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## PARLIAMENTS AND DEMOCRATIC LEGITIMACY OF THE COMMON SECURITY AND DEFENCE POLICY

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## ■ ABSTRACT

The Common Foreign and Security Policy (CFSP), including its strong arm, the Common Security and Defence Policy (CSDP), follows, within Europe, an intergovernmental logic. Thus, prior to the Treaty of Lisbon (2007), the European Union was built on a three-pillar structure, with a Community pillar and two intergovernmental pillars: the CFSP and Justice and Home Affairs (JHA). Whereas the first pillar functioned on the basis of the Community procedure characterised by the legislative initiative of the European Commission, the other two were subject to intergovernmental procedures. Today, however, since the Treaty of Lisbon came into force at the end of 2009, we can say that the CFSP alone has remained intergovernmental, whereas the former JHA pillar was absorbed into common law.

Are we to consider that this development will eventually trigger a communitisation of CFSP and CSDP with an effective parliamentary control? While this is not on the agenda, several developments point to incipient communitisation with the regular intervention of the European Commission and a more urgent demand for democratic control from the European Parliament and the national parliaments on defence matters.

Regarding the European Parliament and its interaction with national parliaments, it had to compensate for the disappearance of the Western European Union (WEU), the only assembly that dealt with defence matters. Its role today is mainly an advisory one, but it does have, however, some useful levers for intervening in CSDP.

First, the High Representative (HR) must report to the European Parliament on the development of CSDP and consult with it on fundamental issues. The European Parliament may request access to sensitive information, which it does more and more frequently, though not without reticence from member states. The HR maintains regular dialogue with the Parliament and implements its recommendations as far as possible. Maintaining good relations with the Parliament is in the HR's interest, as the Parliament has a determining position on budget approval. It can notably, through its power of amendment, influence or even direct the implementation of CSDP operations by deciding on the funding of the different actions. The Parliament also seeks to obtain more political control over CSDP through its Subcommittee on Security and Defence (SEDE), a subcommittee of the Committee on Foreign Affairs. The power of this subcommittee is nevertheless limited by its status, which requires it to keep its relations with the national committees at an informal level.

National parliaments play no legal role in the implementation of CSDP. They nevertheless have a right to information that enables them to assess European acts. More specifically, as regards defence, they have since 2008 two rights to information, one on military interventions abroad and the other, more generally, on EU acts relating to the European defence policy. The national parliaments impose, in general, a preliminary agreement prior to any deployment of troops abroad, be it national, under a coalition or an organisation. France, the United Kingdom and Poland are the only exceptions to this rule.

In April 2012, a new mechanism known as the Interparliamentary Conference for CFSP and CSDP was set up to replace the WEU Assembly and link national parliaments to the European Parliament. It provides a framework for the exchange of information and best practices on questions regarding defence and security. The HR is invited to take part in every meeting to present the EU priorities and strategies in the field of CFSP and CSDP.

The conclusion of this study shows that the intergovernmental logic that governs CSDP is no longer truly a reality. In addition to the tangible influence of the European Commission on CSDP in economic, industrial and technological matters, the European Parliament seeks to exert democratic control over CSDP. While the Parliament's role is essential for the funding of CSDP civilian missions, the recommendations it makes to the HR are often followed up, although they retain an advisory nature. The role of the Parliament could be enhanced through the transformation of the Subcommittee on Security and Defence into a committee in its own right, which would give it a powerful voice on topics related to CSDP. The relations between the Parliament and the HR could also gain in effectiveness by developing the role of vice-president of the European Commission (HR/VP). Nevertheless, the European Parliament's involvement in CSDP should not undermine external action governance and operational effectiveness at the EU level.

In this context, the States must become aware of this development in order to accompany and control it, while paying particular heed to the principle of subsidiarity which stipulates that decisions must be taken at the most appropriate level possible.

## ■ INTRODUCTION

*“With the military you cannot achieve everything, but without the military you can do nothing”*

Raymond Aron.

The issue of defence, which has long been neglected in the European integration process, has nonetheless been at the heart of numerous debates and controversies. The failure of the European Defence Community project in the 1950s – a project intended by the fathers of Europe, Robert Schuman and Jean Monnet, to be a catalyst in its construction – provided an opportunity for France to recall that defence remained the “supreme attribute of sovereignty”, the “*ultima ratio regum*”.

After the introduction in 1992 of the Common Foreign and Security Policy (CFSP), it wasn't until 2003 that the European Union defined its objectives through the *European Security Strategy* and launched its first military operation.<sup>1</sup> A European defence was created, but its political concept and its legal definition remained ambiguous.

The following years saw the gradual development of institutional and operational structures of CFSP, including in terms of Common Security and Defence Policy (CSDP). In 2015, thirty operations were launched in total, two thirds of which were civilian missions. These operations are often set up with some difficulty, and their scope is generally limited. Indeed, the institutional and operational structure of CSDP, based on intergovernmentalism and the necessary consensus, tends to slow decision-making. The European Council, that brings together the Heads of State and government, has the sole decision-making power as regards CSDP.

In this context, the question arises as to the democratic legitimacy of CSDP. This warrants the analysis of the level of involvement of national parliaments and of the European Parliament within the CSDP normative process.

Whereas the Treaty of Lisbon marked a turning point in the inclusion of national parliaments in the community normative process, they are sidelined legally speaking as regards defence. Defence policy is often developed at the national level, and the role of governments remains limited within CSDP. As for the European Parliament, its co-decision powers do not extend to CDSP, in which its role remains essentially an advisory one. Though it has other mechanisms of intervention in CSDP, its role is still limited within decision-making. In this context, interparliamentary cooperation is a significant additional means of political influence for national and European parliaments. This versatile instrument, which is constantly growing, could compensate for the democratic deficit of the CSDP.

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<sup>1</sup> Operation Concordia – Former Yugoslav Republic of Macedonia (FYROM), March 31, 2003.

## ■ NATIONAL PARLIAMENTS HAVE A LIMITED ROLE WITHIN THE EUROPEAN SECURITY AND DEFENCE POLICY

National parliaments, which were ignored for a long time within the European construction, have gradually seen their role increase from 1979, with the election of the European Parliament by direct universal suffrage. Whereas the Maastricht treaty had been accompanied by a simple statement on national parliaments, the treaty of Amsterdam saw the adoption of a protocol on “the role of national parliaments and interparliamentary cooperation”, taking national parliaments one step further towards the acknowledgment of their role.

This inclusion, seen as a way to make up for the democratic deficit in the European Union, has continued to grow. The Treaty of Lisbon itself considerably reinforced the role of national parliaments within the European normative process, henceforth making them the guarantors of compliance with the principle of subsidiarity.<sup>2</sup> However, while expanding the responsibility of national parliaments as regards EU law follows the logic of integration underpinning the European Union, the same cannot be said for areas relating to national sovereignty, such as defence and security.

Consequently, the role of national parliaments remains limited in the development of the European defence policy.

A detailed reading of the Treaties reveals that national parliaments are legally left out of the development of European defence policy at the supranational level. However, in order to compensate for this, the role of parliaments was increased at the national level.

### **At the supranational level, national parliaments are not bound by any legal obligations concerning the development of CSDP**

One of the main contributions of the Treaty of Lisbon was indisputably the expansion of the role of the national parliaments in the development of the European norm. This expansion, however, mostly concerns the European normative process, i.e. the Union’s legislative acts. However, CSDP has not yielded to the call of the European institutions and continues to be based on intergovernmentalism.

The close reading of the treaties thus shows that the European codification distances national parliaments from the development of the European defence policy. In practice, however, the development of this policy is not exclusively intergovernmental.

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<sup>2</sup> The principle of subsidiarity states that, in the areas that do not fall within the exclusive competence of the Community, the latter intervenes only if the objectives of an action cannot be successfully achieved by the member states. This principle is thus meant to protect the capacity of decision and action of the member states. See Article 5 paragraph 3 TEU: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

### *Intergovernmental codification of CSDP excludes national parliaments*

In many ways, the Treaty of Lisbon was a major step towards strengthening the role of national parliaments within the European normative process. One full article is dedicated to the role of national parliaments (TEU, article 12) and there are two protocols regarding them: the Protocol on the role of national Parliaments in the European Union, and the Protocol on the application of the principles of subsidiarity and proportionality. This was the first time the role of national parliaments, that contribute to the “good functioning” of the Union, was mentioned within the body itself of the Treaties. This illustration reveals once more the Union’s strong desire to increase democratic legitimacy by strengthening the principle of subsidiarity.

Among the innovations of the Treaty of Lisbon is the right to information of national parliaments through the henceforth direct forwarding of all European institution documents,<sup>3</sup> as well as a new mechanism of subsidiarity control called “early warning”.<sup>4</sup> Even though members of national parliaments benefit from these innovations within the framework of the Union’s community policies, it is not the case with CFSP and CSDP.

Article 24-1 § 2 TEU provides that:

*“The common foreign and security policy is subject to **specific rules and procedures**. It shall be defined and implemented by the European Council and the Council acting **unanimously**, except where the Treaties provide otherwise. The adoption **of legislative acts shall be excluded**. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions...”*

Formerly represented by the second pillar, CFSP is a historically intergovernmental cooperation policy. The treaty of Lisbon mentions the peculiarity of this policy, as well as its “[being forced to respect] *specific rules and procedures*”. Whereas the co-decision procedure became ordinary legislative procedure<sup>5</sup>, CFSP remained governed by unanimity, “except where this Chapter provides otherwise” (TEU, Article 31 a). CSDP, an integral part of the CFSP, is no exception to the rule, for the rare hypotheses where the qualified majority only is required in CFSP do not apply to “*decisions with military implications or those in the area of defence*” (TEU, Article 31 c). This intergovernmental approach, which stems from the commitment of States to their prerogatives, is even stronger as regards defence policy. Whereas the purpose is the development of a common defence policy (TEU, article 24 paragraph 2 and article 42 point 2), the Treaty is extremely clear on limiting the scope of

<sup>3</sup> Article 12 a) TEU, articles 1 and 2 protocol 1 and article 4 protocol 2. Prior to the treaty of Lisbon, the forwarding of documents from the institutions was only indirect, through the governments of the member states.

<sup>4</sup> Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, send to the institution in question a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. See article 12 b) TEU, articles 3 and 4 protocol 1 and articles 6 and 7 protocol 2.

<sup>5</sup> Articles 231, 289 and 294 TFEU and article 16 §1 and §3 TEU: on a Commission proposal, a draft legislative act is adopted in conjunction by the European Parliament (simple majority) and the Council of the Union (qualified majority).

such a policy: “the (...) policy of the Union (...) does not prejudice the specific character of the security and defence policy of certain Member States” (TUE, article 42 point 2).

Through this intergovernmental rationale, the Treaties exclude the adoption of legislative acts as regards CFSP (TEU, article 24 paragraph 2 and article 31). The common defence policy can thus only be defined through “decisions” (TEU, article 25), unanimously adopted by the European Council (TEU, article 42 point 2). However, if the qualification the European Council’s as legislative acts is refuted, so are the mechanisms inherent to the adoption of a legislative act. All modalities of intervention granted to national parliaments in the ordinary legislative procedure thus seem excluded from CFSP (*a fortiori* in relation to CSDP). Indeed, nothing obliges the European Council to inform and forward these draft decisions to national parliaments. Therefore, unlike the legislative acts of EU law, no other “early warning” mechanism (TEU, articles 3 and 4 Protocol 1 and articles 6 and 7 Protocol 2) is available to them as regards defence. In reality, the Treaties mention no control of subsidiarity of the Council’s decisions regarding CFSP. Indeed, such a mechanism available to MPs would completely call into question the intergovernmental character of CFSP. Consequently, the jurisdiction of the Court of Justice of the European Union is also distanced (TEU, article 24 TEU paragraph 1 § 2).

### *CSDP is not always governed by an intergovernmental rationale alone*

Whereas CSDP remains mostly subject to intergovernmental logic, certain mechanisms and structures show that this logic is not absolute. These mechanisms prove that the Treaties are not written in stone, which seems to indicate gradual relaxation. Whereas this does not increase the current influence of national parliaments, the influence of national parliaments could grow in the future.

#### *Article 31-1 § 2 TEU*

Similar to article 24 TFEU quoted and analysed above, whereas article 31-1 § 1 TEU dismisses the adoption of CFSP legislative acts and establishes the unanimity rule in the Council and the European Council,<sup>6</sup> paragraph 2 qualifies its scope.

Article 31-1 § 2 TEU:

*“When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In this case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.”*

Article 31-1 § 2 TEU establishes a mechanism that relaxes the normative process of CFSP, for it allows, on an ad hoc basis, for exceptions to the unanimity rule of the Council. Indeed, the abstention

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<sup>6</sup> See article 31-1 § 1 TEU: “Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded”.

of a member state, and therefore the absence of unanimity, does not automatically stop the the decision from being adopted. On the contrary, the State that abstains accepts that the decision commits the Union and therefore produces legal effects. It is even required to comply with the adoption of the decision by the other member states and not to impede it. Whereas mechanisms to derogate from qualified majority voting are not applicable to CSDP,<sup>7</sup> this mechanism, called the “*constructive abstention*” mechanism, is dealt with separately by the Treaty. Given that it only represents an indirect exception to the classic unanimity rule as regards CSDP, the Treaty does not regard it as a derogation mechanism in its own right and, consequently, does not exclude it. This mechanism is, therefore, theoretically applicable within CSDP.

It is important, however, to note that the decision cannot be adopted if one third of the Member States,<sup>8</sup> making up one third of the European citizens, abstain. Conversely, this means that in the absence of opposition, a qualified majority of more than two thirds of the member states approving the decision is enough for the decision to be adopted. Thus, as long as States that abstain make up less than one third of the member states, abstention is considered a form of neutrality: unlike in the case of acceptance, abstentionist states will not suffer the legal consequences of the said decision. Conversely, when abstentionist states represent one third of the member states, abstention amounts to an opposition. This hypothesis remains, however, unlikely, because any explicit opposition is enough to prevent the adoption of a decision.

This relaxation of the unanimity voting rule is not all that calls into question the intergovernmental nature of CSDP: the functioning of the European Defence Agency is not entirely intergovernmental. Although the EDA is under the authority of the Council and the High Representative – and therefore, governed by an intergovernmental logic – it is interesting from a legal viewpoint, for it seems to soften once more this logic in terms of CSDP. The Steering Board<sup>9</sup> has the necessary flexibility to enable it to vote on decisions by acting in a qualified majority, that amounts to two thirds of the weighted votes of member states participating in EDA.<sup>10</sup> The traditional rigidity of CSDP remains, as this method of voting is exceptional in terms of defence and security,

Whereas these voting mechanisms seem to indicate exceptions to the rule of consensus, they are rarely used at the present and cannot challenge the dominant intergovernmentalism as regards defence and security.

### **At the national level, the role of national parliaments is developed in order to compensate for the supranational deficit**

Although the power of intervention of national parliaments in the European defence policy does not seem to be significant *in jure* in the Treaties, the constitutional tradition of each member state generally enables preliminary control.

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<sup>7</sup> See article 31-4 TEU: “*Paragraphs 2 and 3 shall not apply to decisions having military or defence implications*”. This refers to direct derogation mechanisms, in other words, exceptions to the principle of unanimity.

<sup>8</sup> Nine member states, Denmark being excluded from CSFP.

<sup>9</sup> In its classic formation, the Steering Board brings together the Ministers of Defence of member states and a member of the Commission. For specific matters, EDA brings together national armaments directors (NAD), R&T directors and military staff in charge of defence planning.

<sup>10</sup> All member states of the Union, except for Denmark.

Each member state having its own institutional system, the degree of parliamentary control of the national defence policy differs according to the states. The combination of legal and political criteria enables, however, comparisons to be made between certain national institutional systems according to the influence of each national parliament on security and defence.<sup>11</sup> In certain member states of constitutional parliamentary tradition, the national parliament has a decision-making power on these matters. Thus, concerning the decision to use the armed forces, certain states display a high level of parliamentary control: this is precisely the case of Germany, Spain and Sweden. By contrast, parliamentary control is more limited in France, Belgium, Poland and the United Kingdom.

In Germany, members of the *Bundestag* are at the core of security and defence matters. They have major powers that enable them to intervene, including regarding CSDP. To a lesser extent in France, several tools are, nevertheless, available to MPs to oversee European acts. The French Parliament's influence is reflected in a guaranteed expanded right to information and an effective European resolutions mechanism.

### *The Bundestag is at the core of security and defence matters*

#### *The Bundestag must approve the deployment of forces abroad*

German parliamentarianism had a chaotic beginning, marked by the Third Reich and the slow reconstruction of the German armed forces during the Cold war. Thus, the “parliamentary arena” (Irondele, Rozenberg, Hoeffler et al., 2012 : 110-111) plays an essential role in the development of defence policies in Germany. It is from this context also that stems a strategic culture which defines it: it is a rather antimilitarist culture (Becker, 2013), having long endeavoured to favour other modes of action at the international level, especially those bearing a civilian character. It was after the fall of the Berlin Wall and the German reunification that the German antimilitarist culture was challenged, particularly during the Gulf War and the Kosovo War. Whereas public opinion has not fundamentally evolved, German strategy has gradually adapted to the constraints of the international stage, diplomatic, as well as military.

A judgement of the German Constitutional Court on July 12, 1994, that described the German army as a “*parliamentary army*”, reaffirmed a principle of constitutional value: the need for prior assent of the *Bundestag*<sup>12</sup> for any deployment of troops abroad (Le Bris, 2012 : 953). It was not until March 18, 2005 that this principle was written into German law through article 2 of the “Parliamentary Participation Act”.<sup>13</sup> If the urgency of a situation requires the rapid deployment of troops, this is possible without the backing of the *Bundestag*. The *Bundestag* must, however, be immediately informed and give its assent after the event. Without its approval, the German government is forced to withdraw troops already engaged. Also, the slightest change in the deployment of troops is also subject to the prior approval of the *Bundestag*, an approval which imposes restrictions on the government. This means that the *Bundestag* implicitly has a right to information that is particularly extensive in terms of both materiel and time: the government is required to justify its actions regularly, in a transparent manner.

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<sup>11</sup> See especially the two classification tables of certain member states in Appendix 1. It should be noted, however, that these tables are dated 2005 and 2006 and, therefore, do not take into account France's 2008 constitutional reform.

<sup>12</sup> Defence and security matters are outside the jurisdiction of the *Bundesrat*.

<sup>13</sup> “Parliamentary Participation Act”, known as *Parlamentsbeteiligungsgesetz* or *PBG*.

It is here that parliament control reaches its highest degree: German federal parliamentarians directly intervene in German defence policy and, therefore, indirectly in CSDP. Indeed, whereas the prior approval of German parliamentarians is needed for the deployment of troops, no distinction is made as to the nature of the intervention: it is therefore equally required as regards interventions within the framework of CSDP (civilian missions, as well as military operations). In this case, the *Bundestag* plays an indirect role in European decision-making as regards CSDP. Its approval is needed, because in the event of disagreement, the German government could be forced, if not to oppose European intervention, at least to abstain in the Council.

Furthermore, this parliamentary assent that is the result of a simple majority vote, comprises two stages. All deployment proposals are submitted to the Committee on Foreign Affairs, responsible for the deployment of forces, and which must give its assent. Although formally unbinding, its assent is in practice always followed by the Plenary Assembly of the *Bundestag* (Irondele, Rozenberg, Hoeffler et al., 2012 : 128). In order to do this, the Committee on Foreign Affairs is helped by the Defence Committee, that issues recommendations on these matters.

#### *The Defence Committee plays a major role within the German defence policy*

The only committee established by the German Basic Law,<sup>14</sup> the Defence Committee<sup>15</sup> plays an essential role in the parliamentary oversight process of the armed forces. This constitutional recognition gives it great legitimacy in the face of various actors in security and defence.

The Committee aims to control all aspects of the German defence policy. It is also responsible for the development of armies and their moral code: the "*Innere Führung*". In other terms, the Committee defines the "spirit" of the German defence policy. As has already been said, it advises the Committee on Foreign Affairs as to the deployment of German troops abroad. It gives its opinion on every bill as regards security and defence. In order to do so, it has an expansive right to summons: it can summon any member of the Ministry of Defence, or even of the government.<sup>16</sup> These hearings are important as they enable the Committee to keep track of the evolution of policies in a regular and effective manner.

As the advisory role of the German Defence Committee is vast, nothing prevents its having a say also in decisions or draft decisions of the Council in terms of CSDP. The *Bundestag* indirectly has, in this case also, strong influence on the Council's decisions in terms of CSDP. The influence of the German Defence Committee is such that the German government cannot oppose it, at the risk of being denied the deployment of troops afterwards.

The Defence Committee can also convene itself as a committee of inquiry on its own initiative, at the request of a quarter of its members. Its structure and functioning are very similar to those of traditional committees of inquiry,<sup>17</sup> but the constitutional base of this power<sup>18</sup> turns it into a strong

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<sup>14</sup> See article 45a § 1 of the German Basic Law.

<sup>15</sup> In the 18th electoral term, the German Defence Committee comprises 32 members and 32 substitute members, that represent the various political groups in the *Bundestag*.

<sup>16</sup> See § 68 of the Rules of Procedure of the German *Bundestag*.

<sup>17</sup> See article 34 § 4 the law on parliamentary committees of inquiry.

<sup>18</sup> See article 45 a § 2 of the German Basic Law.

political symbol. Whereas the Defence Committee rarely uses this power,<sup>19</sup> its hypothetical ability to do so acts as a strong incentive on the executive to cooperate during the parliamentary oversight process, or at the very least not to hinder it. This power of inquiry further increases the Committee's influence on the German government's decisions as regards defence, including CSDP.

The *Bundestag* can thus use numerous control mechanisms as regards defence, even though these mechanisms are only indirect in the case of CSDP. To a lesser extent, mechanisms are available to the French Parliament for influencing the European normative process as regards CSDP.

### *The French Parliament can use several legal tools to influence European acts*

Whereas the French Parliament does not directly intervene in the European normative process as regards defence, it can influence it through several mechanisms.

*The French Parliament has a constitutionally reinforced right to information enabling it to assess European acts*

Since the constitutional reform in 2008, national parliaments' right to information on defence policy is based on two different articles of the Constitution: article 35 paragraph 2 relating specifically to military interventions abroad and article 88-4 paragraph 1 that deals, more generally, with the acts of the Union, whether related to the European defence policy or otherwise.

Article 35 paragraph 2 provides:

*"The Government shall **inform** Parliament of its decision to have the armed forces intervene abroad, at the latest three days after the beginning of said intervention. It shall detail the objectives of the said intervention. This **information** may give rise to a debate, which **shall not be followed by a vote.**"*

The use of the indicative clarifies the scope of this disposition: the Government must inform the Parliament, this is a binding disposition that leaves no room for interpretation. Although it is only a question of a right to information, this right forces the executive to inform the Parliament instead of leaving it the task of taking the necessary steps to this end (Ailinca, 2011 : 132).

However, in reality, article 35 sees its scope particularly limited. First, materially, as it only applies to military operations abroad. Furthermore, the content of the information provided to the Parliament also remains limited, the Government being simply required to state the operation's objectives, through a vector of its own choosing.<sup>20</sup> Last, the provision in question can only be applied once, the Constitution guaranteeing no regular information of parliamentarians concerning the development of an operation.

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<sup>19</sup> Two times only during the last fifteen years: in 1998 and 2006. See B. Irondele, O. Rozenberg, C. Hoeffler, J. Joana, O. Chopin and C. Olsson, *Evolution du contrôle parlementaire des forces armées en Europe*, op. cit., p. 123.

<sup>20</sup> No clarification needed as to its exact nature, the foundations of its legality and of its appropriateness or the personnel engaged. The absence of clearly stated legislation means a simple press release may suffice (Ailinca, 2011 : 133).

Whereas article 35 of the Constitution leaves little room for the French Parliament in defence policy (contrary to German Basic Law), the new wording of article 88-4 extends the French Parliament's right to information to include European acts.

Article 88-4 first paragraph of the French Constitution<sup>21</sup> provides:

The government shall lay before the National Assembly and the Senate drafts of European legislative acts as well as other drafts of or proposals for acts of the European Union as soon as they have been transmitted to the Council of the European Union..

This new wording of the article is innovative, as the obligation to provide information to the French Parliament henceforth regards all European acts, whether they have a legislative value or not.<sup>22</sup> The Circular of 21<sup>st</sup> June 2010 regarding the participation of the National Parliament in the European decision-making process clearly explains that this new wording covers acts relating to CFSP, with no precision with respect to CSDP. However, several legal analyses indicate that this silence does not distance the acts relating to CSDP. Thus, unless otherwise specified, nothing prevents article 88-4 from being applied to CSDP acts, despite its intergovernmental character. This broad interpretation of the right to information of national MPs indirectly enables them to be, if not included in the decision-making process as regards CSDP, at least informed about it.

The Government equally stated this obligation to inform the Parliament in the circular of implementation of article 88-4 of the Constitution. Apart from the twenty-four-hour time limit imposed to inform the presidents of the assemblies, the circular expands this obligation in time:<sup>23</sup> the Parliament's right to information includes the implementation of the European projects and acts. Despite the limited scope of the Parliament's right to information in article 35 paragraph 2 of the Constitution (*ratione materiae*, as well as *ratione temporis*), European acts and other projects regarding CSDP thus seem covered by the obligation to inform the Parliament established by article 88-4.

Nevertheless, this right to information is not in itself a real power of influence. Article 88-4 grants the French members of parliament another mechanism: European resolutions.

*The "European" resolutions mechanism is an effective instrument of influence for French MPs enabling them to give opinions*

Whereas article 88-4 of the Constitution increases the French Parliament's right to information, including as regards CSDP, it also reinforces the latter's power of influence through the adoption of European resolutions.<sup>24</sup>

Article 88-4 paragraph 2 of the Constitution provides:

In the manner laid down by the Rules of Procedure of each House, European resolutions may be passed, even if Parliament is not in session, on the drafts or proposals referred to in the preceding

<sup>21</sup> [French Constitution of 1958](#), as amended in 2008, available online:.

<sup>22</sup> Indeed, the previous version of article 88-4 paragraph 1 imposed on the Government only to forward drafts or proposals in the legal field. (Ailincă, 2011, 133).

<sup>23</sup> Circular of June 21, 2010 concerning the participation of the national parliament to the European decision-making process, OJ of 22 June, points I. 2) and IV.

<sup>24</sup> Article 88-4 paragraph 2 of the Constitution.

paragraph, as well as on any document issuing from a European Union Institution.

These resolutions may cover all the acts mentioned in the first paragraph of article 88-4, i.e. “drafts of European legislative acts as well as other drafts of or proposals for acts of the European Union” and “any document issuing from a European Union Institution”. Thus, resolutions can touch upon any document relating to CSDP, resolutions of the European Parliament as well as decisions of the Council. This broad interpretation of the scope of the resolutions reinforces the influence of the French Parliament in the field of CSDP.<sup>25</sup> In this respect, a recent European resolution relating to the revival of the Europe of Defence<sup>26</sup> was adopted by the Assemblée Nationale on May 4, 2013.<sup>27</sup>

This role is all the more vital since the executive is required to take into account its importance to the Parliament. Indeed, according to a circular of June 10, 2010,<sup>28</sup> when a resolution is introduced before the adoption of a decision at the European level, the Government must follow the procedural provisions that enable it to reserve its position pending the adoption of the resolution.<sup>29</sup> Depending on the date the text is included on the agenda of the Council of the European Union, the Minister of foreign affairs will be able, as regards CFSP/CSDP acts, to make known that France is against its inclusion, request that the text be adopted at a later date, or render France’s definitive vote conditional on the Parliament’s position. This provision considerably increases the influence of the French Parliament, which indirectly intervenes in negotiations within the Council (Ailincă, 2011 : 134).

It should be recalled, however, that a circular does not have the same binding force as a constitutional provision, the hierarchy of norms in French law conferring it an infra-regulatory scope. While introducing new rules, such as of the rule on the monitoring of the Parliament’s position, in particular, this circular seems however to belong to the category of mandatory circulars and, therefore, to have a binding force.<sup>30</sup> In any event, if there is a majority in government, it is unlikely that the Parliament would issue an unfavourable opinion on the adoption of a European act by the Government. Nevertheless, if there is cohabitation, the Parliament might not share the Government’s stance and issue an unfavourable opinion on the adoption of the European act.

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<sup>25</sup> See for example regarding CSDP the [resolution adopted by the Senate on November 21, 2009](#) on the draft agreement between the European Union and the United States concerning the processing and transfer of financial messaging data in order to combat terrorism.

<sup>26</sup> [Assemblée nationale European resolution on the Revival of the Europe of Defence](#) adopted on May 4, 2013.

<sup>27</sup> Two other European resolutions were formerly adopted by the Senate: the European resolution on oversight of the common security and defence policy of April 11, 2010 and the European resolution on the proposal of a Council decision establishing the organisation and functioning of the European External Action Service of May 21, 2010.

<sup>28</sup> Circular of 21 June 2010 concerning the participation of the national parliament in the European decision-making process, *op. cit.*, point IV.

<sup>29</sup> *Ibid.*, point IV 1.

<sup>30</sup> Since the decision handed down on the *Institution Notre-Dame du Kreisker* (Ass., 29 janv. 1954, p. 64). the Council of State rejected on the grounds of inadmissibility the move to annul purely interpretative circulars. They were not considered to be prejudicial and could not be invoked in support of appeal. These circulars had to be distinguished from those of a regulatory nature, which gave rise to complaints and could therefore be invoked in support of appeal. Overturning this distinction by its Duvignères decision of December 18, 2002, the Council of State established new criteria of admissibility for appeal to excessive power exercised against a circular. These criteria lie in the circular’s character: mandatory or otherwise.

In conclusion, within the European normative and institutional framework in which the intervention of national parliaments fits, the latter seems particularly limited, especially in terms of CSDP. Indeed, even though certain mechanisms point to a relaxation of the intergovernmental logic of the CSDP, national parliaments do not have real decision-making power within the European defence policy. The domestic legal framework of certain member states thus contributes to the strengthening of the national parliament's modalities of intervention within the European normative process. In the case of Germany, of rather parliamentary tradition, a constitutional principle henceforth imposes the prior assent of the Bundestag for any deployment of forces abroad. However, whereas the political influence of the Bundestag is considerable in defence, it is only indirectly so in CSDP and cannot be considered a decision-making power. In France, MPs can use two mechanisms in order to oversee European acts, including those relating to CSDP: a broader right to information and a resolution mechanism thus enable to compensate for absences in the Treaties. Nevertheless, the French Parliament's instruments are not all binding. Here the traditional dichotomous reasoning in law – participation or exclusion – does not apply, and in reality the French Parliament must embrace the norm, and influence it, rather than formulate it (Le Bris, 2012).

Thus, according to the systems of parliamentary control in place at national level, the role that national parliaments play within CSDP varies. Therefore, the political influence of national parliaments is rather unbalanced and cannot make them essential actors of the CSDP. As for the European Parliament, it has an equally limited role as regards CSDP, although it is constantly evolving.

## ■ THE ROLE OF THE EUROPEAN PARLIAMENT IN DEFINING EUROPEAN SECURITY AND DEFENCE POLICY IS ALSO LIMITED

The origins of the European Parliament are to be found in the evolution of the Common Assembly of the European Coal and Steel Community (ECSC). As a single assembly, it brought together the three existing supranational European communities at the time<sup>31</sup> under the name of “European Parliamentary Assembly” until 1962, when it became known as the “European Parliament”. Originally appointed by each national parliament, Members of the European Parliament have been elected by direct universal suffrage since 1979.

The Treaty of Lisbon is an important step, for it extends once again the co-decision procedure to forty-five new legislative fields, granting it an ordinary character (ordinary legislative procedure). Thus, as regards most of the secondary EU legislation acts,<sup>32</sup> the European Parliament has henceforth the same decision-making power as the Council. However, there are matters that typically concern national sovereignty in which the member states are not yet inclined to delegate their prerogatives to the European institution, as is the case with the Common Security and Defence Policy.

Therefore, whereas the European Parliament does have mechanisms of intervention in the CSDP, its level of influence remains feeble.

As was the case with national parliaments, the legal analysis of the European Treaties reveals a limited role of the European Parliament in the development of European security and defence policy. Whereas national parliaments are left out of the European normative process in this matter, the European Parliament has an essentially consultative role. While having no real decision-making power, it can nevertheless use other mechanisms of intervention in Common Security and Defence Policy.

### **The European Parliament has an essentially advisory role within CSDP**

Upon analysing the treaties, the limited role of the European Parliament in the defining of the European security and defence policy can be seen. Legally speaking, the European Parliament’s only power in this area is influence, without having any real decision-making power. The European Parliament Subcommittee on Security and Defence seeks to be included in the CSDP normative process.

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<sup>31</sup> The European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

<sup>32</sup> EU “secondary law” designates all legislative acts adopted by the European institutions, such as regulations and directives. It is different from EU “primary law”, which designates all the founding Treaties of the European Union.

### *The European Parliament has a power of political influence alone*

Whereas the role of the European Parliament has also increased with the Treaty of Lisbon, it has changed little as regards defence and still remains *ipso facto* legally limited.

Article 36 paragraph 1 TEU provides:

*“The High Representative of the Union for Foreign Affairs and Security Policy shall regularly **consult** the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and **inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration.** Special representatives may be involved in briefing the European Parliament”.*

Article 36 paragraph 1 TEU defines the advisory role of the European Parliament as regards CSDP. The use of the indicative shows once again that the High Representative has the obligation to consult the European Parliament on the main aspects of the CSDP. However, as a declaratory act, the advisory opinion issued by the Parliament is not binding. Thus, this consultation of the European Parliament enables it to express its position, leaving it to the High Representative to take into account (or not) any recommendations. In this respect, the High Representative is also required to inform the European Parliament on the evolution of CSDP: whereas the notion of “evolution” is not clearly stated, it must be acknowledged that the High Representative makes a major effort in order to regularly attend Parliament. The question is whether this frequency is considered sufficient, especially with regard to the content and benefit of the discussions on draft decisions.

However, all that is dealt with here is the classic obligation of informing the European Parliament, transposed to CSDP.<sup>33</sup> But article 36 TEU grants the European Parliament another mechanism in the field of CSDP.

Article 36 paragraph 2 provides:

*“The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy..*

In addition to its right to information, the European Parliament also – and logically – has the right to ask questions in response to the documents it receives. This right to ask questions may especially be exercised while hearing the EU special representatives (TUE, article 24 a). Paragraph 2 of article 36 TEU adds the right for the European Parliament to make recommendations to the Council or the High Representative. The recommendations are a regular means of expression of the European Parliament. Where the advisory opinion is a timely response to a draft European act, recommendations can be issued at any time, without prior solicitation. These recommendations are often made through European Parliament resolutions. Thus, on November 21, 2013, two resolutions

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<sup>33</sup> The European Parliament’s right to information mainly relies on the possibility to hear the European Council and the Council (of Ministers) “*in accordance with the conditions laid down in the Rules of Procedure of the European Council and those of the Council*” (article 230 paragraph 3 TFEU and article 26 of the Rules of Procedure of the European Council). The European Council must also forward a report to the European Parliament following each reunion (article 15-6 d TEU).

were adopted by the European Parliament: the first, on the implementation of CSDP<sup>34</sup> and the second on DTIB,<sup>35</sup> both for the European Council of December 19 and 20, 2013.

As already stated, paragraph 1 of article 36 TEU stresses the need for the High Representative to take into account the views of the European Parliament. However, this consideration is not explicitly extended to recommendations, and therefore nothing indicates that the High Representative or the Council must follow them. In this respect, as well as for the advisory opinions of the European Parliament, the recommendations have no binding force, whether they are taken into account *de facto* or not. Thus, influence is once more merely political: in the light of the Parliament's recommendations, the Council may possibly decide to amend certain provisions of the future European act. However, this cannot give a binding force to the aforesaid recommendations. Under these conditions, any extensive interpretation of article 36 TEU seems almost unjustifiable legally speaking.

Similarly, the right to hold a debate<sup>36</sup> granted to the European Parliament could be likened to a form of control of CFSP (and, therefore, of CDSP). However, these debates do not engender any sanction and therefore have no binding force with regard to the development of CFSP, as well as CSDP. In reality, they are used for the formulation of positions and recommendations of the European Parliament on the matter.

In practice, the 2009 Report on the main aspects and basic choices of the Common Foreign and Security Policy<sup>37</sup> also demonstrates that the Council lacks rigour as to its duty to inform vis-à-vis the European Parliament. Indeed, parliamentarians criticise the method used by the Council that, according to them, "content[s] itself with providing an exhaustive catalogue of the activities carried out".<sup>38</sup> They thus reproach it its failure to present the main challenges, priorities and objectives of future activities within the framework of this policy.<sup>39</sup> Indeed, the European Parliament having no authority in the matter, it must content itself with "inviting"<sup>40</sup> the Council to build real cooperation with it in order to deepen dialogue and, at the same time, the legitimacy of acts adopted by the Council.<sup>41</sup>

At present, textual analysis of the Treaty shows that the European Parliament remains dependent on the intergovernmental nature<sup>42</sup> of the CSDP. The Subcommittee on Security and Defence, however, seeks inclusion within the normative process in the field.

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<sup>34</sup> [European Parliament Resolution on the implementation of CSDP, P7\\_TA\(2013\)0513.](#)

<sup>35</sup> [European Parliament Resolution on the European Defence Technological and Industrial Base, P7\\_TA\(2013\)0514.](#)

<sup>36</sup> Biannually and no longer annually; see article 36 paragraph 1 TEU.

<sup>37</sup> [Annual report on the main aspects and basic choices of the CFSP of February 19, 2009.](#)

<sup>38</sup> *Ibid.*, § 10.

<sup>39</sup> *Ibid.*, § 10.

<sup>40</sup> *Ibid.*, § 11.

<sup>41</sup> Also, recently, in a resolution on the implementation of the Council common position on arms exports to third countries (P7\_TA-PROV(2013)0324), the European Parliament can thus only "*note*" the lack of uniformity in the implementation of this common position, be "*of the opinion that*" it should be subject to effective parliamentary control of its implementation by member states and, lastly, "*call for*" an annual debate held in Parliament, as well as a report, also annual, within the framework of this effective control.

<sup>42</sup> See formerly I. A. 1.

*The Subcommittee on Security and Defence of the European Parliament seeks inclusion within the European normative process as regards CSDP*

As indicated in Annex VII of the European Parliament Rules of Procedure, the Subcommittee on Security and Defence “assists” the Committee on Foreign Affairs “in matters relating to the European common security policy and common security and defence policy”.<sup>43</sup> In spite of the European Parliament’s limited powers as regards CFSP, in view of its intergovernmental logic, the Committee on Foreign Affairs, as well as its Subcommittee on Security and Defence, have thus managed to impose themselves in the inter-institutional dialogue. Whereas the European Parliament Rules of Procedure do not define in a more specific way the functions of the Subcommittee on Security and Defence, guidelines were adopted as early as 2004 in order to allocate powers between the Committee on Foreign Affairs and the Subcommittee on Security and Defence. The Committee on Foreign Affairs has most of the exchanges with the main actors in defence, but the Subcommittee has also proved its capacity to participate in the political dialogue and set up certain meetings with actors in the CDSP. (Von Wagau, 2010 : 18)<sup>44</sup> This political dialogue may also be formalised through inter-institutional agreements, as provided by the Treaty.

Article 295 TFEU provides:

*“The European Parliament, the Council and the Commission shall **consult each other** and by common agreement make arrangements for their **cooperation**. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a **binding nature**.”*

Indeed, the Council and the European Parliament have adopted several interinstitutional agreements, particularly concerning budgetary discipline and the sound financial management.<sup>45</sup> This agreement resulted in a consultation of the European Parliament by the Council, particularly concerning the basic choices of CFSP. However, the Subcommittee may benefit from these agreements, as is the case particularly with the civilian missions led within CSDP. In this respect, five times a year a group of parliament members<sup>46</sup> meets the Chairman of the Political and Security Committee in order to audit, among others, the use of CSDP credits. An institutional agreement also

<sup>43</sup> European Parliament Rules of Procedure, Annex VII, point I. 1.

<sup>44</sup> The Committee on Foreign Affairs has the monopoly of exchanges with the High Representative, the president of the Commission, the Commissioner in charge of external relations, the Defence minister of the member state that holds the presidency of the Council and the NATO Secretary General. Apart from the Minister of Foreign Affairs of the country that chairs the Council, the subcommittee has the possibility to receive the presidency of the Political and Security Committee (PSC), the heads of the civilian and military missions within the framework of ESDP, the Chairman of the EU Military Committee, the director of the EU Military Staff, and the heads of the European Defence Agency, the European Union Satellite Centre and of the Institute for Security Studies.

<sup>45</sup> Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, cooperation in budgetary matters and on sound financial management, OJEU 139/1, June 14, 2006.

<sup>46</sup> *Ibid.*, p. 21. This group of parliamentarians brings together the Chairperson of the Committee on Foreign Affairs, the Chairman of the Budgets Committee and his rapporteur and the Chairwoman of the Subcommittee on Defence and Security.

enables another group of parliament members<sup>47</sup> to have access to sensitive Council information concerning CSDP.<sup>48</sup> In this respect, consultation of such documents may be requested by the President of the European Parliament or the Chairman of the Committee on Foreign Affairs, “*where it is required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union*”.<sup>49</sup>

Even though the Subcommittee on Security and Defence has thus succeeded in finding a place in the political control of CSDP, it can only become a major player if the European Parliament itself gains more power in the field. In addition, interparliamentary cooperation must be further developed as the Chairwoman of the Subcommittee on Defence and Security is still formally unable to receive her counterparts of national parliaments. Their dialogue is confined to the invitation to take part in the biannual conference of the chairs of defence committees of the EU national parliaments and candidate countries.<sup>50</sup> Once more, it is the democratic legitimacy of decisions regarding CSDP that suffers.

It would, however, seem reasonable to strengthen the role of the Subcommittee on Defence and Security. The Subcommittee, which is under the aegis of the Committee on Foreign Affairs, could become a standing committee in its own right, which would increase its visibility. As such, it would become the direct parliamentary interlocutor of other European institutions as regards security and defence. This would have a direct impact on the holding of formal councils where defence ministers meet, which is not the case today.<sup>51</sup> Nevertheless, regular dialogue between the two committees will be necessary. Taking minimal inspiration from the French constitutional model, the Committee on Security and Defence would be granted the first reading of documents from the Council and could adopt resolutions in its own name.

The increased intervention of the European Parliament in certain fields that touch upon security and defence cannot hide the general limits of its involvement as regards CSDP. Nevertheless, the Treaty provides for other mechanisms to be used by the European Parliament to intervene in security and defence-related matters.

### **The European Parliament has other ways of intervening in security and defence**

In addition to the usual influence prerogatives accorded by the Treaties, the Parliament has other ways of intervening in determining European common security policy. The most significant one is the power to approve the budget, which sometimes includes the CSDP. It can also invoke the right to public access to the Council’s documents to obtain more information from the Council in relation to the implementation of CSDP.

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<sup>47</sup> *Ibid.*, p. 21. This group of five parliamentarians representing the three largest political groups and which comprises, once more, the Chairpersons of the Committee on Foreign Affairs and the Chairwoman of the Subcommittee on Defence and Security.

<sup>48</sup> Interinstitutional Agreement between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy, OJ C 298, November 30, 2002.

<sup>49</sup> *Ibid.*, point 2.2.

<sup>50</sup> Optional invitation on the initiative of the parliament of the country that holds the presidency of the Union.

<sup>51</sup> The Council of the European Union regularly meets in Foreign Affairs configuration, presided over by the High Representative. The defence ministers join them only when deemed necessary.

### *The European Parliament can use its budget approval power*

Despite the disparities in decision-making between community policies and intergovernmental policies, certain provisions of the treaties “demonstrate (...) the unfulfilled desire of those drafting the Treaties to guarantee the system unity of the Union” (Bosse-Platière, 2010 : 45). The budget procedure is therefore one of the general institutional provisions that reflect the desire to standardise the Union budget. This desire results in the inclusion of certain mechanisms that fall under CFSP and CSDP within the E.U. budget.

The European Parliament therefore is lacking any real determining power in the normative process as regards CFSP, but has a determining voice in terms of budget approval. Though there is little coherence between the defining of CSDP and its funding, the Parliament “intends to use the most of its powers, seeking, to varying results, to compensate for the lack of normative power” (Bosse-Platière, 2010 : 46).

Article 41 TEU provides:

“1. **Administrative expenditure** to which the implementation of this Chapter gives rise for the institutions **shall be charged to the Union budget.**

2. **Operating expenditure** to which the implementation of this Chapter gives rise **shall also be charged to the Union budget, except for such expenditure** arising from operations having **military or defence implications** and cases where the Council acting unanimously decides otherwise.”

As a component of CFSP, most expenses, both administrative as well as operating, that result from the implementation of CSDP are therefore charged to the E.U. budget. In a single document, the Union budget is adopted in accordance with the common law budget procedure: that of codecision (TFEU, article 314). While the European Parliament and the Council of the E.U. are both budget authorities for the E.U., in this instance the European Parliament has the final say. Using its power of amendment, it can in particular “influence the budget structure and create new budget lines” or even “determine the amounts to be accorded in the funding of an action” (Bosse-Platière, 2010 : 46). By exercising this budgetary prerogative, the European Parliament can therefore influence and even guide the implementation of CFSP operations (and thereby CSDP operations). Here we come upon a paradox: the defining and implementing of CSDP are intergovernmental actions, but its funding mostly comes from the Union budget. This implies that European institutions, which are mainly excluded from the normative process for the CSDP, are able to financially orientate and validate its execution. This is a major power for the European Parliament.

We must also point out that this budgetary power only applies to “(operating) expenditure arising from operations having military or defence implications” (TEU, article 41 paragraph 2). In other words, even within the CSDP, military operations must be distinguished from civilian missions. The administrative and operating expenses associated with CSDP civilian missions are covered by the

Union budget (TEU, article 42-1 and 43).<sup>52</sup> Only the administrative expenses associated with military operations, however, are covered in the Union budget and therefore must be approved by the European Parliament. Common operating expenses incurred in military operations are paid for by the intergovernmental mechanism Athena.<sup>53</sup> The rest of the operating expenses are directly financed by the budgets of Member States participating in the operations.<sup>54</sup> The Athena mechanism is greatly criticised by the European Parliament, because it “clearly does not afford an overview of all the financial implications of missions conducted under the CFSP”.<sup>55</sup> This approach to financing the CFSP military operations is another example of the distrust of Member States towards the European Parliament's control of the budget. These differences of procedure make it more difficult to render coherent E.U. external actions, in particular between the civilian missions and military operations.

Harmonisation of the budgetary procedures, by making them more transparent and reactive, is necessary. It would also be useful to transfer certain financial instruments to the European External Action Service (EEAS), thereby helping to strengthen the powers of the High Representative. As a reminder, the High Representative “ensures the consistency of the Union's external action” (TFEU, article 18.4).

Apart from military operations and situations “where the Council acting unanimously decides otherwise” (TEU, article 41-2), funding for interventions conducted as part of the CFSP (including CSDP) therefore requires approval by the European Parliament. In 1994, the European Parliament decided that there was a conflict situation between the jurisdiction on the merits for CFSP and budgetary jurisdiction for this policy area.<sup>56</sup> Indeed, the latter has often conflicted with the Council during budgetary debates due to its lack of transparency. In 2001, it confirmed that it would not accept new priorities to be fixed that require financial resources taken from the EU budget, in the absence of specific indications as to the estimated amount of envisaged costs, the source of financing and, where necessary, appropriate revision of financial perspectives<sup>57</sup>. The insistence of the European Parliament eventually paid off, because it led to an interinstitutional agreement on budgetary discipline and sound financial management, adopted on May 17 2006<sup>58</sup>. This agreement,

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<sup>52</sup> These civilian CSDP missions are partly financed by the Instrument for Stability, an integrated European Union mechanism for civilian crisis management.

<sup>53</sup> Mechanism funded by the member states.

<sup>54</sup> This excludes Denmark, which does not participate in CFSP. See *Protocol (no 16) on certain provisions relating to Denmark*, annexed to the TEU and the TFEU.

<sup>55</sup> European Parliament resolution of 10 March 2010 on the annual report from the Council to the European Parliament on the main aspects and basic choices of the Common Foreign and Security Policy (CFSP) in 2008, P7\_TA(2010) 0060, point 12.

<sup>56</sup> European Parliament resolution of 26 October 1994 on CFSP funding, JOCE, n° C 323, 21 November 1994, p. 73.

<sup>57</sup> European Parliament resolution concerning EU priorities in external action, JOCE, no. 135, 7 May 2001, p.179. In this resolution, the European Parliament also threatens the Council with making full use of the political and budgetary instruments available to it in order to reach its goals. As such, in 2005, the Parliament reduced the CFSP budget by half. See I. BOSSE-PLATIÈRE, “Le Parlement européen et la PESC/PSDC : Les aspects juridiques”, *Le Parlement européen dans la PSDC, Cahier de l'IRSEM n°4*, 2011, p. 49.

<sup>58</sup> Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management - JOUE, no. C 139, 14 June 2006, p. 1.

cited previously,<sup>59</sup> bolsters the obligation of the Parliament to be informed on the decisions leading to spending on the Union budget. The Council must now send the Parliament the estimated costs of each operation within five working days after adopting the decision to proceed. While this inter-institutional agreement seemed to ease tensions for a while, the Council has since tried once more to avoid providing the Parliament with the information due. The Council seemed to be excessively using administrative expenses – over which the Parliament had no control – to finance interventions that were growing increasingly closer to operational expenses (Bosse-Platière I., 2010 : 50). For the first time in 2009 and following numerous controversies, the European Parliament did not hesitate in refusing to grant discharge<sup>60</sup> to the Council Secretary General on the execution of the 2007 budget.<sup>61</sup>

Relations between Parliament and the Council regarding CFSP budget are therefore regularly subject to conflict.

Further to these budgetary powers, the European Parliament has another legal mechanism that it can use to give it more room to intervene in CSDP: the citizen's right to access the documents of European institutions.

#### *The European Parliament can exercise the citizen's right to access Council documents*

Another general principle could enable the European Parliament to increase its intervention in CSDP matters is the citizen's right to access the documents of European institutions. There are no particular provisions for the European Parliament in this regard, but as it is a general principle, it applies to all of the European Union and therefore to the Council documents.

Article 15-3 TEU provides:

“Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

(...)

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.”

<sup>59</sup> See II. A. 2.

<sup>60</sup> Discharge is the final approval of the EU budget for a given year: it is the political control carried out after the budget has been implemented. Upon Council recommendation, the European Parliament decides whether or not to grant discharge to the Commission for the execution of the EU budget. [See the European Commission website](#) for more information.

<sup>61</sup> European Parliament decision of 23 April 2009 on Discharge in respect of the implementation of the European Union general budget for the financial year 2007, section II – Council, P6\_TA-PROV (2009) 0273

The application of this principle has already been the subject of numerous conflicts between the European Parliament and Council. The European court has already voiced an opinion on the scope of this right, in particular concerning the legality of a Council decision to refuse the European Parliament access to a report by the Working Party on Conventional Arms Exports within the Political and Security Committee. In a decision handed down in 1999 by the ICC<sup>62</sup>, and confirmed in 2001 by the CJEC<sup>63</sup>, the judge also stressed the Council's obligation to respect transparency in all areas of activity. The judge did however state that as regards information related to security or defence, derogations may be admitted but would be interpreted in a restrictive manner, so that it remains an exception (Bosse-Platière, 2010 : 52). In this regard, we must note that without any clear legal boundaries for these derogations, nothing would stop the Council from interpreting this decision as it sees fit. The area of security and defence covers a large number of documents, to which access could be refused to the European Parliament.

Following this judgement, two Council decisions were adopted in 2000.<sup>64</sup> These two decisions together establish a strict classification of documents relative to CFSP and CSDP, simultaneously restricting public access (Bosse-Platière, 2010 : 53). In response, several appeals were made, not only by the European Parliament but also by the Netherlands, Finland and Sweden, who were against the Council decision, claiming it violated the principle of transparency. The European Institutions preferred to settle the conflict internally through negotiation and cooperation. In November 2002, an interinstitutional agreement between the Council and the Parliament granted the Parliament access to classified documents under certain conditions.<sup>65</sup> Despite this agreement, the European Parliament continues to demand wider access to sensitive information,<sup>66</sup> hoping to make up for its lack of normative power on the topic. In this respect, wider access to classified documents would appear difficult to achieve, as Member States may believe these documents to be too sensitive to be disseminated at a given moment, even if this was restricted.

In conclusion, for both the European Parliament and national parliaments, the Treaties are a reflection of the intergovernmental tradition of common security and defence policy. The European Parliament is not entirely excluded, to the extent that the national parliaments are, but its role is essentially an advisory one on the topic of CSDP. While it has no direct decision-making power, it does have access to mechanisms that allow it to influence decisions on CSDP. The European

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<sup>62</sup> Court of First Instance, 19 July 1999, *Heidi Hautala v Council*, aff. T-14/98, Rec. P. II-2492.

<sup>63</sup> CJCE, 6 December 2001, *Council v Heidi Hautala*, aff. C-353/99 P, Rec. P. I-9594.

<sup>64</sup> Decision 2000/C 239/01 of the Secretary-General of the Council/High Representative for the Common Foreign and Security Policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council no. C 239 of 23 August 2000 and Council Decision of 14 August 2000 amending Decision 93/731/EC on public access to Council documents and Council Decision 2000/23/EC on the improvement of information on the Council's legislative activities and the public register of Council documents, JOCE, no. L 212 of 23 August 2000.

<sup>65</sup> Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy JOCE, no. C 298, 30 November 2002, p. 1.

<sup>66</sup> Namely in the European Parliament Resolution of 10 March 2010 on the Annual report from the Council to the European Parliament on the main aspects and basic choices of the CFSP, P7\_TA-PROV(2010) 0060, point 12, as previously analysed in II. B. 1 of this study.

Parliament subcommittee on security and defence tries to expand this influence and develops political dialogue, namely through certain interinstitutional agreements.

This gradual progress will not be enough, however, to give a major role to the European Parliament in terms of defence. It will have to settle for indirect intervening, using other prerogatives, which are not insignificant. Firstly, its budgetary prerogatives enable it to oversee CFSP and part of the CSDP, the budget of which is included in the overall E.U. budget. Secondly, the citizen's right to access Council documents is gradually enabling the European Parliament to access "sensitive" defence-related documents. All of these indirect prerogatives are nonetheless insufficient to give the European Parliament any decision-making power on CSDP, confining it legally to an advisory role. The Member States do not yet seem ready to abandon certain sovereign prerogatives, even if European defence policy is becoming increasingly justified.

Despite the possibility of influencing and even guiding CSDP via certain mechanisms, the European Parliament, like national parliaments, does not have any real decision-making power in terms of CSDP. The limited parliamentary control of CSDP weakens its democratic legitimacy. The participation of national and European parliaments could however be increased in order to expand their political influence in the domain, particularly by combining their efforts through interparliamentary cooperation.

## ■ RENEWED INTERPARLIAMENTARY COOPERATION MAY COMPENSATE FOR THE CSDP'S LACK OF DEMOCRATIC LEGITIMACY

Members of parliament intervening on the international stage is nothing new. "Parliamentary diplomacy" began to develop in ancient times in Greece, Rome and Venice. Taken extensively, parliamentary diplomacy is "the commitment of parliament members to the international relations of their countries and the role they play within intergovernmental organisations as interparliamentarians" (Le Bris, 2012 : 3). It is a full-fledged form of diplomacy, but it is still related to traditional diplomacy practiced by governments. As well as playing a potentially direct normative role, it mainly has a role of political influence on national and supranational authorities in charge of drafting norms. As such, interparliamentary cooperation plays a crucial role in parliamentary diplomacy. It is multifaceted and constantly developing, so it is an additional tool for national and European parliaments to intervene.

Interparliamentary cooperation is thereby a way to strengthen the democratic legitimacy of the CSDP.

With the entry into force of the Treaty of Lisbon, the Western European Union became defunct, taking with it the only assembly specialised in security and defence. As a result, parliamentary monitoring of the CSDP was lessened. Interparliamentary cooperation is in its development phase, and could nonetheless expand the scope of intervention for state and European members of parliament on the matter of CSDP, in particular through the various shapes it may take.

### **The closure of the WEU reduced the parliamentary oversight of the CSDP**

On 17 March 1948, France, Belgium, Luxembourg, the Netherlands and the United Kingdom signed a treaty in Brussels with the aim of creating a defence alliance, via a collective defence clause.<sup>67</sup> While it was initially signed with the aim of countering any renewed attack from Germany, this alliance was eventually joined by the West Germany and Italy in 1954. The treaty, which was modified and completed by a protocol, established a new organisation: the Western European Union. The aim then was the rearmament of Germany and the reintegration into Europe of the Federal Republic of Germany.<sup>68</sup> In 2010, twenty-eight countries were part of the WEU: after Spain joined in 1990 and Greece in 1995, the WEU had ten Member States, as well as six associate members,<sup>69</sup> five observer states<sup>70</sup> and seven associate partners.<sup>71</sup>

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<sup>67</sup> Article V of the Modified Brussels Treaty: "If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power."

<sup>68</sup> [Draft resolution by the Senate for the Committee of European Affairs on the parliamentary oversight of common security and defence policy](#), submitted and adopted on 7 April 2010, p.7.

<sup>69</sup> Hungary, Iceland, Norway, Poland, Czech Republic and Turkey.

<sup>70</sup> Austria, Denmark, Finland, Ireland and Sweden.

In 1993, the Maastricht Treaty established a common foreign and security policy, making the WEU the “strong arm” of the European Union.<sup>72</sup> Article J.4.2 of the treaty provides that the European Union may request the WEU “to elaborate and implement decisions and actions of the Union that have defence implications”.<sup>73</sup> Having become “an integral part of the development of the Union”,<sup>74</sup> the WEU had a greater role, but in the end only conducted a small number of small-scale crisis management and conflict prevention missions.<sup>75</sup> In 2000, the European Union was equipped with operational bodies and took over from the WEU in handling civilian and military crises. This was a death sentence for the WEU. Its subsidiary organs became defunct and only the central organs remained: the Council (with its general secretariat) and the Parliamentary Assembly. As a new step in the European integration process, the Treaty of Lisbon uses the key terms from the treaty establishing the WEU. In particular, the clause on “collective defence” has become a clause of “mutual assistance” and gives the EU crisis management instruments, rendering the WEU consequently obsolete. On 31 March 2010, a shared declaration by the member states of the WEU announced the decision to “terminate the treaty and consequently close the organisation”<sup>76</sup>. While this decision was mainly due to the entering into force of the Treaty of Lisbon at the end of 2009, it was also proof of failure of an organisation that never reached an operational level.

The closure of the WEU led to the collapse of the Parliamentary Assembly which was the only forum where national and European members of parliament could exchange on issues relating to defence and security at the European level. Article 9 of the modified Brussels Treaty made it obligatory for the governments of member states of the WEU to submit an annual report to the Assembly, allowing it to follow regularly their security and defence-related activities. When operational activities were transferred to the European Union in 2000, the Assembly was devoted to monitoring CSDP. It thereby became the sole European structure enabling members of parliament from the 27 Member States concerned to meet, consult each other and discuss security and defence issues. It was renamed the “European Security and Defence Assembly” in May 2008.

Each of the Assembly’s four expert committees produced reports and recommendations on specific security and defence issues.<sup>77</sup> These reports and recommendations were voted on by the Assembly in plenary session and sent to the Council of the WEU, who replied in writing. The Assembly could also send resolutions to international organisations, governments and state parliaments.<sup>78</sup> It was therefore a very important structure for state parliaments. This Assembly, while holding no legal

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<sup>71</sup> Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.

<sup>72</sup> Draft resolution by the Senate on the parliamentary oversight of common security and defence policy, op. cit., p. 10.

<sup>73</sup> [Article J.4.2 of the Maastricht Treaty](#) (original version).

<sup>74</sup> *Ibid.*

<sup>75</sup> Between 1988 and 2001, temporary, small-scale missions in the Persian Gulf, the Adriatic, Yugoslavia, Danube, Mostar, Albania and Croatia.

<sup>76</sup> [Available online.](#)

<sup>77</sup> The Defence Committee for Operational and Military Affairs, the Policy Committee for policy aspects, the Technical and Aerospace Committee for issues related to dual technologies and arms cooperation and the Committee for Parliamentary and Public Relations in charge of cooperation with the national parliaments.

<sup>78</sup> See the [powers of the WEU Assembly and its various committees](#) in Article 5 of the Charter and Regulations of the WEU Assembly.

voice in the European decision-making process on CFSP,<sup>79</sup> had several ways of voicing its opinion. These mechanisms were especially valued because they were additional ways to influence the implementation of CSDP for state governments.

When the European Security and Defence Assembly was abolished, state parliaments therefore played an even smaller role in the monitoring of CSDP. This parliamentary monitoring is necessary because the CSDP is lacking in democratic legitimacy.

In these conditions, interparliamentary cooperation appears to be the solution to allow state and European parliaments to intervene in the implementation of CSDP.

### **Interparliamentary cooperation enables greater intervention by state and European parliaments in CSDP**

For the first time in the history of European construction, the entering into force of the Treaty of Lisbon acknowledged interparliamentary cooperation in a wider sense and encourages its development.

Article 9 of the Protocol on the role of national parliaments provides:

“The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.”

In this regard, interparliamentary cooperation can take on any structure, both formal and informal. In addition to knowledge and information sharing among members of parliament, it is most importantly a way to monitor policies. This is the case for the Interparliamentary Conference for CFSP and CSDP, recently established and demonstrating renewed interparliamentary cooperation at the multilateral level. Similarly, at the bilateral level, interparliamentary cooperation is a major tool for more thorough monitoring of CSDP.

#### *Multilateral interparliamentary cooperation is growing*

Interparliamentary cooperation is not a recent invention. There are already several interparliamentary cooperation structures,<sup>80</sup> the first to be established being the Conference of Presidents of Parliament. This Conference monitors the coordination of all interparliamentary activities in the Union. Many meetings can be organised for interparliamentary cooperation: joint parliamentary meetings such as those between the parliament of a country holding the Presidency of the Union and the European Parliament, or meetings between sectoral committees.<sup>81</sup> For greater

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<sup>79</sup> This is still the case today for national parliaments. See above I. A. 1.

<sup>80</sup> [Brief overview of interparliamentary cooperation.](#)

<sup>81</sup> Namely the meetings of committees in charge of security and defense (CODAC) and foreign affairs committees (COFACC).

efficiency in these interparliamentary meetings, there exists a tool called IPEX.<sup>82</sup> This electronic platform contains and facilitates information exchange between European parliament members, in particular relating to draft legislation for the European Union.

A single interparliamentary cooperation structure is recognised by the European treaties: the Conference of Parliamentary Committees for Union Affairs (COSAC). As its name indicates, it brings together the committees of national parliaments responsible for European affairs and the European Parliament,<sup>83</sup> upon invitation by the parliament of the country holding the Presidency. The COSAC was created in May 1989 during a Conference of the Presidents of Parliament of Member States and is formally recognised by the Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Amsterdam in 1997. This Protocol also appears in the Treaty of Lisbon, though it was modified.

Article 10 of Protocol 1 provides:

“A conference of Parliamentary Committees for Union Affairs may **submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission**. That conference shall in addition promote **the exchange of information** and best practice between **national Parliaments and the European Parliament**, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular **to debate matters of common foreign and security policy, including common security and defence policy**. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.”

The treaty allows the COSAC to give an opinion on any issue related to the European Union and send its writings to the European institutions. These recommendations or “contributions” are not formally recognised as binding, and therefore nothing obliges the institutions to take them into consideration. The main aim of this structure is to provide a space for national and European parliaments to exchange and discuss together any subject to do with the European Union. The main advantage of the Treaty of Lisbon for the COSAC is in the possibility it provides to organise conferences on the specific them of the CFSP and including CSDP. In addition to the political influence instrument that COSAC contributions represent, the Conference can now also monitor the CSDP, despite this policy being dominated by intergovernmentalism. However, the expertise of national delegations can still be questioned, because they rarely belong to national defence committees.

After the European Security and Defence Assembly became defunct, the question was rapidly raised as to a new interparliamentary structure uniquely dedicated to CSDP. After a number of discussions on the form it would take and how it would work,<sup>84</sup> attempts such as the COFACC and the CODAC,<sup>85</sup>

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<sup>82</sup> IPEX: “Interparliamentary Exchange”.

<sup>83</sup> Each national parliament is represented by six members, just like the European Parliament. The national parliaments of candidate countries can participate by sending 3 observers each.

<sup>84</sup> On this topic, see the [opinions of the various national parliaments](#) summarised in Chapter 2 of the 14th Bi-annual Report on European Union Practices and Procedures from October 2010.

<sup>85</sup> COFACC: Conference of Foreign Affairs Committee Chairs and CODAC: Conference of Presidents of Parliamentary Defence Committees.

a new structure finally appeared in April 2012: the Interparliamentary Conference for the CFSP and the CSDP.<sup>86</sup>

Similar to the WEU Assembly, the Interparliamentary Conference discusses matters relating to the CFSP and the CSDP and “provides a framework for the exchange of information and best practices” between national parliaments and the European Parliament.<sup>87</sup> Contrary to the COFACC and the CODAC that it replaces, each parliament is represented by a delegation of six members, who are joined by sixteen European members of parliament.<sup>88</sup> The increase in the number of European members of parliament was one of the conditions imposed by the European Parliament, which ensured a balanced debate. Greater presence of MEPs means the European Parliament is not isolated in terms of national public opinions: the European representatives would then risk no longer representing Europeans. Appointed by the people, these national members of parliament act as opinion transmitters for their countries. However, as the composition of each delegation is freely formed, nothing indicates that the parliament members of the Interparliamentary Conference would be members of the committees in charge of security and defence issues in each of their national parliaments. As for the expertise of the Conference, which as already been highlighted by the Security and Defence Assembly, this remains left open. The same is true for the democratic legitimacy of certain members of national delegations, as they are not always elected through direct universal suffrage.<sup>89</sup>

As with the European Security and Defence Assembly, the Interparliamentary Conference can adopt “conclusions” and send them to the presidents of national parliaments and the president of the European Parliament, the presidents of the European Council and the Commission, and the High Representative.<sup>90</sup> Furthermore, the HR is invited to each meeting “to set out the priorities and strategies of the EU in the area of CFSP and CSDP.”<sup>91</sup> There is therefore a direct link with the European institutions. These provisions allow members of parliament to use an additional influence mechanism as well as efficiently monitor developments on CFSP and CSDP matters, as the Assembly of the WEU did before them.

We must point out that here again, the conclusions of the Interparliamentary Conference – which are similar to resolutions – are not binding and therefore do not grant sanctioning powers to the national and European parliaments. Although they are strengthened by this interparliamentary cooperation structure, they can do little more than exercise political influence. As an example, during their meeting in Athens on 3<sup>rd</sup> and 4<sup>th</sup> April 2014, the national and European members of parliament

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<sup>86</sup> The Interparliamentary Conference for CFSP/CSDP was formed following the meetings held on 4-5 April 2011 and 20-21 April 2012 of the Conference of Presidents of Parliaments of the European Union.

<sup>87</sup> [Articles 1.1 and 1.2 of the Rules and Procedures of the Inter-parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy.](#)

<sup>88</sup> As well as these delegations are those of the EU candidate countries and every NATO member state, which can each be represented by 4 observers. See articles 2.1 and 2.2 of the Rules and Procedures of the Inter-parliamentary Conference, *op.cit.*

<sup>89</sup> This is the case for French Senators. However, all MEPs are elected by direct universal suffrage.

<sup>90</sup> Articles 7.1 and 7.3 of the Rules and Procedures of the Inter-parliamentary Conference, *op. cit.*

<sup>91</sup> Article 2.3 of the Rules and Procedures of the Inter-parliamentary Conference, *op. cit.*

stressed the need to follow the agenda established by the European Council of December 2013. In order to support the progress made in the area of CSDP, they also suggested holding an annual meeting of the European Defence Council as well as regular meetings of a Council on Defence.<sup>92</sup>

The conclusions of the Interparliamentary Conference could have greater legal scope, namely by strengthening the formal dialogue between the Conference and the European institutions, with the High Representative at least. The HR could then be bound to answer the conclusions of the Conference for the following meeting, and even take them into consideration during Council deliberating.

The establishing of this new multilateral interparliamentary cooperation –which is also specialised in CFSP and CSDP matters – would seem to without doubt make up for the end of the Assembly of the WEU. As a new forum for meeting and dialogue between members of parliament, it is an additional tool of political influence. This form of multilateral cooperation may however seem insufficient. Another form of interparliamentary cooperation is possible: bilateral interparliamentary cooperation.

*[Bilateral interparliamentary cooperation is a major tool for ensuring in-depth monitoring of CSDP](#)*

France actively participates in interparliamentary cooperation, namely through bilateral partnerships. According to Senator Daniel Reiner,<sup>93</sup> since the Lancaster House summit and the adoption of the Franco-British defence cooperation treaty that is associated with it, interparliamentary cooperation has recently been established between the two countries. Since 8 December 2010, several members of the defence committees of the French Parliament, Senate, House of Commons and the House of Lords meet on the sidelines of each summit organised for the implementation of the treaty.<sup>94</sup> The aim of this type of working group is both to monitor the implementation of the Franco-British treaty and also discuss opinions on all defence and security-related issues.<sup>95</sup> There is no legal text, however, that formally attests to the institution of this “Franco-British defence working group” and parliament members that participate are not appointed to represent their committee or parliament: no meeting reports can therefore be published.<sup>96</sup>

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<sup>92</sup> See point 9 of the [Conclusions of the Interparliamentary Conference on the CFSP and the CSDP](#) of the meeting of 3 and 4 April 2014.

<sup>93</sup> Member of the French Senate’s Committee on Foreign Affairs, Defence and the Armed Forces. Information collected during an interview at the Senate on 29 November 2013.

<sup>94</sup> The main difference with the Interparliamentary Conference previously developed, as members of parliament representing France were not necessarily members of the parliamentary committees in charge of defence and security matters.

<sup>95</sup> Suggestion made by Senators Josselin de Rohan (then president of the Commission) and Daniel Reiner in the information report no. 658 (2009-2010) on 9 July 2010 on [bilateral defence cooperation between France and the United Kingdom](#).

<sup>96</sup> [The websites of the Assemblée Nationale and the Senate do however cite the working group and give a number of meeting dates.](#)

Although it is independent, this Franco-British working group is unique, because of the strategic partnership between the two countries. This type of partnership is not required, however, to establish limited interparliamentary cooperation. Interparliamentary cooperation on defence matters is also being discussed with members of the Bundestag, although the terms are yet to be defined.<sup>97</sup> <sup>98</sup>We must also note that an initial meeting with members of the Polish parliament has taken place, which may not necessarily lead to cooperation. Plans to hold a "Weimar-type" meeting have nonetheless been mentioned.<sup>99</sup>

Although they are informal and lacking any legal scope, this form of parliamentary cooperation is a way of avoiding the "rigidity" that can sometimes be felt in the EU-28. Multilateral systems of interparliamentary cooperation that bring together the member states are therefore inefficient because there are too many participants.<sup>100</sup> However, the informal nature of bilateral parliamentary cooperation would appear to be beneficial. According to Raymond Forni, "in a world where network logic is growing stronger", anything informal is an "ideal vector" for "the collective influence of our ideas, positions and propositions".<sup>101</sup>

The question of the expertise of the members of parliament taking part in these bilateral interparliamentary meetings is also resolved, as the members of French delegations all come from parliamentary committees responsible for security and defence issues. This was not the case for the French delegation to the Parliamentary Assembly of the WEU, nor for the current French delegation to the Interparliamentary Conference on the CFDP and CSDP.

Lastly, the flexibility of bilateral parliamentary meetings enables regular and efficient monitoring of the CSDP. They encourage the exchange of opinions between parliament members, and the sharing of positions, which can then be defended during multilateral interparliamentary meetings. As such, accounting for 40% of military spending and 50% of equipments in Europe, France and Britain together naturally have a considerable weight during European meetings. Similarly, these common bilateral positions are also another way for members of parliament to influence their own government and therefore indirectly the CSDP itself. Parliamentary diplomacy thereby complements traditional diplomacy practiced by the executive and has the potential to give it direction.

To conclude, as the Assembly of the WEU was the only parliamentary assembly specialising in security and defence, its closure has left a void in interparliamentary monitoring of the CSDP. Intergovernmental codification of the CSDP does not suffice for efficient monitoring by members of

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<sup>97</sup> The Bundesrat has no jurisdiction in defence matters.

<sup>98</sup> According to Olivier Delamare Deboutteville, Department Head of the Committee for Foreign Affairs, Defence and the Armed Forces, two preparatory meetings already took place in Berlin. The president of the Committee for Foreign Affairs, Defence and the Armed Forces, Senator Jean-Louis Carrère, officially suggested to his German counterpart that regular meetings be held. These quotes are taken from an electronic conversation held on 11 December 2013.

<sup>99</sup> Ibid.

<sup>100</sup> COSAC or Interparliamentary Conference, previously developed in III. B. 1.

<sup>101</sup> Raymond Forni was President of the Assemblée Nationale between 2000 and 2002. See Assemblée nationale et Sénat, La Diplomatie parlementaire, Conference held on 23 May 2001, Opening address by Raymond Forni, point 2, para. 4.

national or European parliaments. While the Treaty of Lisbon attempts to remedy the situation by authorising the COSAC to deal with matters relating to defence and security, the issue of the expertise of members of parliaments on the topic was not resolved. The Interparliamentary Conference on the CFSP and the CSDP are now filling the void left by the Parliamentary Assembly of the WEU.

Interparliamentary cooperation is therefore an essential part of parliamentary diplomacy. It is therefore an additional mechanism for members of national and the European parliaments, allowing them to increase their political influence on European decisions in CSDP matters. Interparliamentary cooperation takes many forms and can be tailored to different situations, making it extremely flexible. Bilateral cooperation together with the multilateral conferences form a multidimensional parliamentary network, rendering monitoring of the CSDP more efficient.

## ■ CONCLUSION

It is an evident fact that the Treaty of Lisbon brought major changes to European Union laws. The national parliaments and the European Parliament saw their roles expand, simultaneously making Union law more legitimate. While the CSDP touches on a chiefly sovereign prerogative, it does not progress in the same way as other European policies which always advance towards greater integration. The CSDP is dependent on the visceral attachment of states to their sovereignty, and continues to be deeply rooted in an intergovernmental rationale.

While members of national parliaments feel the European treaties does not provide jurisdiction for them to be included in the CSDP normative process, domestic law provides ways to compensate for the supranational deficit via a number of mechanisms. Although they remain dependent on the constitutional traditions of each state, they are still tools that can be used for political influence.

The European Parliament, which ensures democratic legitimacy at the European level, is mostly restricted to an advisory role in terms of CSDP. Its budgetary authority, and the various influence mechanisms that are available to it, do however enable it to exercise political influence to some degree on the CSDP.

As an integral part of “parliamentary diplomacy”, interparliamentary cooperation – while lacking visibility and weight – is constantly evolving and demonstrates the real and gradual involvement of MPs in CSDP matters;

CSDP still appears to be lacking democratic legitimacy, as European law currently stands. The treaties are not set in stone and can evolve, namely through Article 48 of the TEU setting out the procedures (ordinary and simplified) for revising treaties. While Article 48 attests to the intergovernmental rationale of the CSDP, it does not exclude the possibility of expanding the jurisdiction of European and national MPs on defence matters.<sup>102</sup> Certain changes could therefore be enacted at the supranational level:

- The European Parliament sub-committee on security and defence could be given more autonomy and become a full-fledged committee and the main representative of the European institutions for CSDP-related issues. Upon receiving draft acts from the Council, it could in this respect issue recommendations and engage in regular dialogue with the Council and the High Representative. The new commission would therefore be more visible and have greater influence in “defence” type meetings at the EU Council,<sup>103</sup> which could in turn be made official more frequent.
- As EU external action often involves both civilian and military components, budgetary procedures should be harmonised. A single body or centre could therefore be responsible for

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<sup>102</sup> Article 48-7 TEU states that “decisions with military implications or those in the area of defence” are not subject to vote by qualified majority at the Council.

<sup>103</sup> Also known as the Council of Ministers.

the implementation, coordination and funding of EU external interventions. Without undermining the respective decision-making processes of the civilian and military components of each external action, the European External Action Service could be accorded new responsibilities, namely budgetary, and adequate financial tools. The High Representative would therefore have greater power in the EU external actions.

- As chair of the Foreign Affairs Council and Vice-President of the Commission, the High Representative reflects the two approaches – intergovernmental and European. In order to improve the coherence of the EU's external actions, the HR's power of initiative in CSDP matters could thereby be strengthened, for both civilian missions and military operations. As the final decision is taken by the Council, this strengthening would meet the requirements of good governance, without challenging the intergovernmental rationale of the CSDP.<sup>104</sup>
- The dialogue between the European institutions and the Interparliamentary Conference could be officially reinforced. In addition to the regular meeting between the High Representative and the Interparliamentary Conference, the latter could vote on an annual action plan that the Council would be obliged to respect, or at least to respond. By rendering dialogue between the Council, High Representative and the Interparliamentary Conference an official engagement, European and national MPs would have greater visibility and influence, thereby partly compensating for the democratic legitimacy deficit of the CSDP.

While intergovernmentalism remains the basic principle of CSDP, there is room for evolution. A European policy of this type, the goal of which is to establish common European defence, could not dispense with democratic grounding. The involvement of the European Parliament in CSDP would provide the democratic legitimacy that is lacking today. There would however be a risk that this may occur to the detriment of the European governance of external action and operational efficiency. Indeed, if the ultimate goal is common defence, development can only be gradual and must be achieved in stages. Currently, the main objective is coherency in external actions, in particular by finding the delicate balance between the intergovernmental rationale and the European rationale.

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<sup>104</sup> In its White Paper on European Governance, the Commission outlines five key principles: openness, participation, accountability, effectiveness and coherence. Here, what is important is effectiveness and rapidity of reaction that crisis management requires. See the Commission statement, from 25 July 2001, "European Governance: A White Paper", COM(2001) 428 final, JOCE C 287 of 12.10.2001.

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## ■ APPENDIX

### Article 31 TEU

1. Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),

- when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,

- when adopting any decision implementing a decision defining a Union action or position,

- when appointing a special representative in accordance with Article 33.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

5. For procedural questions, the Council shall act by a majority of its members.

## ■ ABBREVIATIONS

- CFSP:** Common Foreign and Security Policy
- CJEC:** Court of Justice of the European Community
- CODAC:** Conference of Defence Affairs Committees
- COFACC:** Conference of Foreign Affairs Committee Chairs
- COSAC:** Conference of Parliamentary Committees for Union Affairs
- CPP:** Conference of Presidents of Parliaments
- CSDP:** Common Security and Defence Policy
- DTIB:** Defence Technological and Industrial Base
- ECSC:** European Coal and Steel Community
- EDA:** European Defence Agency
- EDC:** European Defence Community
- EEAS:** European External Action Service
- EGC:** General Court of the European Union
- ESA:** European Space Agency
- ESDP:** European Security and Defence Policy
- EU:** European Union
- IPEX:** Interparliamentary Platform Exchange
- PSC:** Political and Security Committee
- TFEU:** Treaty on the Functioning of the European Union
- TEU:** Treaty on European Union
- WEU:** Western European Union

# PARLIAMENTS AND DEMOCRATIC LEGITIMACY OF THE COMMON SECURITY AND DEFENCE POLICY

When the Lisbon Treaty entered into force at the end of 2009, the Common Foreign and Security Policy (CFSP) and its strong arm, the European Security and Defence Policy (CSDP), remained intergovernmental in nature, although certain developments show a shift towards communitisation is taking place. This can be seen by the regular contributions from the European Commission on defence-related issues and the request for closer democratic control by the European and national parliaments.

Aside from tangible influence from the European Commission on CSDP through economic, industrial and technological aspects, the European Parliament controls the funding of CSDP civilian operations. The recommendations made to the High Representative often have an effect, especially since the nomination of the HR is now subject to its approval.

However, the European Parliament must not intervene at the cost of external action governance and its success in operations. The role of the European Parliament could nonetheless be enhanced by the transformation of the Subcommittee on Security and Defence into a fully fledged committee in its own right. The relationship between the Parliament and the High Representative could also become more efficient by furthering the role of Vice President of the European Commission.

The member states of the European Union must be aware of this development in order to act accordingly and monitor it, in particular concerning the principle of subsidiarity which states that the competences must only intervene at the most relevant decision-making level.

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