



Geneva Centre for the Democratic Control of  
Armed Forces (DCAF)

Policy Paper - №28

## **Parliamentary Oversight of ESDP Missions**

*Hans Born, Suzana Anghel, Alex Dowling, Teodora Fuior*



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## Abstract

Legislative oversight of executive decisions to deploy troops abroad is seen as a key agent of democratic legitimacy. However, parliamentary scrutiny of ESDP is at present deficient. The combination of supranational and intergovernmental elements that comprise the EU make for an ill-defined role for the European Parliament and its national equivalents in the realm of security and defence policy.

This Paper primarily explores current practices in the parliaments of EU member states for scrutinising ESDP decision-making. Oversight practices were investigated in four ESDP missions. The results of our research show that a democratic deficit of ESDP missions exists at European and at the national levels. Our findings outlined a wide variation among national parliaments with regard to important aspects of ESDP oversight: the legal basis for oversight; the power of prior approval; the handling of civilian versus military ESDP missions; the parliamentary interest in scrutinising ESDP; the executive practices of information-sharing with legislatures. This lack of uniformity has negative consequences for the effectiveness of Europe's parliamentary oversight architecture. The European Union's institutions and its decisional mechanisms add an extra challenge for the democratic legitimization of policy at national level. Even parliaments traditionally perceived as strong legislatures, who exercise the formal power to approve national participation in missions abroad, might fail to effectively participate in the decision making process on ESDP missions in Brussels. Civilian ESDP missions especially, in spite of representing the largest number of deployed European operations, fall through the cracks of parliamentary oversight, finding themselves in a larger democratic deficit than the ESDP military missions.

Four models of national parliamentary oversight of ESDP were identified from the research and 25 parliamentary best practices at the national level were collated. As a result of these findings at the national level, three groups of recommendations are put forward to strengthen the European Parliament's role in filling the present void in ESDP parliamentary scrutiny through improved inter-parliamentary cooperation, enhanced cooperation with the Council and strengthen oversight practices within the European Parliament itself.

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# Parliamentary Oversight of ESDP Missions<sup>1</sup>

*Hans Born, Suzana Anghel, Alex Dowling, Teodora Fuior*

## 1. Introduction

### 1.1. Objectives and Methodology

While the use of force under international auspices has increased substantially, the democratic accountability of such action has lagged behind. Even established democracies – where the control of armed forces is taken for granted – are struggling to adapt their parliamentary control mechanisms to new realities. Increasingly, decisions regarding the use of force are being made by national governments in the framework of international organisations. One such example is the EU, which is carrying out civilian and military crisis management operations within the framework of the European Security and Defence Policy (ESDP). Since the EU launched its first military mission in 2003 (operation Concordia in the Former Yugoslav Republic of Macedonia- FYROM), it has undertaken 20 operations, including 5 military and 15 civilian ESDP missions, not only in Europe but also in the Caucasus, Middle East, Southeast Asia and sub-Saharan Africa. The increasing importance and number of ESDP missions has provoked strong debate regarding the complex nature of EU crisis management decision-making and resulting implications for parliamentary accountability

The aims of this paper are two-fold: (a) to examine the role of the EP and national parliaments of EU Member States in exercising their democratic and legal rights to scrutinise ESDP crisis management operations; (b) to set out policy recommendations for improving EP oversight (both ex ante and post hoc) of ESDP missions.

The methodology used for meeting the research objectives includes three elements:

- (a) a literature review of the existing body of research on parliamentary oversight of ESDP;
- (b) a quantitative EU-wide survey, with the objective of forming a general overview of the involvement of national parliaments in the oversight of ESDP missions;

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<sup>1</sup> In 2007, the Sub-committee on Security and Defence (SEDE) of the European Parliament (EP) mandated the Geneva Centre for the Democratic Control (DCAF) to conduct a study on: 'Parliamentary Oversight of civilian and military ESDP missions - European and national levels.' The research undertaken for that study represents the foundation of this paper. More information about the research project, as well as the complete text of the DCAF study mandated by the EP, may be found at: [http://www.dcaf.ch/parliamentary-oversight-ESDP-missions/\\_index.cfm](http://www.dcaf.ch/parliamentary-oversight-ESDP-missions/_index.cfm). The Study can also be found on the European Parliament website at: [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/dv/pe348610\\_/PE348610\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/pe348610_/PE348610_en.pdf)

- (c) qualitative in-depth research in six selected EU states that constitute different political-constitutional models, are geographically dispersed across the EU and are major troop-contributors to international missions. They are: France, Germany, Poland, Romania, Spain and the United Kingdom.

In order to detail oversight practices, the study focuses on how far parliamentary oversight occurred at the national level in four ESDP mission case studies. Two military ESDP missions – EU Force (EUFOR) Althea in Bosnia Herzegovina and EU Force in the Democratic Republic of Congo (EUFOR DRC) – and two civilian ESDP missions – the EU Police Mission in Bosnia and Herzegovina (EUPM Bosnia) and the EU Border Assistance Mission at the Rafah Crossing point in the Palestine Territories (EU BAM Rafah) - were chosen. These missions were chosen for their variety: EUFOR Althea is conducted within the Berlin Plus Agreement, using NATO assets and capabilities, whilst EUFOR DRC was an autonomous EU mission with Germany as the lead nation. EUPM was chosen since it was a substantial mission in terms of human and material contributions from EU Member States. All four missions were chosen to maximise the involvement of the six selected states.

## **1.2. Parliamentary Oversight of ESDP Missions: Scope and Issues**

### **Contrasting Views on Democratic Accountability of ESDP Decision Making**

ESDP decisions are taken collectively and unanimously at the European level by the Council of Ministers. The literature on ESDP accountability focuses on whether there is a ‘double democratic deficit’ at both the European and national level or at the national level only, if at all. Two groups of scholars have developed contrasting views on democratic accountability of ESDP, alternatively from an ‘intergovernmental’ or a ‘trans-national’ perspective. In addition, the European Parliament’s toolbox for scrutinising ESDP has also begun to attract closer examination<sup>2</sup>.

Scholars favouring an intergovernmental view deny the existence of a democratic deficit at the European level for three reasons. Firstly, for intergovernmentalists, foreign policy positions are formulated in advance at the national level and defended in the Council by member states governments during negotiations. Consequently, the democratic deficit, if it exists at all, must be evaluated at the national level<sup>3</sup>. Secondly, intergovernmentalists dismiss the argument that CFSP/ESDP development leads to an increase of executive power and a decrease of

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2 Nickel, Dietmar & Quille, Gerrard (2007), “In the Shadow of the Constitution: Common Foreign and Security Policy/European Security and Defence Policy Adapting to a Changing External Environment”, Jean Monnet Working Paper, no. 02/07 available at: <http://www.jeanmonnetprogram.org/papers/07/070201.html>

3 Moravcsik, Andrew (2004), ‘Is there a “Democratic Deficit” in World Politics? A Framework for Analysis’, in *Government and Opposition*, Vol. 39, No. 2, April: 336-363.



national parliamentary control<sup>4</sup>. National governments remain individually accountable to their respective parliaments for the position defended in the Council. Thirdly, intergovernmentalists stress that member states commit their national troops and financial resources to implement ESDP decisions, therefore national oversight practices alone should be enhanced, if required<sup>5</sup>.

In contrast, scholars favouring a trans-national perspective contend that CFSP/ESDP decisions represent more than the result of mere intergovernmental bargaining<sup>6</sup>. They consider the European Council to be a unique institutional setting where predetermined national positions are constantly adjusted and accommodated to reach compromise and consensus<sup>7</sup>. Institutionalists point to a sense of commonness forged between the member states' permanent representatives in Brussels by day-to-day interaction in the Council<sup>8</sup>. They underline the collective nature of ESDP decisions and stress that only the means of implementation – troops and assets – remain the prerogative of national governments. In sum, institutionalist/transgovernmentalist analysis of national and the European level oversight mechanisms warns against an increase of governmental weight in foreign and security policy affairs<sup>9</sup> and points to the emergence of a 'double democratic deficit' in ESDP.

The democratic deficit as constituted at the national level is primarily the result of four factors. Firstly, as the findings of this study show, there are only a few national parliaments empowered to provide their government with a clear negotiating mandate prior to the adoption of a decision by the Council<sup>10</sup>. Secondly, due to diverging national legal procedures, few national parliaments are mandated to formally approve troop deployments in an international operation<sup>11</sup>. Parliaments' powers of approval are often limited to the deployment of armed forces and do not extend to the secondment of national police personnel to external police missions. Thirdly, national parliaments receive security and defence-related information from their respective governments and are therefore dependent upon their government's transparency or goodwill in making information available. Finally, national parliaments' powers of scrutiny are largely limited to the annual approval

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4 Follesdal, Andreas and Hix, Simon (2006), 'Why there is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', *Journal of Common Market Studies*, Volume 44, No. 3, pp. 533-562.

5 Thym, Daniel (2006), 'Beyond Parliament's Reach? The Role of the European Parliament in the CFSP', *European Foreign Affairs Review*, No. 11, pp. 109-127.

6 Stavridis, Stelios (2001), 'The Democratic Control of the EU's Foreign and Security Policy after Amsterdam and Nice', in *Current Politics and Economics of Europe*, Vol. 10, No. 3, pp. 289-31.

7 Lewis, Jeffrey (2000), 'The methods in EU decision-making and administrative rivalry in the Council's infrastructure', *Journal of European Public Policy*, No7, Issue 2, pp. 261-289.

8 Smith, Michael E. (1998), 'Rules, Transgovernmentalism and the expansion of European Political Cooperation', Sandholtz, Wayne and Stone Sweet, Alec, *European Integration and Supranational Governance*, Oxford University Press, Oxford, pp. 304-333.

9 Wagner, Wolfgang (2006), 'The democratic control of military power Europe', *Journal of European Public Policy*, No. 13, Issue 2, pp. 200-216.

10 Wessels, Wolfgang et al. (2002), *The Parliamentary Dimension of CFSP/ESDP - Options for the European Convention*, TEPSA, Brussels.

11 Born, Hans and Urscheler, Marlene (2004), 'Parliamentary accountability of multinational peace support operations' in Born, H. and Hänggi, H. (eds), 2004. pp. 61-67.

of funds for external operations, as part of the overall national defence budget<sup>12</sup>. As a result, national parliaments possess an incomplete view of ESDP affairs and their oversight powers are limited to overseeing their national government's actions. They are neither collectively associated with the ESDP decision-making process nor able to collectively scrutinise the implementation of a Council decision.

At the European level, the European Parliament is, according to Article 21 of the Treaty on the European Union (TEU) 'consulted' by the Presidency 'on the main aspects and the basic choices of the common foreign and security policy'. The Presidency 'shall ensure that the views of the European Parliament are duly taken into consideration'. Furthermore, the Parliament is 'informed' of the development of CFSP by the Presidency and the Commission. The parliament may ask questions, make recommendations and 'shall hold an annual debate on progress in implementing the common foreign and security policy'. As Article 21 TEU does not explicitly state that the EP shall receive information prior to a Council action in the field of CFSP/ESDP (though it does not preclude it), the academic literature has underlined the fragile oversight position of the EP<sup>13</sup>. The EP has earned its current oversight legitimacy by engaging in a day-to-day dialogue with the Council and the Commission. The EP has managed to increase its formal oversight powers in CFSP by concluding Inter-institutional Agreements (IIA) with the Council and the Commission. In this sense, the 2006 IIA (articles 42-43) on budgetary discipline and sound financial management has opened the door for the EP to be informed prior to the moment a decision entailing CFSP expenditure is taken and 'no later than five working days following the final decision'. This trend was further developed in the exchange of letters between the EP and the 2006 Finnish Presidency, which allows for the EP to be informed *ex ante* on CFSP/ESDP actions entailing CFSP budgetary expenditures<sup>14</sup>. The Lisbon Treaty provisions (amended article 21 TEU), once in force, may contribute to strengthen the EP's oversight position, particularly *ex ante*, by enabling parliament to get more fluid and timely information on CFSP/ESDP developments from the Council and the Commission. In this sense, the High Representative of the Union for Foreign Affairs and Security Policy 'shall regularly consult' the European Parliament on CFSP/ESDP developments and shall 'ensure that the views of the European Parliament are duly taken into consideration'. Furthermore, the number of plenary EP debates on CFSP/ESDP will be raised to two per year.

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12 Gourlay, Catriona (2004), 'Parliamentary Accountability and ESDP: The National and the European level', in Hans Born and Heiner Hanggi (eds) *The double democratic deficit: parliamentary accountability and the use of force under international auspices*, Ashgate and DCAF, Aldershot, pp. 195.

13 Bono, Giovanna (2006), 'Challenges of Democratic Oversight of EU Security Policies', *European Security*, Vol. 15, No.4, December, pp. 431-449; Diedrichs, Udo (2004), 'The European Parliament in CFSP: More than a Marginal Player?', *The International Spectator*, Volume XXXIX Issue 2, pp. 31-46; Gavrilescu, Suzana-Elena (2004), 'Parliamentary Scrutiny of European Security and Defence Policy: is there Anybody in Charge?', *Perspectives*, No. 22, pp. 75-93.; Gourlay, Catriona (2004), 'Parliamentary Accountability and ESDP: The National and the European level', in Hans Born and Heiner Hanggi (eds) *The double democratic deficit: parliamentary accountability and the use of force under international auspices*, Ashgate and DCAF, Aldershot, pp. 183-200.

14 Nickel, Dietmar & Quille, Gerrard (2007),

## Ex ante and Post hoc Parliamentary Oversight of ESDP Missions

In order to achieve a clearer understanding of parliamentary involvement in ESDP decision-making a distinction is made in this paper between ex ante and post hoc parliamentary accountability of ESDP missions<sup>15</sup>.

Ex ante parliamentary accountability of ESDP missions refers to any oversight exercised by a parliament before the troops are deployed, whether it occurs before or after the Joint Action is signed in the Council. The most important instrument for exercising ex ante accountability is the power of prior authorisation, that is parliament's power to approve, reject or even amend the executive's proposal to deploy troops abroad. Ex ante accountability can also allow parliament to exercise budget control, raise questions, organise (public) hearings and invite experts to voice their opinion on upcoming missions.

Post hoc accountability refers to any oversight exercised after the troops have been deployed abroad. Important parliamentary instruments in this regard are the power to: withdraw troops, extend the deployment, conduct inquiries, raise questions, hold hearings, conduct financial audits and visit troops.

Three factors determine the effectiveness of parliamentary accountability: authority, ability and willingness. Firstly, authority refers to the power of parliament to hold government accountable, which is derived from the constitutional and legal framework as well as customary practice. Customary practices are often non-binding but are powerful nevertheless, particularly if they are reinforced by the power of parliament to send the government (or a minister) home or to reject/amend the yearly budget for deployments abroad. If these additional powers are lacking, parliament depends on the willingness of the government to cooperate. Secondly, the ability of parliaments to hold the government accountable refers to resources, expertise, staff and access to (sometimes classified) information necessary to assess government decision-making. Thirdly the willingness of members of parliament to hold government accountable depends, among others, on party discipline<sup>16</sup>.

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15 Bono, Giovanna (2002), 'European Security and Defence Policy: theoretical approaches, the Nice Summit and hot issues', ESDP Democracy Paper, available at: <http://www.europeansecurity.net/Documents/documents/ESDP&Democracy.pdf>. Born, Hans and Hänggi, Heiner (eds) (2004), *The double democratic deficit: parliamentary accountability and the use of force under international auspices*, Ashgate, Aldershot, pp. 53-72.

16 Born, Hans and Hänggi, Heiner (2005), *The Use of Force under International Auspices - Strengthening Parliamentary Accountability*, DCAF Policy Paper no. 7, Geneva, available at [www.dcaf.ch](http://www.dcaf.ch)

## 2. European Parliament Oversight of ESDP

### 2.1. ESDP Executive Decision-Making

In order to understand how parliamentary oversight of ESDP occurs, the context of executive decision-making in Brussels must first be understood.

The Political and Security Committee (PSC), composed of national representatives at the ambassador/senior level, plays a central role in the definition and follow-up of the EU's response to crisis. The PSC drafts opinions and may recommend that the Council adopt a Joint Action (European Council, Nice, 2000). The Commission is associated through a representative attending PSC meetings and is more active in the case of civilian crisis management. In the end, all decisions are taken by the Council in its General Affairs and External Relations (GAERC) formation<sup>17</sup>.

Based on the Crisis Management Procedures (CMP) (Council Document 11127/03), six phases of the decision-making process can be distinguished:

**Phase 1 - *Routine.*** This phase refers to on-going monitoring, analysis and early warning of a crisis situation. Member States and Commission representatives exchange information within the PSC. The European Union Military Staff (EUMS), the Police Unit, the Council General Secretariat (CGS), the Joint Situation Centre, and the Commission planning staff, in cooperation with other relevant bodies in the Council Secretariat and the Commission, carry out advance planning and preparatory actions, including civil-military co-ordination.

**Phase 2 - *Crisis build-up and development of the draft Crisis Management Concept (CMC).*** In case a crisis builds up and EU action is judged appropriate, the PSC may call for an ad-hoc Crisis Response Coordinating Team (CRTC) to develop the Crisis Management Concept (CMC). The CMC includes an assessment of the situation on the ground and sets out options for EU action.

**Phase 3 - *Approval of the Crises Management Concept and development of strategic options.*** The CMC is adopted by the Council, following an opinion by the PSC. The timeframe for the development (phase 2) and the adoption (phase 3) of the CMC differs from mission to mission, depending on its complexity and size. (one year, in the case of EUFOR Althea, or a few weeks in the case of Artemis and the Aceh Monitoring Mission). The strategic options for both military and civilian missions are developed and the draft decision to take action (i.e the Joint Action) is elaborated for approval by the Council.

**Phase 4 - *Formal decision to take action and development of planning documents.*** The Joint Action is adopted by unanimity within the Council. The text of a CFSP Joint

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<sup>17</sup> Denmark has opted out from actions with military and defence implications carried out under the EU Treaty.

Action covers: the mission mandate; its objective; its scope; the resources put at the Union's disposal by the member states; the initial duration of the mission; as well as the chain of command. The whole process of adopting a Joint Action can take between four and nineteen weeks, depending on the level of urgency and the political consensus among member states<sup>18</sup>. Following the adoption of a Joint Action, the Council appoints the Operation Commander.

**Phase 5 - *Implementation.*** The PSC exercises political control and strategic guidance over the operation, be it civilian or military.

**Phase 6 - *Refocusing of EU action and termination of operations.*** In case there is need for a change in the mandate or duration of the mission, the Crisis Management Concept is examined and revised. In case the Union's action is refocused or terminated, the relevant EU bodies assess the mission and look for lessons learned both in terms of inter-institutional cooperation and ground implementation.

From a democratic accountability perspective, phases 1 to 4 are of relevance to ex ante parliamentary scrutiny, as they take place before the actual launch of the mission. Occurring after the commencement of the mission, phases 5 and 6 are relevant to post hoc scrutiny by parliament.

## **2.2. European Parliament Oversight of ESDP**

### **European Parliament Ex Ante Powers in Oversight of ESDP**

#### *EP prior authorisation of ESDP missions*

The EP does not have the formal power to authorise an ESDP mission, but it can be informed and consulted by the EU's executive institutions during phases 1-4 of the Crisis Management Procedures. The EP is not associated to the decision-making process unless additional resources are required from the CFSP Budget for a civilian crisis management operation, in which case the Council must approach the EP for a budget increase<sup>19</sup>. Thus, the EP's ex ante role in overseeing ESDP missions is largely based on access to information and dialogue with the EU's executive institutions and, if additional resources are required, a decision on an augmentation of the EU budget.

#### *Issuing non-binding EP Resolutions and Recommendations*

The EP may issue non-binding resolutions and recommendations before a Joint Action decision is taken or before an ESDP mission is launched, using

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<sup>18</sup> The scheme with the Procedure for the definition and adoption of Joint Actions is available at: [http://ec.europa.eu/external\\_relations/cfsp/fin/procja.pdf](http://ec.europa.eu/external_relations/cfsp/fin/procja.pdf)

<sup>19</sup> Nickel, Dietmar & Quille, Gerrard (2007), "In the Shadow of the Constitution: Common Foreign and Security Policy/European Security and Defence Policy Adapting to a Changing External Environment", Jean Monnet Working Paper, no. 02/07 available at: <http://www.jeanmonnetprogram.org/papers/07/070201.html>



them as a means to express support for an ESDP mission. The EP has issued, ex ante, resolutions in respect to three ESDP military missions, EUFOR Althea, EUFOR DRC and EUFOR Chad/Central African Republic (CAR). The resolution on EUFOR Althea was adopted on 17th November 2004, almost half a year after the adoption of Council Joint Action and two weeks prior to the launch of the operation. The resolution on EUFOR DRC (16th March 2006) was adopted prior to the Council Joint Action. A first resolution on EUFOR Tchad/CAR was adopted on 27th September 2007, nearly three weeks prior to the adoption by the Council of a Joint Action (15 October 2007). A second resolution urging for rapid deployment of EUFOR Chad/CAR was adopted by the EP on 12 December 2007, nearly one month a half prior to the deployment (28 January 2008). The three resolutions were issued following statements made in front of the EP by the Council and the Commission. In the case of the civilian missions, no EP resolutions were passed ex ante.

#### *Parliamentary questions and hearings*

A Committee or a political group or forty MEPs can table questions to the Council and the Commission, whilst an individual MEP may address written questions to the Council or the Commission. Out of the four missions of interest to the present study, only EUFOR Althea was subject to an ex ante question on the capacity of the mission's personnel to comply with human rights standards and avoid abuses. To date, no public hearing on a specific ESDP mission has been organised prior to the adoption of a Joint Action or the launch of an ESDP mission.

#### *Statements made by Council and Commission representatives before the EP*

Another important power of the EP is to request members of the Council or European Commission to appear before it. EU officials may appear in front of the parliament for statements at their own initiative or at the Parliament's invitation. According to Rule 103-1 of the EP's Rules of Procedure, Representatives of the Council and the Commission may request to appear at their own initiative before the EP if they attain permission from the Presidency of the Parliament, for example to make a statement prior to the adoption of a Joint Action or prior to a troop deployment. The four resolutions (based upon Rule 103-2) adopted by the EP in the case of EUFOR Althea, EUFOR DRC and EUFOR Chad/CAR were issued following statements made by the Council and the Commission. The EP may also invite EU officials to appear before parliament, though they are not obliged to attend.

## European Parliament Post Hoc Powers in Oversight of ESDP

### *Post Hoc Resolutions or Recommendations*

No post hoc resolution, opinion or recommendation has so far been issued by the EP on individual civilian or military missions.

### *Reports on ESDP*

The EP receives an annual report from the Council on CFSP/ESDP developments. The EP responds by issuing its own report and making recommendations on future developments of ESDP. AFET is in charge of drafting this report and submitting it to a vote during the annual plenary session on CFSP/ESDP affairs. However, it is arguable to what extent and under what procedures the Council takes the EP's views as expressed in this report into consideration. In addition to the annual report by the Council, the EP may be informed about the Union's external actions through reports from EU Special Representatives (EUSR). However, EUSRs are not obliged to report to the EP, some having reported on an ad hoc basis and others choosing not to do so at all<sup>20</sup>. Beyond written reports, EUSRs may appear before AFET to discuss the political situation in their relevant region/country.

### *Statements by National and EU Officials in the EP*

Additionally, the EP is informed of ongoing developments in ESDP through the general foreign policy statements of Council, Commission and national officials.

### *Hearings and Evaluations*

Another option for AFET/SEDE to gather information on ESDP developments is via the organisation of public hearings, in which SEDE members may ask questions, assess ESDP developments, take evidence on lessons learned from ongoing operations, and shape the EP's future recommendations.

### *Parliamentary Questions*

MEPs have addressed to the Council one specific question on EUFOR Althea, two questions concerning the EU BAM operation and one question on EUFOR DRC. Through questions, MEPs have looked for financial clarifications<sup>21</sup> or for evaluations on individual missions<sup>22</sup>. The EU executive institutions are obliged to answer MEPs either during question time or in writing at a later date.

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20 For examples of past reports by the EUSR in Bosnia and Herzegovina see: the Report to the European Parliament by the OHR and EU Special Representative for BiH, January - June 2002 [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=30141](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=30141) , the Report to the European Parliament by the OHR and EU Special Representative for BiH, July-December 2002 [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=30140](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=30140) , the Report to the European Parliament by the OHR and EU Special Representative for BiH, June-December 2005 [http://www.operationspaix.net/IMG/pdf/UE\\_rapport\\_haut\\_representant\\_2006-01\\_.pdf](http://www.operationspaix.net/IMG/pdf/UE_rapport_haut_representant_2006-01_.pdf) and the Report to the European Parliament by the OHR and EU Special Representative for BiH, February 2006 - June 2006 [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=38511](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=38511)

21 See, for example, MEP Tobias Pflüger's question of 1 December 2005 on the amount paid by the EU to NATO for the use of NATO capabilities in EUFOR Althea.

22 Such as the question of MEP Robert Evans of 8 November 2006 on EUFOR DRC.

### *Parliamentary Visits to the Troops*

Members of AFET/SEDE have exercised their right to visit troops in both 2005 and 2006, visiting EUPM and EUFOR in Bosnia. During summer 2006, MEPs also visited both the operational Headquarters of EUFOR DRC in Potsdam and troops deployed in Kinshasa<sup>23</sup>. Visits enable MEPs to assess how missions are implemented and to become familiar with the problems faced by the military on the ground. Findings are put into a short report by the Chair of the delegation.

### **Budgetary Aspects of Oversight**

The budgetary instrument is an important oversight tool for the EP. The EP and the Council adopt the annual EU budget administered by the Commission. The EP oversees spending from the EU budget for civilian ESDP missions. Spending supported by member states in connection to ESDP missions is based on the principle of 'costs lie where they fall'. However, common costs for military missions are borne by member states via the Athena Mechanism.

#### *ESDP civilian mission costs supported by the EU budget*

The rules defining financing of civilian ESDP operations were established in the Commission Communication 'Financing of Civilian Crisis Management Operations' (COM(2001)647). The document distinguishes between three types of crisis management missions: (1) 'operations under a Community instrument', financed by the Community budget; (2) CFSP operations without military or defence implications, financed by the CFSP budget; (3) ESDP operations with military implications financed by the Member States (outside of the EU budget). Operations falling within the first category are 1st pillar actions, implemented under the Community framework and charged to the European Communities budget over which the EP has scrutiny and co-decision power. Operations falling under the second category (i.e. executive police operations) are decided by a Council Joint Action under the 2nd pillar. As a general rule, expenditures for this type of operation are charged to the CFSP budget, except for costs that the Council decides upon by Joint Action to be borne separately by member states.

According to the EU budgetary procedure, the EP can set a ceiling on the annual budget for CFSP. In addition, the EP is presented every quarter with a detailed list of CFSP commitment appropriations, including individual costs for civilian ESDP missions (EP, 2006b). In the case of insufficient CFSP budget appropriations for operations, the Council may adopt an ESDP Joint Action but has to request additional funds from the EP. The EP must be informed every time CFSP expenditure is envisaged and no later than five days after the adoption

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<sup>23</sup> von Wogau, Karl (2006), MEP, Chairman's Report, Visit of the Ad-hoc Delegation to Kinshasa (DRC), SEDE, European Parliament, Brussels, 6 - 9 November, available at: [http://www.europarl.europa.eu/meetdocs/2004\\_2009\\_documents/dv/191/191206/191206reportkinshasaen.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009_documents/dv/191/191206/191206reportkinshasaen.pdf)



of a final CFSP decision. At least five times a year, Joint Consultation Meetings take place between the EP and the Council and aim to keep the EP informed on financial planning and spending in CFSP<sup>24</sup>.

*Costs supported by member states in ESDP civilian missions, including pre-operational costs*

In the case of civilian missions, the Joint Action specifies the financial details of each operation, distinguishing the amounts supported from the CFSP budget from costs supported by member states. For example, all EUPM BiH costs relating to planning, equipment, operational costs, local staff and international civilian staff, are supported from the CFSP budget. Costs relating to seconded national personnel are supported by individual member states, on the basis of the ‘costs lie where they fall’ principle. On a similar basis, contributing member states support the costs of national personnel seconded to EU BAM Rafah.

A number of operational costs supported from the national budgets are difficult to attribute to individual states. A particular case in point is the cost of fact-finding missions, dispatched during the preparatory phase of an operation and bringing together international and national personnel. These costs are borne by member states, but there is currently no common mechanism in place to administer national contributions and facilitate the rapid disbursement of funds.

*Cost supported by member states in ESDP military missions*

Pre-operational phase costs (fact-finding missions) in the case of military missions are considered ‘common costs’ and can be funded via the Athena Mechanism, a common fund for military missions. Fact-finding missions are funded through member state contributions made in advance on the basis of a fixed gross national income (GNI) percentage. These Athena funds can be used to conduct and terminate an ESDP mission as long as implied costs are common. ESDP military mission costs that are not common continue to be borne by member states on the basis of the ‘costs lie where they fall’ principle. National parliaments can, in accordance with national budgetary procedures, hold accountable their respective governments for finances spent on external operations but are not able to oversee the way the Athena Mechanism is administered. The EP is also unable to exercise any formal oversight role over Athena funds because military costs do not fall under CFSP expenditures. The Council may brief the EP on aspects related to the implementation of the Athena Mechanism during Joint Consultation Meetings but it is not obliged to do so. In sum, the current nature of the Athena Mechanism is such that neither the EP nor national parliaments are able to scrutinise an important proportion of ESDP military spending.

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<sup>24</sup> The bureaus of the ‘two Committees Concerned’ - AFET and the Committee on Budgets - along with their secretariats and policy departments, participate in JCMs, as do the chair of the PSC, Council General Secretariat, and a Commission representative.

## Capacity to Scrutinise ESDP Missions

Effective parliamentary oversight is not only determined by formal powers but also by institutional capacity. The European Parliament's oversight powers cannot be effectively exercised if they are not matched by necessary resources, staff, expertise and effective committees.

### *EP Sub-Committee for Security and Defence (SEDE)*

The committee mandated to monitor ESDP affairs is the Sub-committee for Security and Defence, established at the start of the current 2004-2009 parliamentary term. SEDE has a budget for 2007 of 160,000EUR to commission research studies. The Sub-committee is mandated to follow ESDP developments; relations with NATO (including the NATO Parliamentary Assembly); counter-terrorism policy; non-proliferation of weapons of mass destruction; security sector reform; and disarmament, demobilisation and reintegration. As a Sub-committee, SEDE has a lower administrative status and its work plan is highly dependent on the priorities of the main Committee, AFET. Reports and motions for resolutions are drafted in the Sub-committee, amended and adopted through a vote by AFET, and voted by the EP in a plenary session.

### *Expert staff*

MEPs are supported by expert staff in the Directorate-General (DG) for External Policies (including its Policy Department and SEDE Secretariat) and political group staff.

The DG for External Policies comprises around 160 staff. Its Policy Department is dedicated to providing expert policy support functions, including in-house research and analysis for the EP's main political organs. It is also responsible for seeking external expertise and as such can commission external studies. The SEDE secretariat, comprising 8 staff, is in charge of briefing MEPs on past activities and positions adopted. They assist rapporteurs with background research and may help in drafting texts. A significant portion of the SEDE secretariat's work is allocated to organisational tasks, thus limiting time allocated for research and expert support. The EP's political groups have secretariats with staff dedicated to the follow-up of committee activities. In addition, MEPs have personal assistants who may be asked to carry out background research and draft amendments.

### *Secrecy and Access to Classified Information*

As a general rule, (Sub-)committee meetings are open to the public. One exception to this rule is when the Committee identifies a certain topic to be addressed in a closed meeting, or 'in camera'. Access to sensitive Council information in the field of security and defence is granted to the President of the European Parliament and a Special Committee, composed of the AFET Chairman and four

MEPs nominated by the Conference of Presidents. There is no indication of the Committee affiliation of the four MEPs. All members have to be security-cleared prior to taking part in the Special Committee. The Special Committee meets every six weeks with the High Representative for CFSP or representatives from his office, where confidential information is discussed. The Council retains the right to deny the EP any information it considers inappropriate to share. This right was exercised when the SG/HR for CFSP decided not to cooperate with the EP in its inquiry into illegal CIA detentions and transportations.

### **Cooperation between the EP, National Parliaments and Inter-Parliamentary Bodies**

Inter-parliamentary cooperation on ESDP offers an additional stratum of oversight. It currently takes six forms:

**1) The Conference of the Community and European Affairs Committees (COSAC)** first met in Paris in 1989 and has been formally recognised by the Amsterdam Treaty additional Protocol on the Role of the National Parliaments in the European Union. COSAC is a forum for debate that brings together national parliamentarians, members of the European Affairs Committees, and European Parliamentarians twice a year. COSAC's mandate is to cover community issues (1<sup>st</sup> pillar) affairs and does not specifically include ESDP affairs, in accordance with the mandate of the European Affairs Committees which, in many national parliaments, does not include ESDP.

**2) The Western European Union Assembly (WEU PA)** functions on the basis of Article IX of the 1948 Brussels Treaty. After the transfer in 2000 of the operational activities of the WEU to the EU, the Assembly is the only WEU institutional body still in place. The Assembly focuses on ESDP affairs. It meets in plenary twice a year and in committees several times a year. The European Parliament has no official status in the WEU. Not all EU states are full members of the WEU Assembly.

**3) The Conference on the Future of Europe** was organised for the first time in May 2006, based on Protocol 1 on the role of national parliaments attached to the Treaty Establishing a Constitution for Europe, as adopted in 2004. The Protocol encourages European Affairs Committees and the EP to organise inter-parliamentary conferences on specific topics. Currently, such joint meetings are organised every six months. MEPs and MPs represent a broad spectrum of committees and gather together to exchange views. The topics covered are broad and do not offer a platform for continuous ESDP oversight.

**4) Conferences of the Presidents of Foreign Affairs and Defence Committees** are called at the invitation of the parliamentary defence committee of the country holding the EU Presidency and offer MEPs and MPs the

possibility to discuss ESDP issues. In addition, AFET/SEDE organise joint meetings with foreign affairs and defence committees twice a year to provide national parliaments with the opportunity to be briefed by the High Representative for CFSP on European security developments.

**5) Inter-parliamentary bodies** such as the NATO Parliamentary Assembly are additional fora with which the EP may exchange views on ESDP. The NATO PA is a forum where parliamentarians can exchange views on security issues. Meetings between an EP delegation and a NATO PA delegation take place almost every two months and focus on EU-NATO cooperation in the field of security.

**6) National parliament liaison offices** have been established by 23 EU member parliaments in Brussels<sup>25</sup>, to channel information from Brussels to the national level. The EP has established a Directorate for Relations with National Parliaments within the Directorate General for Internal Polices.

### **Constitutional Treaty/Reform Treaty**

On 19 October 2007 in Lisbon, Member States agreed upon the text of the “Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community” henceforth known as the Lisbon Treaty. The new Lisbon Treaty was formally signed by the Heads of State and Government at the European Council on 13 December 2007.

The Lisbon Treaty introduces four elements of significant relevance to CFSP/ESDP.

1) A High Representative of the Union for Foreign Affairs and Security Policy, Vice-President of the Commission, will combine the portfolios of the current SG/HR for CFSP and the Commissioner for External Relations. It will be appointed by the European Council, with agreement of the President of the Commission, and approved, due to the dual role as a Commissioner, by the EP. As Vice-President of the Commission, the High Representative will with the entire Commission be subject to dismissal by the EP through the censure procedure.

2) An External Action Service will comprise personnel from the Council General Secretariat, the Commission and seconded personnel from national diplomatic services. The Service will be established by a Council decision, after prior consultation with the European Parliament and with consent from the Commission.

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<sup>25</sup> The list of parliamentary liaison offices is available at: <http://www.europarl.europa.eu/webnp/cms/lang/en/pid/18/cache/offonce>

3) Permanent structured cooperation, a specific form of ‘enhanced cooperation’ in the military and defence area, envisages closer military cooperation between select member states, integrating their military means as far as they had the military capabilities and assuming they had ‘made more binding commitments to one another’. The list of Member States participating in permanent structured cooperation would be voted by qualified majority voting (QMV) in the Council. Only the member states that take part in permanent structured cooperation would be able to participate in the vote on issues pertaining to ‘permanent structured cooperation’. Yet, the criteria for joining ‘permanent structured cooperation’ as well as the tasks that will make the object of such cooperation are still to be determined. In terms of accountability, this provision may limit the scrutiny capacity of national parliaments, but may lead to enhanced variable geometry in inter-parliamentary cooperation and thus facilitate dialogue between the national parliaments of participating member states and the EP.

4) The Lisbon Treaty opens the door for the Council to establish, after consulting the European Parliament, ‘specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing’ (article 28) of CFSP/ESDP actions. A start-up fund made up of Member States’ contributions, most probable similar to the existing Athena mechanism, will be set up to support ‘preparatory activities’ that do not fall under the Union budget.

In terms of parliamentary scrutiny, the Lisbon Treaty strengthens the European Parliament’s oversight role for the following three reasons. First, according to the amended article 21, the High Representative ‘shall regularly consult’ the EP on ‘the main aspects and the basic choices’ of CFSP/ESDP and, thus, provide the EP to receive timely ex ante information on CFSP/ESDP developments. Second, the EP may threaten to initiate the censure procedure on the Commission in case its views are not taken into consideration. Third, specific procedures on urgent financing supported through the Union budget are likely to bring more transparency on CFSP/ESDP spending and a consolidation of the EP’s oversight role.

### **3. National Parliamentary Oversight of ESDP**

#### **3.1. EU-wide Survey on Parliamentary Oversight of ESDP Operations**

The primary research undertaken for this study included an EU-wide survey on the topic of parliamentary oversight of ESDP, focusing on two military missions – EUFOR Althea (Bosnia) and EUFOR DRC (Democratic Republic of Congo) – and two civilian missions – EUPM in Bosnia and EU BAM RAFAH in the Palestinian Territories. A questionnaire was distributed via email to the committees responsible for defence, European affairs, internal affairs and foreign affairs within the parliaments of the 27 Member States of the EU in February 2007.

A total of 39 replies were received from parliamentary staffers and MPs from 25 European parliaments. The responses suggested that ESDP matters are seen as being the responsibility of the defence committees (18 responses), in the majority of parliaments. EU committees are less involved in these matters (8 responses) whilst foreign affairs (6 responses) and interior affairs committees (3 responses) play an even more peripheral role in ESDP. Most respondents appeared to have some difficulty in pointing out exactly how their parliament scrutinised the four missions in question. 11 respondents out of 39 stated that ESDP matters are simply not discussed within their committees. This might indicate that ESDP missions do not figure highly on the parliamentary agenda in EU Member States.

### Parliamentary Oversight of Four Selected ESDP Missions

The findings of the DCAF questionnaire survey on parliamentary oversight of the four ESDP missions are considered below, with an overview of the results given in Table 1.

**Table 1: Oversight of ESDP case study missions in respondent states**

ESDP operations	Parliament** approved participation in at least one mission	Parliament** debated participation in at least one mission	Parliament** had no involvement
<b>Military operations: EUFOR Althea and EUFOR DRC</b>	Austria, Bulgaria*, Germany, Cyprus, Czech Republic*, Estonia, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands, Spain, Sweden	Belgium, France, Lithuania, Poland, Portugal, Slovenia, UK	Greece, Slovakia, Romania
<b>Civilian operations: EUPM Bosnia and EUBAM Rafah</b>	Austria, Czech Republic, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands, Romania*, Sweden	Belgium, Denmark***, France, Poland, Portugal, Germany, Slovenia, UK	Bulgaria, Cyprus, Estonia, Greece, Lithuania, Slovakia, Spain

(Source: DCAF Survey 2007)

- \* This table represents strictly the results of the questionnaire survey of the four case study missions. Since some of the missions were launched, new legislation dealing with national deployments abroad was adopted in Bulgaria, Czech Republic and Romania. The parliaments in these countries no longer have the formal power of prior approval for national participation in ESDP operations.
- \*\* For the purposes of this table, 'parliament' may refer to activity either in the plenary or in a committee. Debate means, at least, that some formal information was received from the government and the issue was on the agenda of a committee.
- \*\*\* Denmark participates only in the civilian aspects of ESDP. It does not participate in ESDP military missions nor in the elaboration and implementation of any decisions or actions of the Union which have defence implications.



### *EUFOR Althea*

Operation EUFOR Althea received prior approval in 12 parliaments, during the period between the Joint Action decision in Brussels (12 July 2004) and the date of the deployment of national troops<sup>26</sup>. The 12 parliaments in question were: Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Netherlands and Luxembourg. The Finnish parliament discussed and approved the mission before the Joint Action decision was taken at the European level. Furthermore, 3 parliaments (France, Poland and the UK) that do not have formal approval authority discussed and agreed upon the national participation in this ESDP operation before the decision was taken in the Council. These discussions took place in EU committees. In practice, committees were only briefly informed about a text that had already been negotiated and the issues failed to raise any significant political interest within the debates. There was no consultation or formal information received by the parliaments of Belgium, Greece, Romania and Spain. Despite these four countries contributing to the operation, no debates or hearings were held by parliamentary committees.

### *EUFOR DRC*

Operation EUFOR DRC received prior approval in 10 parliaments: Austria, Cyprus, Czech Republic, Finland, Germany, Ireland, Italy, Luxembourg, Netherlands and Spain. In Luxembourg, the Committee for Foreign and European Affairs, Defence, Cooperation and Immigration, was consulted by the government and agreed on the Joint Action more than three weeks before the text was adopted by the Council, on 27 April 2006. The other parliaments appear to have approved the mission after that date. Other parliaments which do not have the power of prior approval were informed by their governments and discussed EUFOR DRC within the EU Committee – in the cases of France and the UK – and within the Defence Committee – in the cases of Belgium, Poland and Slovenia. In France, the discussion took place one month before the Joint Action was adopted by the Council.

### *EUPM BiH*

Operation EUPM BiH received prior approval in nine parliaments: Austria, Czech Republic, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands and Romania. The operation was discussed in six parliaments that do not have the power of prior authorisation: in the Defence Committees of Belgium and Slovenia, in the EU Committees of Denmark, France and the UK, as well as in a joint session of the Defence, Foreign Affairs and EU committees in Poland. No debate or hearing was held and no information was provided to parliaments of other countries that contributed personnel to the operation. This was the case in: Bulgaria, Estonia, Greece, Slovakia and Spain.

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<sup>26</sup> Member states may join a mission once after the date of the official mission launch and after its initial phase on the ground is completed.

## *EUBAM Rafah*

Operation EUBAM Rafah received prior approval in 6 parliaments: Austria, Finland, Ireland, Italy, Luxembourg and the Netherlands. Austria and Ireland did not participate with personnel in the mission but approved it nevertheless. EU committees in Denmark, France and the UK were informed about the mission and discussed the operation, around the date that it was launched. The parliaments of other countries that have contributed personnel to EUBAM Rafah were neither informed nor consulted about the operations. These include, Belgium, Greece, Romania and Spain.

### **Respondents' Opinions about Parliamentary Oversight of ESDP Missions**

In addition to requesting factual information in the questionnaire, respondents were asked to give their thoughts about parliamentary involvement in ESDP missions. Using a scale of 1 to 4, with 1 indicating strong disagreement and 4 indicating strong agreement, 26 staffers from 19 countries evaluated six statements. These statements are briefly reviewed below.

#### *'My parliament receives sufficient information about military and civilian ESDP missions'*

Staffers were more satisfied with information concerning military missions than that relating to civilian missions. Staffers from Austria and the Czech Republic were most satisfied with the information supplied on both military and civilian missions. In Cyprus and Spain, staffers strongly agreed that their parliaments received sufficient information on military missions but the information offered concerning civilian missions was deemed to be inadequate. Staffers in Portugal and Romania were among the least satisfied overall.

#### *'My parliament has the power to approve or to reject national participation in ESDP missions, before these missions are launched'*

Once again, the results indicated a disparity between civilian and military operations. Respondents felt their parliament had greater legal power concerning military rather than civilian ESDP missions in five out of 19 responding countries: Bulgaria, Cyprus, Estonia, Finland and Spain. Respondents from Austria, the Czech Republic, Latvia and Luxembourg strongly agreed with the statement for both military and civilian missions. The strongest disagreement with the statement was expressed by staffers in: Belgium, France, Poland, Portugal, Romania, Slovenia and the UK.

#### *'My parliament has the political will and interest to be involved in the decision-making process of national participation in ESDP missions'*

In three countries, the willingness to be involved in scrutiny of military deployments was greater than that for civilian deployments. In another three countries, there was no knowledge about the willingness of MPs to be involved



in civilian ESDP missions. Both facts presumably reflect a lower interest in civilian missions. Staffers in Austria, the Czech Republic, Germany, Latvia, Luxembourg and the Netherlands noted the willingness of their parliament to exercise oversight of both civilian and military ESDP missions. Conversely, staffers in Belgium, Portugal, Romania and the UK felt that their parliaments had limited interest in exercising greater oversight of ESDP.

*'My parliament has sufficient capacity in terms of committee staff, expertise and financial resources to actively oversee ESDP missions'*

Staffers from Belgium, Bulgaria, Cyprus, Finland, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Spain were among the most dissatisfied respondents regarding the resources at their disposal to exercise oversight of military or civilian ESDP missions. Significantly, Finland and Luxembourg belong to this group, where it would appear that the parliament's strong legal prior authorisation powers (see Table 1) are not entirely matched by their resources. The most satisfied staffers belong to the parliaments of Czech Republic and Estonia.

*'My parliament needs to be more involved in scrutinising ESDP missions'*

Staffers from Austria, Cyprus, Czech Republic, Estonia, Germany (concerning civilian deployments), Spain and the UK, all believed that their parliaments were sufficiently engaged in ESDP scrutiny already. On the other hand, in: Bulgaria, Finland (in the case of military missions), Luxembourg, Portugal and Romania, staffers felt that their parliaments should be more involved in scrutinising ESDP operations. Interestingly, in France, Poland and the UK, divergent views were expressed by the different Committees as to whether their parliaments should seek greater involvement in oversight of ESDP. This reflects their overlapping mandate on ESDP, where no single committee possesses the sole role in scrutiny and each has its own institutional perspective.

### **3.2. Parliamentary Oversight of ESDP Missions in Six Selected Member States**

This part of the Paper presents the findings of in-depth interviews with parliamentarians and their staffers in the six member states selected (France, Germany, Poland, Romania, Spain and the UK). Detailed interviews were conducted with 41 MPs and staffers from both governing and opposition parties, all in the native language, with the aim of gaining a deeper insight into the national procedures and practices of parliamentary oversight of ESDP operations.

#### **France**

The French Parliament does not approve ex ante or post hoc the deployment of French troops to an ESDP mission, although it is mandated to clear the Council

Joint Action prior to adoption. Article 88-4 of the French constitution offers the legal basis to exercise oversight of European affairs. The two parliamentary bodies which receive information about ongoing ESDP negotiations prior to the adoption of a Council Joint Action are the Delegation for the European Union at the Senate and its counterpart at the National Assembly. The main task of each Delegation is to provide ex ante political clearance of EU documents.

In the case of EUFOR DRC, EUPM in BiH and EU BAM in Rafah, the Government informed in writing the Delegations about the EU's intention to conduct the operations, and requested that each Delegation examine the Joint Actions according to an emergency procedure. The Presidents of the Delegations followed the emergency procedure, lifting the parliamentary scrutiny reserve and clearing the Joint Actions. The members of the Delegations were informed of these decisions afterwards. In the event of a potentially contentious document, the President of each Delegation can refuse the emergency procedure, ask for a debate and also notify the specialised committee (defence or foreign affairs). The French representative in the EU Council is not permitted to vote until the specialised committee has examined the contentious document. In spite of this power, this procedure has yet to be applied to an ESDP operation.

The Delegations may still debate a Joint Action in spite of the emergency procedure. This occurred in the National Assembly Delegation during the planning of operation EUFOR Althea, on 8 July 2004<sup>27</sup>. The EUFOR DRC operation received more attention in Parliament, due to the French interest in the Great Lakes region and the past contributions to Operation Artemis and MONUC. On 22 March 2006, the Chief of Staff of the Army informed the Senate Committee on Foreign Affairs, National Defence and Armed Forces about the planning for operation EUFOR DRC.

Post hoc parliamentary oversight takes place mainly during the debate on the budget rectification. Yet individual costs per operation are only provided to MPs on request, either when the initial budget law or the rectification of the budget is discussed. The members of the Defence Committee of the National Assembly have visited troops in Bosnia, The Palestinian Territories and Congo. In addition, the MPs of the National Assembly were informed about the status of the four missions in the plenary by Ministers of Foreign Affairs and European Affairs during the June 2006 parliamentary session. In the Senate, two questions concerning EUFOR Althea were addressed in the Plenary. In the Plenary of the National Assembly, one question regarding EUFOR Althea was posed.

The interviewed MPs and parliamentary staffers stressed that the French Parliament has a limited oversight role in foreign affairs and defence under the

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<sup>27</sup> Minutes of the debate held on 8 July 2004 by the National Assembly Delegation for the European Union <http://www.assemblee-nationale.fr/12/europe/c-rendus/c0092.asp>

framework of the 1958 Constitution. At present there is a significant degree of consensus on French participation in ESDP operations and therefore MPs tend to focus on other more conflicting issues. The reform of the legislature's role is under consideration in order to give Parliament the power to vote *ex ante* on the deployment of French troops in external operations.

All the individuals interviewed in Paris were in agreement that the approval of ESDP missions should remain at the national level and the oversight role of national parliaments in ESDP should be enhanced. The EP's role should be limited to expressing critical opinions on ESDP developments which can serve to influence national parliaments in their oversight work. In this context, it was suggested that a body combining the features of the WEU Assembly and COSAC may be more appropriate to facilitate communication between the national parliaments, and ensure ESDP oversight.

## Germany

The German Bundestag exercises strong *ex ante* and *post hoc* oversight over military ESDP missions. According to the Parliamentary Participation Law adopted in 2004, any participation of armed forces personnel in missions requires prior parliamentary authorisation. The Government needs to inform the Bundestag 'in good time' before the military is deployed abroad. Parliament must be informed about the following elements of a deployment<sup>28</sup>: the mandate, geographical scope of operations, legal basis of the military deployment, maximum number of troops to be deployed, the capabilities of these troops, the duration of the mission and the estimated financial costs<sup>29</sup>. Parliament does not have the power to alter the Government's plans; it can only accept or reject Government proposals to deploy troops abroad<sup>30</sup>. To date, the Bundestag has never refused such a proposal. The Parliamentary Participation Act gives the Bundestag the power to withdraw German troops, to discontinue their mission<sup>31</sup> and also to approve any extension of mission mandates.

Votes held in the plenary on upcoming military deployments are free votes, meaning that parties do not require their MPs to follow the party line. Defence Committee meetings are always held behind closed doors and the level of secrecy surrounding them depends on the nature of the issue being considered. MPs are prohibited from repeating or commenting on what has been said by participants during the meeting.

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28 Parliamentary Participation Act, Para 3(2).

29 However, the provision of a detailed proposal and information applies to regular armed forces only. The deployment of Germany's special military forces (Kommando Spezialkräfte - KSK) is exempt from this procedure. Parliamentarians only receive general information about their deployment, normally as part of a wider military deployment. Given the secret nature of the tasks of KSK soldiers, such as in counter-terrorist operations, no specific information is given about their exact mandate, area of operations or number of soldiers. Interview G1, Berlin, 26 February 2007

30 Parliamentary Participation Act, Para 3(3), and Interview G1.

31 Parliamentary Participation Act, Para. 8.

The Bundestag is not involved in the early stages of preparation and planning of any military ESDP mission, nor do the cabinet ministers or the chancellor inform the Bundestag about Germany's role in future ESDP missions. Policy-making and planning in this field are regarded as being the prerogative of the executive and outside of the responsibility of Parliament. Therefore, the Bundestag deals with ESDP missions on a case by case basis.

At each parliamentary session of the Defence Committee – of which there are twenty-two to twenty-four per year – the Defence Minister or his Deputy, accompanied by high-ranking military personnel, gives an overview of all current military deployments abroad. Furthermore, Defence Committee members receive a confidential detailed report from the Defence Ministry on all military ESDP missions on a weekly basis. The military EUFOR DRC mission – which was German-led – was extensively discussed in the German Bundestag in terms of mandate, number and quality of German troops. MPs visited troops deployed to the mission in Congo in 2006 and Parliament has exercised similar rights by recently visiting German troops stationed in Afghanistan.

In contrast to its *ex ante* and *post hoc* oversight of ESDP military missions, the Bundestag has no approval power in civilian missions, but exercises a limited *post hoc* oversight role, after personnel have been deployed<sup>32</sup>. Article 8 of the Police Act stipulates the right of the Bundestag to be informed about deployments of police abroad and its authority to end a deployment<sup>33</sup>. The oversight of civilian ESDP missions is complicated by the fact that police missions are not only staffed by federal police but also by the police services of the German Länder (counties). Therefore, legislative control takes place not only on the federal level but also at the regional level. Within the Bundestag, the Interior Committee is responsible for oversight of civilian ESDP missions, its meetings always held behind closed doors. MPs do not receive information about the budgets or expenditures of civilian ESDP missions.

There is no regular flow of information from the Ministry of the Interior to the Interior Committee of the Bundestag. The Interior Committee is dependent upon the initiative of individual MPs to request information about the current state of civilian ESDP operations. MPs have visited the EUPM BiH and the EU BAM Rafah missions. Interviewees perceived these visits to be crucial to the *post hoc* parliamentary oversight of civilian ESDP missions.

The majority of the MPs and staffers interviewed argued that there is a need for a greater parliamentary oversight role, both at the national level in the Bundestag

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32 Former minister Otto Schilly (SDP) described the role of parliament in ESDP civilian missions, when he stated in an Interior Committee meeting that 'ESDP civilian missions are part of executive decision-making (Executif Sache).' Interview G8 in Berlin on 28 February 2007.

33 Federal Police Act (Bundespolizeigesetz), Art. 8(1) - version of 1 February 2007, available at [http://bundesrecht.juris.de/bundesrecht/bgsg\\_1994/gesamt.pdf](http://bundesrecht.juris.de/bundesrecht/bgsg_1994/gesamt.pdf)

and at the European level through the EP. A number of suggestions were put forward to strengthen the role of the Bundestag in ESDP missions, such as: ensuring that committees have better access to information about missions at an earlier stage in the planning process; the organisation of public parliamentary hearings; and improved cooperation between national parliaments of EU member States in sharing of information and experiences. With regards to civilian ESDP operations, several interviewees stated their belief that oversight powers should parallel the Bundestag's powers of scrutiny for military ESDP missions. It was argued that the EP's ex ante role should be buttressed through the requirement for EP authorisation of all ESDP missions, through the co-decision procedure.

### **Poland<sup>34</sup>**

The Sejm and Senat of the Republic of Poland do not have any formal institutional oversight of Polish participation in ESDP Missions. However, there has been a steady flow of information regarding ESDP missions to Parliament and both Houses of Parliament have shown an active interest in staying informed about ESDP developments. The oversight of ESDP missions has not followed a consistent procedure and has differed significantly with each mission. The parliamentary procedures for dealing with both military and civilian missions are not established and have become an ad hoc prerogative of the Speakers of the Sejm and Senat; the Polish Council of Ministers informs the Speakers of the Sejm and Senat once a decision on deployment has been taken and they decide on an ad hoc basis which committees should be given the information.

Polish participation in Operation EUFOR ALTHEA was debated by the EU Committee several days before the Joint Action was adopted by the Council, whereas Operation EUFOR DRC was discussed by the Defence Committee almost three months after the adoption of the Joint Action but before the operation was launched. EUPM BIH was debated in a joint meeting of the Defence, EU and Foreign Affairs Committees after the Joint Action adoption but before the operation's launch.

Polish parliamentarians do not receive information on a systematic basis from either national or international sources regarding ESDP missions. However, despite not being legally obliged to inform Parliament of a decision to participate in ESDP and other international missions, on most occasions the Government has communicated these decisions to Parliament. Cabinet Ministers, Ministry of Defence staff and military officials have appeared before the Sejm and Senat committees, sometimes in joint committee meetings. The Defence Committee of the Senat has held several specific hearings on ESDP together with the EU Committee.

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<sup>34</sup> The field report on Poland was prepared by Mr. Antoni Mickiewicz of DCAF Brussels.



Participation in international fora is an additional means for MPs to gain information on ESDP. For instance, in February 2007, the Head of the Polish Delegation to the WEU Assembly presented a report to the Senate Defence Committee on his attendance at the WEU Assembly conference on ESDP in Berlin<sup>35</sup>. No formal visits are made by Polish parliamentarians to ESDP missions.

In common with other national parliaments, the Polish Parliament is able to exercise scrutiny of external missions through its budgetary powers. However, this capacity is limited in its extent as the budget for Polish missions abroad is set out in a block that also contains many other defence provisions.

The parliamentarians interviewed all expressed the belief that more information relating to ESDP missions should be exchanged between the EU and the defence committees of the Sejm and Senat. This improved flow of information would negate the need for the defence committees to rely on incomplete information about ESDP missions provided by the Government.

## **Romania**

The Romanian Parliament is neither consulted nor requested to approve national participation in ESDP operations. The decision to send troops on missions abroad belongs to the President, with the sole obligation to inform the Parliament of this decision within five days. The prior approval of Parliament is required only in the case of military and civilian operations where troops are not deployed on the basis of an international treaty to which Romania is party, excluding ESDP missions from parliamentary approval. Since the current legal framework entered into force on 15 March 2004 the Romanian Parliament has not been requested to approve any overseas mission.

The debate and the approval of the Budget Law is Parliament's only opportunity to exert influence over decision-making regarding participation in international operations. The Defence and Budget committees commonly amend the budget proposal but changes are rarely significant. The total financial burden of international operations abroad is difficult to calculate from the defence budget documents, as costs are spread over numerous budgetary appropriations.

Romania's participation in EUFOR Althea and EUPM BiH received formal prior approval of the Parliament before the current legislation came into force in 2004. The Romanian participation in EUPM BiH was approved by a Parliamentary Decision on 4 November 2002 (after the Council Joint Action was adopted). On 12 November 2003, the Parliament also ratified a Treaty with the EU regarding Romania's participation in EUPM.

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<sup>35</sup> <http://www.senat.gov.pl/k6/kom/kon/2007/070220.htm>

The participation of Romania in EUBAM RAFAH was approved by the Ministers of Administration and Interior. Small police missions do not need the approval of the President<sup>36</sup>. The status of the police officers dispatched to such operations is similar to that of liaison officers. No information about this mission was received by the Parliament, before or after it was launched.

The President informs Parliament about forces deployed abroad through a letter which is read to the plenary at the beginning of each session. However, ESDP operations have not provoked any questions or statements in the plenary, nor in the hearings and consultations of the Defence Committees. Small numbers of MPs, usually members of Defence Committees or Foreign Affairs Committees, visit troops deployed abroad, accompanying the Minister of Defence or other Government officials on their visits. Romanian troops deployed in different operations in BiH were visited several times, yet no official follow-up mechanisms exist to relay findings to parliament.

Most of the interviewed MPs expressed their belief that a complete change in the legislation is needed, to give Parliament the power of prior approval for national participation in international missions. When a decision must be taken quickly, emergency procedures could be established to allow the Defence Committee to grant approval instead of the plenary. The MPs also remarked that the budget proposal documents should contain more clear information about the financial burden of different types of international operations.

Due to the recent accession of Romania to the EU, the present situation may soon improve. Ex ante accountability of ESDP missions might find a strong legislative foundation in the Romanian Constitution<sup>37</sup>, which stipulates that the Government should transmit to the Parliament the drafts of all documents of a binding character, before they are agreed in Brussels. A Joint Committee for European Affairs has been established by both Chambers<sup>38</sup> and this committee is mandated to ‘exercise parliamentary oversight of European affairs’. It remains to be seen what role this committee will play in ESDP oversight.

## Spain

The Spanish Parliament gives prior approval to the participation of armed forces in all military operations abroad. This authority lies with the lower Chamber of the Spanish Parliament, the Congress of Deputies. Spanish legislation mentions two procedural steps – consultation and authorisation – both prior to mission deployment<sup>39</sup>. The Ministry of Defence prepares a draft agreement,

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36 Article 9, Law no. 42/ 2004.

37 Article 148 (5), Constitution of Romania.

38 Parliament Decision no.52, 20 December 2006.

39 Article 17 of the Law on National Defence no5/ December 2005.

gathering information about missions which are being negotiated and discussed within international organisations and the means available at the national level. The draft must be approved by the Council of Ministers and is then submitted for the prior consultation of the Defence Committee. After the Committee informally agrees with the general terms of the draft, the MOD elaborates on the official, detailed text of the agreement. The final text is submitted to Parliament for formal approval. This law does not refer to civilian operations, where Parliament's oversight role in the decision-making process is limited.

The Government has requested prior approval of Parliament for international missions on three occasions since the new legislation was adopted in December 2005, including Spanish participation in EUFOR DRC. Practice demonstrated that the law needs to be clarified through further procedural regulations. Most importantly, it was noted that Parliament must determine whether the approval authority belongs to the Defence Committee or to the Plenary<sup>40</sup>. Also, the distinct procedural steps of consultation and authorisation outlined in legislation in practice were fused into one procedure; there is no formal flow of information between Parliament and the Government prior to the Government's submission of the decision to participate in an operation for parliamentary approval.

Participation of Spanish armed forces in EUFOR DRC was submitted by the Government for parliamentary approval on 19 May 2006. The decision to approve participation was taken by the Defence Committee on 30 May, (one month after the Council Joint Action) after a debate during which the Defence Minister was present.

The Joint Committee for the European Union has a marginal role in the scrutiny of ESDP operations. It can call for the plenary to debate EU issues, but ESDP operations are seen as a competence of the Defence Committee. There is no legislative provision regarding parliamentary involvement in the decision-making process on ESDP police missions and the Interior Committee is not involved in the scrutiny of civilian ESDP operations.

Parliament approves funds for external operations as part of the yearly defence budget law. However, it is an 'expandable budget', meaning that a small amount of spending is forecast in the MOD budget and it is increased during the year by using the Emergency Fund, under the administration of the Ministry of Economy. There is no requirement for parliamentary approval when money is transferred from this fund<sup>41</sup>.

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40 Furthermore, there is no specification about what type of information related to the operation the Government request should contain. It is not specified whether or not the decision to end participation in an operation also belongs to Parliament, considered an important issue in view of the recent public controversy about Spain's deployment to Iraq. It should be noted that civilian missions are not covered by the legislation.

41 This "presupuesto ampliable" started in 2006 for example, with an allocation of €10 million, approved by parliament within the defence budget. At the end of the year it reached around €450 million, with the additional



Since the Spanish Parliament has the power of prior approval for all international military operations, post hoc scrutiny has been somewhat neglected. The Government has pledged to limit the number of personnel it will deploy in all missions abroad to a maximum of 3,000 persons<sup>42</sup>. Parliament frequently receives information about the number of total deployments and also about ESDP operations. However, ESDP missions have aroused limited debate. There were no committee hearings or questions about ESDP missions in Parliament. Members of the Defence Committee have visited troops deployed in Afghanistan, BiH and Kosovo.

The level of parliamentary involvement in military operations is considered to be satisfactory by most MPs. The military is also pleased with parliamentary approval as it gives political and democratic legitimacy to the military deployments abroad. It was suggested that ESDP scrutiny could also be performed by inter-parliamentary organisations such as the WEU Parliamentary Assembly, which should be endowed with powers for post hoc scrutiny, like summoning European and national officials to hearings.

## United Kingdom

The bicameral Parliament of the United Kingdom does not have powers to formally approve any aspect of British contributions to ESDP operations. However, the Parliament does exercise a scrutiny role over CFSP and ESDP, most actively through the European Union Select Committee of the House of Lords, and more precisely through its Sub-Committee C handling foreign affairs, defence and development policy. The Committee has a mandate to approve all legally-binding decisions of the Council of Ministers before the Government signs them, thus implying ex ante approval power<sup>43</sup>. The Sub-Committee receives a draft agreement from the Government, accompanied by an 'explanatory memorandum'. It may: approve the document; hold the document under a scrutiny reserve, requesting further information or clarification; or conduct a full inquiry. If the Government proceeds to sign a Joint Action without approval from the Committee, it is deemed an 'override', which is not desirable for the Government, but is not legally prohibited<sup>44</sup>. The Sub-Committee's mandate is document-oriented, so civilian and military missions are scrutinised equally.

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money coming from the Emergency Fund.

42 At present this number is approximately 2500. The maximum number of Spanish deployments was 4200 when the pledge was made and at the time they also had troops in Iraq.

43 The core scrutiny power of the Lords Committee derives from the Scrutiny Reserve Resolution, of 6 December 1999, which commits the Government to awaiting the completion of parliamentary scrutiny before agreeing to a legislative proposal in the Council of Ministers. It expressly does not give power to mandate ministers or force their hand.

44 Nonetheless, the Government is expected to justify its decision to override the Committee in writing. All overrides are listed in the Committee's Annual Report.

Despite these powers, the realities of ESDP decision-making are such that ex ante scrutiny over ESDP is difficult to exercise in practice. The Government may deposit a draft Joint Action for the Committee's approval, already agreed in Brussels, which though not yet legally binding is essentially politically binding. Additionally, it is frequently the case that a Joint Action is not deposited in time for ex ante approval. During negotiations over the EUBAM Rafah Mission, the Government wrote to warn the Sub-Committee that it may not deliver the documents for scrutiny in time to secure approval for signing the Joint Action in Brussels. It nonetheless made an effort to keep the Sub-Committee informed of developments.

The Sub-Committee is kept informed of ESDP through various means. ESDP reports by EU Presidencies receive close interest from the Sub-Committee members, to provide forewarning of upcoming issues as well as ongoing missions. Also, the UK Minister for Europe, who has responsibility for ESDP operations, appears before the Sub-Committee twice per year, as do senior officials from the Ministry of Defence and Foreign and Commonwealth Office (FCO).

The Defence Committee of the House of Commons plays a marginal role in ESDP oversight. The Committee's mandate is to scrutinise the work of the MoD, whereas ESDP policy is primarily the jurisdiction of the FCO. The Committee does have the power to scrutinise the UK's military budget, yet it is a blunt instrument of oversight, since budgetary endorsement does not allow for approval of specific ESDP operational budgets. The Defence Committee has not been directly involved in oversight of any of the ESDP operations in question.

The interviewees in the UK diverged in their perceptions of the need to strengthen national parliamentary accountability for British involvement in ESDP operations. The wider issue of the democratic legitimacy of the royal prerogative in troop deployment has become high profile since the war in Iraq, with many supporting a stronger role for parliament. Some parliamentarians argued that parliamentary oversight powers should not be extended in the area of ESDP operations, due to the time constraints imposed by the nature of ESDP missions and the lack of parliamentary expertise in the field of military operations. It was also suggested that there may be scope for increased parliamentary oversight of the renewal of ESDP mission mandates, as committees would have greater time to scrutinise the progress of ESDP operations.

It was pointed out that there are already several oversight bodies at the inter-parliamentary level (such as the NATO Parliamentary Assembly and the WEU Parliamentary Assembly), that exist alongside the EP and national parliaments to form a 'confused' legislative architecture. One interviewee recommended that platforms such as COSAC could provide a valuable forum for national parliaments to exchange ideas and experiences relating to ESDP scrutiny. The opaque decision-making process of the GAERC was ultimately considered to be a primary impediment to legislative oversight, be it at the national or European level.

### 3.3. Analysis: National Parliamentary Oversight of ESDP

#### Prior approval: before Joint Action decision versus before deployment

As far as parliaments that possess the power of prior authorisation are concerned, missions were approved before deployment but usually after the EU Council adopted the Joint Action. Finland and Luxembourg are exceptions to this sequence, where the parliaments have approved missions before the Joint Action decision was taken. In Sweden, parliament is consulted prior to all European Council decisions and has to decide formally on the participation of the Swedish forces in a mission. However, no detailed information on how and when the four operations were approved was provided in the response to our questionnaire. According to Irish legislation, parliament should also be consulted as soon as the Joint Action is initiated but this rule can be ignored when “in the opinion of the minister” the issue “is confidential”<sup>45</sup>, which was the case in each of the four missions considered here.

Most governments are not required to secure parliamentary approval prior to signing a Joint Action in Brussels. Consequently, even parliaments that have prior authorisation power are often confronted with a *fait accompli*, due to the difficulty for a government to withdraw its commitment to contribute to ESDP missions after having committed to a Joint Action. Nevertheless, some parliaments receive information about Joint Actions before they are adopted. This practice is most prevalent within countries where parliaments have no formal power of approval but contribute greatly to ESDP missions, such as France, Poland and the UK. Otherwise, parliamentary awareness about such negotiations and about Joint Actions adopted by the European Council is limited.

In the Netherlands, the Government and the Parliament make use of a “Decision framework for military deployments for international missions”<sup>46</sup>, aimed to make decisions more systematic and transparent. The Framework puts forward 10 points of attention which are important for military deployment decision-making<sup>47</sup>. The reply to the questionnaire from the Dutch Parliament indicated that the procedures for debating and approving the deployment in parliament, can be done within one day in case of emergency.

#### Role of Parliament: Plenary versus Committee

Prior authorisation of national participation in at least one of the four ESDP operations was given in 15 out of 25 respondent parliaments. In some parliaments, this authorisation was given by the plenary and in other parliaments it was a

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45 European Union Scrutiny Act, Number 25 of 2002, Sections 2 and 3.

46 Tweede Kamer (Second Chamber of Parliament), 2000-2001, 23 591, nr. 7, The Hague, The Netherlands.

47 Tweede Kamer (Second Chamber of Parliament), Onderzoek NATO Response Force (Research into NATO Response Forces), 2005-2006, nr. 30162, The Hague, The Netherlands.

committee decision. There are countries where the authority to approve national participation depends on the case. In Finland, the Plenary usually has to give consent<sup>48</sup>. However, if less than ten personnel are assigned to an operation, the deployment is approved by the Foreign Affairs Committee. In Spain, the Standing Bureau of the Congress determines whether the matter is to be decided in the Defence Committee or in the Plenary, depending upon the importance of the mission.

### **Role of Parliament: Military versus Civilian ESDP Missions**

In most respondent parliaments, greater emphasis was placed on parliamentary approval of military ESDP operations than civilian missions, with 14 of the 25 parliaments giving approval to at least one military mission, compared with only 10 parliaments approving civilian operations. Yet the figures are low even for military missions, indicative of a general lack of parliamentary scrutiny of ESDP.

Participation in civilian missions frequently escapes parliamentary attention because of the small number of personnel deployed. For such operations, deployment decisions are often taken at a lower executive level than would be applied to a military mission, with no obligation to report the decision to parliament.

The highest levels of parliamentary control over ESDP missions appear to be in: Austria, the Czech Republic, Finland, Italy, Latvia, Luxembourg, Netherlands and Sweden, where both civilian and military operations passed through formal parliamentary prior consultation and approval. It is noteworthy that, in the case of Czech Republic, the government sought parliamentary approval for all four ESDP operations in question, even though current legislation does not give parliament any formal power of prior approval.

### **Parliamentary committees with overlapping mandates**

The information provided in the questionnaire suggests that ESDP operations often fall under the competency of several parliamentary committees. The slow machinery of committee structures and overlapping committee mandates have served to dissipate awareness on ESDP issues. The following committees may all potentially be involved in ESDP scrutiny: foreign affairs, EU affairs, defence, interior, development aid, budget and human rights committees. The role of these committees differs from country to country, ranging from non-involvement to a lead role. In some parliaments, like the Polish and the Dutch ones, the joint meeting of several committees is a common practice when ESDP operations are debated. In most countries, all international operations abroad, including ESDP operations, are seen as a competence of defence committees. In spite of the rapid development of civilian missions, it appears that interior committees neither play a role in approving nor overseeing

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<sup>48</sup> Mandatory if there is no UN mandate for an operation.

civilian ESDP operations. In those parliaments that do not possess the authority to approve missions, defence committees are less active in ESDP oversight and EU committees tend to have a stronger role, such as France and the UK.

### **Parliamentary control over budgets of ESDP missions**

The so-called ‘power of the purse’ does not appear to signify strong parliamentary scrutiny of ESDP missions. Important elements of ESDP missions are partly financed through either the EU common budget (civilian missions) or the Athena mechanism (military missions) and therefore fall outside of the competence of, or are difficult to be overseen by, national parliaments.

The parliaments that responded to the questionnaire approved the budgets for the four ESDP missions only as part of the annual defence budget which is approved in its entirety each year in the budget law. Nearly all of the responses received indicated that the budget for each individual mission was not approved whilst national participation in the respective mission was considered. Information about the estimated budget of an operation may be offered when it is required during parliamentary debates, but it is not formally approved.

The exceptions are Italy and Germany, where the approval for a mission includes the approval of its estimated budget. In Germany, the Parliamentary Participation Act prescribes that any military deployment proposal of the government to parliament should include information about the estimated costs<sup>49</sup>. In Italy, the approval of national participation in a mission is given through a budgetary approval law. Furthermore, every year the parliament must pass a law in order to allow for the renewal and extension of the mandate. Detailed information about costs, type of forces, tasks and status of forces must be provided.

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<sup>49</sup> See sub-chapter 6.3 in this report on the German Bundestag.

## 4. Conclusions and Recommendations

As outlined in the introduction to this Policy Paper, its principal aims are to identify best practices in national parliamentary oversight of ESDP missions and to formulate recommendations for how EP oversight may be strengthened, as outlined below.

### 4.1. Models and Best Practice of National Parliamentary Oversight of ESDP Missions

#### Models of National Parliamentary Oversight

Based on the EU-wide survey and select interviews conducted for this study, four models of national parliamentary oversight of ESDP may be extrapolated (see Box 1). These models indicate that it is feasible to involve parliament at an early stage of the ESDP decision-making process, contrary to the commonly-held assumption that ESDP crisis management decision-making does not allow sufficient time for parliaments to be given a strong ex ante role. In Finland, Sweden and Luxembourg, parliamentary approval is given before the Council has adopted a Joint Action. Moreover, in 14 out of 25 countries, parliaments are currently involved in prior authorisation before the actual launch of military ESDP missions.

Fewer national parliaments are involved in civilian ESDP decision-making. Only 10 out of 25 have the power of prior authorisation of civilian ESDP missions. Although the EP plays a stronger role in civilian ESDP decision-making (primarily through the scrutiny of the CFSP budget), this does not appear to be the reason for lower national parliamentary involvement. Due to their smaller size, lower costs and lower political risk, civilian missions attract less attention from members of parliament than military missions.

#### Best Practice in National Parliamentary Oversight

The primary research on which this paper is based revealed a number of identifiable best practices in national legislative oversight of ESDP missions, as listed below.

##### A. *Special legislation on sending troops abroad*

1. A specific law on military and/or civilian deployments abroad, which identifies types of missions, conditions for participation, procedures and actors involved, provides a clear legal basis for ESDP decision-making. (e.g. in: Austria, Bulgaria, Finland, Germany, Latvia, Luxembourg, Poland, Portugal, Romania)



### Box 1: Models for national parliamentary oversight of ESDP missions

- A) **Prior authorisation role before the adoption of a Joint Action:** Parliament authorises government to proceed with an ESDP mission before the EU Council adopts a Joint Action. By so doing, parliament influences its government's position in the Council debate on the future ESDP mission in question. This practice was followed in Finland, Luxembourg and Sweden.
- B) **Prior authorisation role before the deployment of troops:** Parliament authorises its government to proceed with an ESDP mission after a Joint Action is adopted by the EU Council but before the deployment of troops abroad. This practice was followed in: Austria, Germany, Cyprus, Czech Republic, Estonia, Ireland, The Netherlands and Spain. Germany and Spain apply this model to military ESDP missions only.
- C) **Consultative role:** Parliament does not have the formal power of prior authorisation, but it debates ESDP missions, sometimes even before the adoption of the Joint Action by the EU Council. If the government fails to obtain parliamentary support, it may proceed with signing the Joint Action and deploying troops under ESDP auspices. This practice was followed in Belgium, France, Poland, Portugal and the United Kingdom.
- D) **No role:** Parliament is neither informed nor consulted about imminent ESDP missions, even when the country deploys troops in the operation. In Bulgaria, Greece and Romania, parliament is involved in neither military nor civilian ESDP mission decisions. In Cyprus, Estonia and Spain, parliament is not involved in civilian ESDP mission decisions.

2. A special law on the role of parliament in deploying personnel abroad provides a clear mandate for scrutiny: prior authorisation powers; the power to withdraw troops; the type of information which must be provided by the government to parliament; emergency decision-making procedures (e.g. Germany).
3. Legal provisions for authorising expenditures related to deployments abroad (e.g. Italy)

#### *B. Parliamentary oversight at the early stages of ESDP operations*

4. After receiving notice of a proposal for a Joint Action establishing an ESDP mission, the government informs parliament without delay. The government explains and justifies its negotiating position and is obliged to take into account parliament's views (e.g. Finland and Sweden).
5. As part of EU document scrutiny, parliament gives political clearance to binding EU documents, including Joint Actions establishing ESDP missions. This practice occurs in the UK and France. However, the government can override parliament's opinion.
6. Before the EU Council meets to decide upon a Joint Action, the government briefs parliamentarians about the annotated agenda of the upcoming EU Council (e.g. The Netherlands).
7. After meetings of the EU Council, including those that establish an ESDP mission, the government briefs parliament (e.g. Finland).

*C. Prior parliamentary approval of deployments abroad*

8. The government has to obtain prior parliamentary approval for troop deployments abroad (Austria, Germany, Finland, Ireland, Italy, Denmark, Luxembourg, Spain, Sweden)
9. Parliamentary prior approval is required for the assignment of national troops to stand-by-units, including an EU Battlegroup (e.g. in Finland).
10. The government is de jure obliged to supply parliament with prior information about upcoming deployments of troops abroad, leading to a de facto approval power of parliament (e.g. The Netherlands)
11. Despite no legal obligation to do so, government seeks prior parliamentary approval of ESDP missions as part of customary practice (e.g. Czech Republic)

*D. Executive-Legislative Relations*

12. In order to avoid overstretch of personnel deployed abroad, parliament and government may set various types of deployment thresholds, based on: a financial ceiling (e.g. in Finland, currently set at 100 million Euros per year); a troop limit (e.g. Spain 3000 troops, Finland 2000 troops and Lithuania 420 troops); or a geographical restriction (e.g. in Lithuania).
13. Representatives of parliament take part in discussions about deployments abroad in executive bodies. In Portugal, parliament is represented by three members in the Superior Council for National Defence, the executive body that decides on deployments.
14. Government sends situation reports to parliament about current deployments on a regular basis. In Germany parliament receives a weekly situation report on current missions, including: information about the political and security situation; relevant incidents; recent high-level visits to troops; performance of the units .
15. Government and parliament apply a 'checklist', intended to ensure a comprehensive political assessment of deployments abroad. In the Netherlands, government and parliament use a 'Framework for deployments of military units in international missions', which refers to: the overarching rationale; political aspects; the mandate of the mission; participating countries; national influence on decision-making within the mission; the feasibility of the mission; potential risks; suitability and availability of military units for the deployment; duration; replacement; and the mission budget.



*E. Parliamentary practices contributing to effective and swift decision-making*

16. German law leaves parliament to decide whether a mission is of sufficient importance to merit involvement. For missions of low intensity and importance, a government request is circulated among the members of parliament and it is considered to be approved unless, within seven days, one faction or a minimum of five per cent of parliamentarians call for a formal approval procedure.
17. The vote in the plenary on deployments is a 'free' vote, without political groups exercising pressure on their members to follow a party line (e.g. in Germany).
18. In Spain, the Presidency of the Congress decides whether formal authorisation will be given by the plenary or only by the Defence Committee, if the mission is not politically sensitive and fast decision-making is preferable.
19. Legislation authorises a committee to give prior approval in the case of minor national participation in a mission: in Denmark (observer missions), in Ireland (when less than 12 persons are deployed) and in Finland (for less than 10 persons deployed).
20. In Finland prior consultation of parliament is necessary for the commitment of a stand-by unit. For its use in operations, only the Foreign Affairs Committee must be consulted. This allows for rapid decision-making in case of the deployment of an EU Battlegroup.
21. There are additional examples where emergency procedures are in place. In France, in cases of urgency the political clearance of the Joint Action can be given by the chairman of the parliamentary committee dealing with EU affairs, who later informs the other members. In the Netherlands, procedures allow parliamentary debate and approval of deployments abroad to be dealt with within one day.
22. 23 parliaments of EU member states have a permanent parliamentary representative in Brussels, facilitating access to information and cooperation between the EP and national parliaments.

*F. Committee practices ensuring proper and swift decision-making*

23. To achieve a full and frank exchange of information, committee meetings dealing with deployments are held behind closed doors in Germany. Updates on the developments of international missions abroad are on the agenda of each committee meeting, including briefings from a minister or deputy minister.

24. Regular or special committees organise meetings and conduct investigations into the wider aspects of ESDP decision-making and deployments abroad, in order to improve parliamentary involvement (e.g. Poland).
25. Parliamentary reports on ESDP decision-making are published online (e.g. the UK).

#### **4.2. Recommendations for Improving EP Oversight of ESDP Missions**

Based on the best practices formulated from investigation of current parliamentary oversight of ESDP, a series of recommendations to enhance EP oversight of ESDP missions is provided below.

##### *A. Strengthening EP oversight through improved inter-parliamentary cooperation*

1. The EP should follow a network strategy to cooperate with national parliaments in overseeing ESDP. For each mission, it should work closely together with the national parliaments of personnel-contributing states and organise joint oversight activities. It is important that these meetings are conducted on the basis of equality between EP and national parliaments.
2. Improved and systematic evaluation of ESDP missions in terms of both effectiveness and cost effectiveness is greatly needed to improve the transparency and accountability of ESDP. The EP could play a more extensive role in the lessons learned phase of ESDP missions. It could conduct independent impact evaluations, ideally in cooperation with national parliaments. This form of oversight should build on current EP practices, such as inviting experts to hearings, commissioning reports or visiting personnel in the field, which are not currently embedded in an impact evaluation.
3. The EP should conduct financial auditing of past expenditures related to ESDP missions, possibly in cooperation with national parliaments or in cooperation with the European Court of Auditors.

##### *B. Strengthening oversight practices through enhanced cooperation of the Council and the EP*

4. The Political Security Committee (PSC) regularly invites independent experts to brief it on particular crises or international security issues. PSC should also invite MEPs to such briefings, and thus allow the involvement of parliamentarians in the early stages of crisis management.
5. Two MEPs could attend GAERC meetings as observers when Joint Actions are discussed. These MEPs could be selected through rotation of the five

members of the special committee established in order to receive classified documents from the Council, since they already have security clearance.

6. The EP should be given a greater role in ex ante approval of ESDP missions, for example through document scrutiny as customary practice, similarly to parliaments in France and the UK. This would allow the EP to approve or reject binding EU documents in draft form. The Council would not be legally bound by the result but EP participation would increase democratic legitimacy.
7. Issuing non-binding opinions of the EP on Joint Actions establishing ESDP missions would also enhance democratic legitimacy and demonstrate that ESDP is not excluded from prior parliamentary scrutiny.
8. The Council should provide the members of the SEDE committee with situation reports about all current ESDP deployments.
9. To achieve effective budgetary oversight, ESDP funding should be restructured, streamlined and brought under the CFSP budget, for which the EP has a scrutiny mandate. However, this is politically unlikely in the near future and would require changes to the current treaty arrangements. Therefore, to enhance transparency of ESDP, an indicative budget should be created for each ESDP mission, bringing together all mission-related costs into a single explanatory document. Ideally, this process would be initiated before a mission deployment and updated thereafter.

*C. Strengthening oversight practices within the EP*

10. EP resolutions should be used as an instrument to voice the EP's (non-binding) opinion in each of the successive stages of ESDP mission decision-making, from the discussion of options in responding to a crisis, through to calling for a lessons learned analysis of a mission.
11. The EP should upgrade the status of SEDE from that of a sub-committee to a full committee, in response to the rapid expansion of ESDP. Political independence would allow for more effective oversight of ESDP.
12. Though the EP and MEPs have policy and expert staff at their disposal, greater resources are needed. Only one expert within the Directorate-General for External Relations is dedicated solely to research on defence and security issues at present. The SEDE budget for commissioning expert reports in the field of foreign affairs and security amounts to 160,000 Euro per year. This budget is currently not fully utilised and should be.
13. Creative thinking on how resources for scrutiny can be efficiently used in partnership with national parliaments and experts is needed, as seen in the growing use of national detached experts in the EU institutions.

The idea of staff exchanges between EP and national parliamentary staffers should be explored.

14. The EP should develop emergency procedures for issuing (non-binding) resolutions and recommendations in situations of urgency.
15. Votes on ESDP missions in SEDE and the Plenary format should be free votes, in which party and country groups abstain from imposing a party line on particular deployments.
16. All SEDE committee members should have security clearance, in order that the sub-committee is able to discuss effectively matters pertaining to confidential documents released by the Council.
17. In order to protect security-sensitive information, SEDE sessions dealing with deployment issues could be held behind closed doors. Practices of national parliaments in establishing an infrastructure for protecting classified information could be adopted.

## **Implementation**

Implementing these recommendations would lead to a stronger role for the EP in the oversight of ESDP missions. By and large, these recommendations are based on improved EP oversight practice and would not require a treaty change or a new inter-institutional agreement. Where treaty changes would be necessary, alternative and less rigorous alternatives are suggested. Nonetheless, even improvements in customary practice would be best implemented through revised treaty provisions, so as not to rely solely on the good will of each actor involved in ESDP decision-making.

These recommendations should be implemented as part of a network strategy, combining the EP and national parliaments. This is important, since shared oversight of ESDP missions is beneficial to both and, more importantly, to the publics that members are elected to serve. Ultimately, public accountability and democratic legitimacy, two of the cornerstones of effective democratic practice, will be enhanced through the strengthening of EP oversight of ESDP.





### **Geneva Centre for the Democratic Control of Armed Forces (DCAF)**

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is one of the world's leading institutions in the areas of Security Sector Reform and Security Sector Governance. DCAF provides in-country advisory support and practical assistance programmes, develops and promotes appropriate democratic norms at the international and national levels, advocates good practices and makes policy recommendations to ensure effective democratic governance of the security sector.

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