualizing Europe's International Role, in: *Journal of Common Market Studies*, September 1993, pp. 305.

11 See for political debate Patrick Cox: The European Parliament and ESDP, in: Werner Hoyer/Gerd. F. Kaldrack (eds.): *Europäische Sicherheits- und Verteidigungspolitik. Der Weg zu integrierten europäischen Streitkräften*, Baden-Baden 2002, pp. 303-316 and Armin Laschet: *Parliamentarisation of the European Security and Defence Policy*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), working paper No. 82, August 2002.

12 See for statistical data Eurobarometer 64, December 2005.

13 For example, the debate on the deployment of troops to the Democratic Republic of the Congo has produced deep concerns as a German television poll on 20 May 2006 indicates a ratio of 94 % against this mission.

sion alike –,<sup>14</sup> that the citizens of Europe are the first to point to and to criticise the shortcomings of formulation, presentation and implementation of ESDP. As an increasing number of decisions will have to be taken in the framework of European Security and Defence Policy, legitimacy seems a necessary prerequisite. But who ensures legitimacy?

The multifaceted concept of legitimacy,<sup>15</sup> often considered as “government of, by, for the people”<sup>16</sup> can be explained as a “system of governance (...) in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their representatives”.<sup>17</sup> But in how far are the representatives at the EU level involved? This question leads in a straight line to the role of parliaments. Since parliaments are regularly the only body directly elected by the people(s), they are regarded as a core institution of legitimacy in democratic systems.

In view of security and defence, legitimacy has a particular impact, since these matters are not comparable to domestic issues. Parliaments in general have never had the same degree of participation in foreign and defence policy as in domestic policy fields. A lot of information in security and defence policy is of confidential or sensitive nature. Since the number of actors might affect the success of international actions, parliaments are involved only to a limited extent – merely left with symbolic formal influence. Nonetheless, parliaments have shown at the national level the ability to influence the conduct of defence and security policies by scrutinising the actions of the executive, ensuring transparency thus providing a link between the people and the armed forces. In view of security and defence pol-

14 See for the background of the Congo mission 2006 Daniel Göler: Europas Interessen in Zentralafrika. Die Mission “Eufor RD Congo”, in: Dokumente 3 (2006), S. 22-27.

15 See for different schools of thoughts Marcus Höreth: Die Europäische Union im Legitimationstrilemma: Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, Baden-Baden 1999 and Beate Kohler-Koch/Berthold Rittberger (eds.): Debating the Democratic Legitimacy of the EU, Lanham (MD) 2006.

16 Fritz W. Scharpf: Governing in Europe: effective and democratic? Oxford/New York 1999, p. 6 – referring to Abraham Lincoln’s famous Gettysburg address 1863.

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icy at the EU level a different picture appears. Both European defence policy and European armaments cooperation are currently designed to be purely intergovernmental – carried out by national governments in the EU framework behind closed doors at the same time as the general exclusion of all kinds of parliamentary bodies is highly visible.

Considering national parliaments it should be taken into account that the role and competences of national parliaments vary broadly in general and particularly in the field of security and defence issues. While some parliaments pronounce rights in initiating legislation and supervising the work of the respective government, other parliaments act primarily as a platform for communication.<sup>18</sup> None of the national parliaments of the EU member states has yet developed capacities to act except-half of the own national arena acquiring an own access to the EU-institutions or becoming cooked part of a European network. However, key decisions on the ESDP will be taken at the EU level in the Council.<sup>19</sup>

Competences that practically have been removed from the national parliaments have not been transferred to the European Parliament. Different from the EC pillar, the European Parliament has not succeeded in becoming involved and has also been unsuccessful in reinforcing its powers. The chance of the EP to achieve more efficient and democratic legitimacy for foreign policy is limited by the current Article 21 TEU stating that the European Parliament is restricted to “be[eing] kept regularly informed” on the development of the Union's CFSP. In view of this provision, it remains to reveal that democratic decision-making structures in ESDP seem to slip through the prevailing intergovernmental prerogative depriving both the

17 Philippe C. Schmitter: *How to Democratize the European Union... And Why Bother?* Lanham 2000, p. 3.

18 Some national parliaments, however, are able to take influence on security and defence issues in the national sphere since they can refer to strong information rights or rely on constitutional rules in case of deploying forces. According to Daniel Thym (*Beyond Parliament's reach? The Role of European Parliament in the CFSP*, in: *European Foreign Affairs Review* 1 (2006), pp. 109-127, here p. 122) Belgium, the Czech Republic, Denmark, Finland, Hungary, Ireland, Lithuania, Poland, Slovakia and Sweden require parliamentary consent in case of military operations.

national parliament's and the European Parliament's oversight. Accordingly, it has to be discussed whether we do not only witness the above mentioned "expectation-capability-gap" in view of the operational powers of ESDP, but also a "legitimacy-accountability-gap" due to the absence of a parliamentary participation in European Security and Defence Policy. This gap might actually turn into a trap if the EU will not attempt to change the basis of its own legitimacy in accordance with democratic postulates and a greater sensitivity for the participation of the people or at least for what is called public opinion.

The aspect of legitimacy is closely interwoven with the question, which institutions, legitimated by the people, are able to control the actions and instruments of ESDP. Following this notion, it frequently has been criticised that a vacuum has arisen in parliamentary control of foreign and security policy because neither the European Parliament – or any other "European" parliamentary body<sup>20</sup> – nor the national parliaments are able to guarantee scrutiny.<sup>21</sup> In terms of a linkage between legitimacy and scrutiny the key question is not only: "Who decides if and how to go to war?" but above all: "Who will be held accountable?" Isabelle Ioannides has drawn the scenario that an operation might be mandated by the UN, commanded by the EU, staffed by the militaries of EU member states, equipped by national assets and "politically controlled by the supply of military information gathered by EU member states, NATO member states (mainly the United States) and/or EU candidate states."<sup>22</sup>

19 The bodies established after the European Council of Helsinki (PSC, EUMC, EUMS) also have been shaped by the Council.

20 In addition, it has to be taken into consideration that the Parliamentary Assembly of the Western European Union – though still existent – has lost its already limited impact.

21 See for the academic debate on this matter Udo Diedrichs: *The European Parliament in CFSP: More than a Marginal Player?*, in: *The International Spectator* 2 (2004), pp. 31-46; Wolfgang Wagner: *Für Europa sterben? Die demokratische Legitimität der Europäischen Sicherheits- und Verteidigungspolitik*, HSFK Report 3 (2004).

22 See Isabelle Ioannides: *The European Rapid Reaction Force: Implications for democratic accountability*, BICC paper 24, pp. 16f.

In order to prevent disorientation and irresponsibility, it seems necessary that parliamentary bodies step in to compensate the loss of accountability, thereby preserving the democratic character of decision-making at the European level. The institution to attain – mostly but not solely – this role is apparently the European Parliament, since it is the only body directly elected at the EU level.<sup>23</sup> Following the Eurobarometer surveys of the last years, the European Parliament is undoubtedly the institution attracting the highest confidence at the European level. It represents the citizens of the Union, aggregates and publicises their views, fears and opinions as well as it acts on their behalf. Thus, it contributes more or less substantially to enhance the legitimacy of the Union. In turn to present a reliable picture of European Parliament's involvement in ESDP the following analysis investigates in detail the already existing channels of participation and interaction at the European level.

### ***Means of Parliamentary Participation in ESDP***

Due to the complexity of EC policies, the European Parliament covers political, economic, cultural and other aspects of foreign policy. Yet, defence as an exclusively intergovernmental policy constitutes a dimension of its own. The role of the European Parliament in ESDP is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of a presidency. In addition to these declarations and conclusions, the legal provisions of CFSP (and ESDP) are lined out in Title V TEU. Article 21 TEU, however, gives only imprecise evidence on competences of participation for the European Parliament when stating: “The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed (...). The European Par-

23 See for such demands Roland Bieber: Democratic Control of European Foreign Policy, in: *European Journal of International Law*, 1/2 (1990), pp. 148-173 and Reimund Seidelmann: Eine neue und demokratische Sicherheitspolitik für die EU, in: Andreas Maurer/Burkhard Thiele (eds.): *Legitimationsprobleme und Demokratisierung der Europäischen Union*, Marburg 1996, pp. 165-180.

liament may ask questions of the Council or make recommendations to it. (...).” Since the objective of Article 21 TEU is merely the “common foreign and security policy” – and in view that the proposal of the Convention as well as the “Treaty establishing a Constitution for Europe” have not substantially amended this provision – a parliamentary dimension of ESDP still lacks a formal legal reference to ESDP.<sup>24</sup>

### *Information, Consultation and Control*

A certain degree of parliamentary participation in ESDP requires the flow of information provided either by the Commissioner, the Council and the High Representative or by the presidency. According to concurrent statements of MEPs the information provided by the Council and the European Commission is sometimes satisfying and sometimes superficial. Yet, a general readiness for information especially through the Commission is stressed by many MEPs.<sup>25</sup> Consequently, in the sessions of European Parliament’s committees the European Commission is regularly represented. In the election period 1999-2004 former Commissioner Chris Patten has been 22 times before European Parliament’s Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) while national foreign and defence ministers appeared 54 times.<sup>26</sup> Contradictory to the well-established communication by the European Commission and the High Representative, Parliamentarians do not consider the information by the presidency as satisfying. The MEPs have repeatedly criticised that the presidency perceives its information obligations vis-à-vis the EP only very generally and vague. Both with respect to the quality and the quantity of the information, the presidency is not considered as productive interlocutor by the parliamentarians.

24 Still, article 17 TEU defines that CFSP “shall include all questions relating to the security of the Union, including the progressive framing of a defence policy, which might lead to a common defence, should the European Council so decide”.

25 See for example the statement of MEP Helmut Kuhne (SPE) in context of the European Security Strategy. Dok. PE 349/862v01-00.

26 Cf. Thym, p. 149.

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The way the European Parliament has tried to strengthen its information rights can be illustrated by its reaction when the High Representative, following a Council decision,<sup>27</sup> took several decisions in the field of security and defence policy that were intended to protect secret or confidential information.<sup>28</sup> In reaction to this “Solana Decision”, the European Parliament made serious plans to take the Council before the European Court of Justice and claim its right for appropriate information. In July 2002 the situation was eased when a draft agreement was discussed with the aim to ensure that the EP would be informed appropriately about EU defence and security policy. This agreement between the EP and the Council – concluded on 20 November 2002 and specified in the subsequent exchange of letters in December 2003 – has been a substantial step forward compared to the current provisions of Article 21 in terms of timing, scope and quality of information.<sup>29</sup> Special significance has attracted the provision that a “security committee” is created comprising four MEPs and the chairman of AFET which will be informed “of the content of the sensitive information”.<sup>30</sup> In view of these instruments, the European Parliament is not the favoured addressee of information but widely privileged in obtaining information vis-à-vis their parliamentary counterparts at the national level.

Control powers of parliaments are closely related to information rights. Regarding the EU level, it can certainly be said that questioning the Commission, the High Representative – the original instruments of the European

27 In a COREPER meeting in July 2000, a majority of member states decided to categorise all documents containing information on military or non-military crisis management. Public access is now refused to documents classified as top secret, secret, or confidential, whereas access to all other documents is granted or denied according to the previous rules.

28 Decision of Secretary-General/High Representative of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council. Official Journal C 239, 23 August 2000, p. 1.

29 See for a critical evaluation of the agreement Malin Tappert: European Parliament resigned to limited oversight of ESDP?, in: *European Security Review* 16 (2003).

30 Cf. Inter-institutional Agreement of 20 November 2002, Official Journal C 298, 30 November 2002. See for the background as well Daniela Kietz/Andreas Maurer/Christian Völkel: Interinstitutional Agreements in CFSP: Parliamentarization through the Backdoor, in: *European Foreign Affairs Review* 2 (2005), pp. 175-195.

Parliament's control opposing the other two institutions – is the major tool for control in ESDP. But one has to bear in mind that control and scrutiny are primarily reactive and practised – after the decision has been taken or the mission has been carried out – when both expenditure and policy experience can be quite harshly examined. Since the information and control of the EP is based to a large extent on the good-will of their interlocutors, informal arrangements, long-established forms of personal strings and internal arrangement play a crucial role in ESDP matters.

### *Legislation, Budget and Appointments*

The legal impact of the European Parliament in foreign, security and defence policy can be neglected since it is not entitled to approve or reject what the executive has proposed. Parliament's decision-making in foreign and defence issues remains in the shadow of weakness vis-à-vis the relevant actors in this policy field – the governments. The main instrument and the doorway to more influence is the budget – both at the European as well as the national level. Yet, the budget for external affairs of the European Union suffers from financial limitations. The budget has been restricted in 2005 to 3,5 billion Euro. Out of this amount less than two percent (62,6 million Euro) are obliged for CFSP.

Roughly summarised, in CFSP/ESDP budgetary affairs currently exists a difference between “administrative” expenditures which are part of the EC budget and “operational” expenditures which will also be financed by the EC budget unless the Council decides otherwise by unanimity.<sup>31</sup> The inter-institutional arrangement of 6 May 1999 has made parliamentary rights here even more tangible: “Whenever it adopts a decision in the field of CFSP entailing expenditure, the Council will immediately and in each case send the European Parliament an estimate of the costs envisaged (‘financial statement’), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training require-

31 See for details Antonio Missiroli: Euros for ESDP: financing EU operations, ISS Occasional Papers 45 (2003).



ments and security arrangements.”<sup>32</sup> This agreement leads to a strong form of accountability since it requires the Council to communicate immediately an estimate of the envisaged costs to the EP. There is, however, one remarkable exception: “Operations having military or defence implications”, have to be financed by the member states.<sup>33</sup> Hence, in view of Article 28(3) TEU, military expenditures will not be funded out of the Community budget.<sup>34</sup> According to a Council (of Foreign Ministers) decision, there are two categories of costs in ESDP: firstly, either common costs of the member states, consisting of funds such as those for transport, administration or public relations of the staff quarter. Secondly, individual costs, which will be taken separately by each member state according to its own expenses. The Council based solution can be considered as a compromise between countries ready to “merge” their defence expenditures and those disposed to adopt NATO’s “costs lie where they fall” principle. The expenses for the transport and accommodation of troops will be decided on a case-by-case basis. As a result of this arrangement for ESDP (military) affairs, it “is left up to the discretion, goodwill and generosity of individual countries, which have the additional option of abstaining and thus not paying for common missions”.<sup>35</sup> Considering these aspects, it can be revealed that the European Parliament has budgetary rights as for instance regarding police missions but no budgetary powers in the military area due to the absence of a common European defence budget.

Besides budgetary legislation the participation of the EP in “appointments” is also of relevance. Currently, the European Parliament is neither involved in the nomination or appointment of the High Representative nor in the choice of special envoys and representatives or any other post in ESDP. Nevertheless, the EP’s approval of the European Commission’s president followed by the entire Commission (Article 214 TEC) can be evaluated as

32 Inter-institutional arrangement of 6 May 1999. OJ C 172/9.

33 The respective contributions are referring to the national GDP.

34 See for the background Ramses A. Wessel: *The European Union’s Foreign and Security Policy. A Legal Institutional Perspective*, The Hague 1999, pp. 220-223.

35 Marta Dassù/Antonio Missiroli: *More Europe in Foreign and Security Policy: The Institutional Dimension of CFSP*, in: *The International Spectator* 2 (2002), pp. 79-88.

a step towards participation in appointments implying also relevance for foreign matters. By means of the “hearings” (not yet legally recognised in the TEC) of the individual Commissioners – including the Commissioner for external relations – the EP has succeeded at least on a small scale in expanding its authority vis-à-vis one institution of the European Union.

### *Parliamentary Cooperation and Internal Organisation*

An overall weakness of national parliamentary institutions in security and defence issues cannot be overlooked. Though some parliaments have considerable competences in the preparation of resolutions and the decision on the deployment of forces, their involvement in security and defence policies has usually an ex post character. National parliaments in general are able to exercise oversight a posteriori – especially via their budgetary competences. But they have neither developed into an equal player nor into a forum for diplomatic initiatives or international negotiations.

Nevertheless, the cooperation with national parliaments could be considered as an important gateway for the European Parliament to gain better information opportunities in the framework of ESDP. But these information channels have not been used widely. Despite the more or less satisfying information by the Commissioner in charge of external affairs and the High Representative, there are hardly any contacts with national representatives relevant for the Parliamentarians in ESDP matters. In particular the heterogeneity and plurality of the European Parliament as well as the wide range of tasks restrict the time budget for intensive attention for the national arenas. Moreover, the European Parliamentarians are only scarcely presented in the inner-state decision groups of national parliaments and parties.

Two institutionalised forms of cooperation have been developed: on the one hand, the Conference of the Parliament Presidents (since 1981)<sup>36</sup> and on the other hand, the COSAC (Conférence des Organes spécialisées en

36 The Conference of Speakers of Parliaments of the European Union is based on an initiative by former EP president Gaetano Martino. The first conference came to pass in January 1963. 1975 it was set on a regular basis by (two-year) intervals.

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Affaires communautaires, since 1989).<sup>37</sup> These two fora remained, however, without any considerable impact for several years. Although COSAC was re-valued by the Amsterdam Treaty and even though it is the only institutionalised body of national parliaments, its profile remains poor up to the present – both in general and particularly in view of security and defence politics. Contacts to member states' politicians are predominantly based on personal strings; a real and efficient coordination cannot be spoken of.

In contrast to the formalised collaboration in the framework of COSAC and the bilateral relations of national parliaments, the 1990s have seen more intense informal contacts between the national parliaments and the European Parliament.<sup>38</sup> Especially at the committees' level, often joint sessions of the EP and national parliaments that can be traced back to initiatives of the European Parliament are held. As Andreas Maurer has pointed out, the European Parliament invites frequently national parliaments to hold bilateral and multilateral meetings between specialised committees. These contacts between the European Parliament and national parliaments have grown from three or four a year in the late 1980s and early 1990s towards 20 to 25 in the late 1990s.<sup>39</sup>

Another component of parliamentary participation in ESDP affairs relates to the internal parliamentary organisation. While it is reasonable for the general aspects of European Security and Defence Policy to be discussed in the plenary, it seems difficult to apply such an understanding to individual

37 COSAC was established in November 1989 in Paris. It was first based on the conference of the EU committees. A decision was taken by the conference of presidents of the member state parliament and of the European Parliament. It was agreed that a body should be created, in which those national parliaments that had already installed a EU committee, – were able to dispatch its Europe-related representatives in order to act by a more intensive cooperation among each other and also with the European Parliament. Especially, a better exchange of information and a mutual support in the national work on Europe were envisioned.

38 See for details Andreas Maurer: *Parlamentarische Demokratie in der Europäischen Union*, Baden-Baden 2002.

39 In addition, on inquiry of national committees, bilateral meetings with the respective committee of the EP have been held in order to provide the national committee with background information.

actions or declarations. It seems necessary to differentiate more specifically whether the Parliament in its entire composition should be involved or whether it should be the defence specialists who are addressed. As the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) covers an extremely wide range of policy fields – from the accession process of the candidate countries to the EU's relations with the South Caucasus – the internal committee structure of the European Parliament has already been revised in order to provide a more efficient way of coping with the heavy workload. With the new election term in 2004 a subcommittee on Security and Defence (SEDE) – consisting of 30 parliamentarians, mostly members of AFET – has been re-invented.<sup>40</sup> The new committee has already taken up its task of engaging in discussions on the evolution of European Security and Defence Policy as well as scrutinising ESDP missions. Though the institutionalisation of this new body might provide the basis for a higher intensity for debate with EP's counterparts in the Commission and the Council it remains to be seen whether the committee will be able to give the European Parliament a stronger public say in discussions on defence policy. The debate on the mission to the presidential and parliamentary elections in the Democratic Republic of the Congo in the European Parliament on 23 March 2006 has so far only obtained little attention by the public.

Summarising all these aspects it can be concluded that the European Parliament does not yet play a substantial role in the European Union's security and defence policy-making. Since formal powers of the European Parliament in this field are extremely poor, the EP should – in terms of legitimacy – claim to reinforce its power at all levels but particularly in order to enhance control and accountability.

40 A sub-committee on Security and Disarmament has already existed in the fourth parliamentary term 1994-1999. See for the background Catriona Gourlay/Malin Tappert: Revising the European Parliament's Scrutiny of foreign affairs and defence, in: *European Security Review* 21 (2004).

## ***Ten Options for Parliamentary Participation in ESDP***

Without a substantial oversight of the EP European Security and Defence Policy even in future will lack the parliamentary dimension that has become the backdrop against which national parliaments conduct the scrutiny of “their” governments. All in all, it seems reasonable that the actors at the European level – be it the European Commission, the High Representative, the Council or the Political and Security Committee – should have to take into consideration that they will eventually be held to accountable by the European Parliament, effectively controlling the decisions taken and the initiatives started. Based on the notion of filling the missing link at the EU level a set of options for institutional changes in ESDP and a potential stronger involvement of the European Parliament will be offered for discussion:<sup>41</sup>

1. In the ongoing “period of reflection” – which followed the crisis after the people in France and the Netherlands voted against the constitution, whereas Britain opted to postpone a referendum – the European Parliament has to focus stronger on a revision of Article 21 TEU. Since the objective of Article 21 is limited to the Common Foreign and Security Policy, a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP. Particularly the term ESDP should find its way into the Treaties proper. This might help to break the artificial distinction between CFSP and ESDP matters. A more workable method might be to differentiate e.g. between long-term strategies including their conduct and strictly military operations.
2. The appointing functions of the European Parliament so far have only been developed in a fairly restricted way. Hence, since the High Representative has obtained a key role in CFSP and ESDP, the European Parliament should become more involved in his or her appointment. At least the need to consult the EP along similar lines to the ECB-investiture should be invented. In terms of legitimacy in ESDP matters,

the assent of the European Parliament appears even more desirable, as it is applicable for the Commission.

3. The right of information on ESDP issues can be considered the most notably aspect of efficient parliamentary participation. In this respect, the links of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy with the Council and its bodies should be improved along the lines of the inter-institutional agreement of November 2002. It would be especially useful for the Parliament to establish links to the PSC as it is envisaged to a certain degree in the 2005 confirmation of the inter-institutional agreement, guaranteeing now "timely information on both the recent and forthcoming developments and their budgetary implications".<sup>42</sup> The EP should claim the right to obtain access not only to decisions that the Council intends to adopt but also to all other information related to foreign, security or military actions in order to gain a more comprehensive overview.
4. To carry out legal acts, parliaments generally must not only have the leeway to formulate their position on all proposals for legal measures, but also the right to approve or to reject what the executive has proposed. Hence, the European Parliament should claim a formal participation – at least in terms of consultation – in civil crisis management rather than military crisis management. Although a distinction between civil and military means might prove difficult in a case-to-case evaluation, the European Parliament should focus on the civil dimension of EU security and defence policy including crisis management by non-military means as defined in Annex I of the Presidency Report in Feira on strengthening the Common European Security and Defence Policy and in Annex 2 to Annex IV of the Helsinki Conclusions.

41 This set of options is based on a study which had been carried out by the author in a team of EU experts on behalf of the European Parliament in 2002/2003 (No. IV/2002/01/01).

42 See the Agreement in Triilogue on certain elements regarding the future budget for 2006, Press Release on 1 December 2005 of the Council (15243/05 (Presse 338)).

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5. The European Parliament should as well focus on a revision of the criteria under which the defence budget is drawn up. Currently, operations, “having military or defence implications”, have to be financed by the member states. Based on the relevant accords, the EP should stress that the common costs including both operational and administrative expenditures should no longer be financed jointly by the member states but by the EC budget. This would provide the European Parliament with an instrument of indirect control that it can exert through its rights to participate in the drafting of the EC budget. In practical terms, this might be carried out by a decision on the overall costs of the EP at the beginning of the budget procedure, which will then be distributed by the Council to single positions.
6. Basic parliamentary involvement in ESDP affairs is a product of “access”, thus requiring efficient and comprehensive information channels. In practice, a lot of information has to be obtained from the national level. Thus, the European Parliament should improve co-operation and exchange of information with national parliaments by setting up some kind of working contacts at Committee level or – for more general issues – a policy-oriented sub-COSAC related to foreign, security and defence issues. It is recommended that more efficient ties in day-to-day politics and a specialised EP-based parliamentary conference on foreign, security and defence policy should ensure efficiency and a better performance in day-to-day-policies than the current COSAC is able to offer.
7. From a general view, the involvement of national parliaments of the EU member states in defence issues can be considered as weak and for the most part reactive. There are even countries without any formal parliamentary rights on the deployment of forces abroad. For this reason, it seems necessary that national parliaments start a learning process shifting their attention to higher degree towards Brussels. This might be achieved by entering into a benchmarking exercise looking at minimum standards for best practices of national legislatures in foreign, security and defence policy.

8. With the transfer of tasks, the WEU has become a comparatively “inactive” organisation. Though the Parliamentary Assembly of the WEU has refused to accept the institution’s demise, the European Parliament should insist that the mandate of the Western European Union and its parliamentary assembly expires. The remaining competences of the WEU should be transferred entirely to the EU. In this case, the mutual assistance clause of the Treaty on the Western European Union might reasonably be placed in the European treaties – similar to the provisions of the “Treaty establishing a Constitution for Europe”. This would imply a collective defence mechanism for the EU in the event of an attack (or act of terrorism) against any member state.
9. The relationship of the EU with NATO is a key element for ESDP, especially given the growing urgency to deploy military forces. The European Parliament has already increased its attention for NATO since its “Delegation for relations with the NATO Parliamentary Assembly” has come together in 2005 for six times compared to two times in 2004. Nevertheless, direct communication with NATO and NATO member states has to be improved. At least a semi-annual regular meeting between representatives of the European Parliament and representatives of the NATO Parliamentary Assembly should be agreed upon. Moreover, it seems necessary that the European Parliament should push for the conclusion of the elusive agreement between the EU and NATO on collaboration in military crises management.
10. Since AFET is still concerned to a large degree with questions of enlargement, the work of the Committee should concentrate more effectively on security and defence aspects in the future, as has internally already been initiated with the invention of a Subcommittee on Security and Defence. In the long run, AFET should also broaden its efforts to make the public more aware and sensible what issues in external affairs are covered at the European level in order to develop a broader discourse on CFSP/ESDP issues.

Considering the strong political pressure by the EU member states governments to push ahead – even in the absence of the Constitutional Treaty –



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with the development of ESDP it seems necessary that the parliamentary dimension will strike new paths. With European integration ever more progressing, the member states will find it increasingly difficult to avoid revising the role of the European Parliament, by giving this body an even greater role in decision-making. That will make the European Parliament – at least in a long-term perspective – a more relevant actor in European Security and Defence Policy. The probably most effective weapon of the parliaments is to arouse public opinion.

Since communication structures in the European Union still relate to the national sphere it seems inevitable that legitimacy and accountability will be shared between the European Parliament and the national parliaments on the basis of their respective rights and room for manoeuvres under the relevant treaties and constitutions. Accordingly, it is a joint task to ensure efficient cooperation and communication means. Although some national parliaments are reluctant to grant further rights to the European Parliament in (CFSP and) ESDP, the question of working links between national parliaments and the European Parliament might be a key for a coherent and efficient parliamentary dimension of European Security and Defence Policy in the near future – facilitating the European Union to escape from the legitimacy-accountability-trap.

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