

## Policy Department External Policies

# PARLIAMENTARY OVERSIGHT OF CIVILIAN AND MILITARY ESDP MISSIONS: THE EUROPEAN AND NATIONAL LEVELS

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## Abstract

Legislative oversight of executive decisions to deploy (particularly) troops abroad is seen as a key agent of democratic legitimacy. However, parliamentary scrutiny of ESDP is at present deficient. The combination of supranational and intergovernmental elements that comprise the EU make for an ill-defined role for the European Parliament and its national equivalents in the realm of security and defence policy. This study primarily explores current practices in the parliaments of EU member states for scrutinising ESDP decision-making. Oversight practices were investigated in four case studies of ESDP missions. The results of this research highlight the wide variation in the practice of ESDP oversight across EU national parliaments. This lack of uniformity has negative consequences for the effectiveness of Europe's parliamentary oversight architecture. Four models of national parliamentary oversight of ESDP were identified from the research and 25 parliamentary best practices at the national level were collated. As a result of these findings at the national level, 17 recommendations are put forward on how to strengthen the European Parliament's role in filling the present void in ESDP parliamentary scrutiny. We suggest that a number of steps may be taken to reinforce the EP's role, largely on the basis of improvements in customary practice.

## Executive Summary

The deployment of personnel under the auspices of the European Security and Defence Policy (ESDP) has increased steadily since ESDP's inception at the 1999 Cologne European Summit and subsequent first operational deployment in 2003. Legislative oversight of executive decisions to deploy (particularly) troops abroad is seen as a key agent of democratic legitimacy, even more so in light of recent contentious deployments by EU member states in places like Iraq and Afghanistan. However, parliamentary scrutiny of ESDP is at present deficient. The combination of supranational and intergovernmental elements that comprise the EU make for an ill-defined role for the European Parliament (EP) and its national equivalents in the realm of security and defence policy. As a result, ESDP missions often fall through the cracks of parliamentary oversight. The EP is not mandated to exercise robust legislative oversight of ESDP, whilst national practices of ESDP vary widely in strength and effectiveness.

This study primarily explores current practices in the parliaments of EU member states for scrutinising ESDP decision-making. An EU-wide survey, completed by relevant committees and secretariats of national parliaments, was used to gain quantitative information across the 27 national parliaments of the EU. Additionally, in-depth qualitative research was carried out in national parliaments in: France, Germany, Poland, Romania, Spain and the United Kingdom (UK). These countries were chosen on the basis of their significant contributions to ESDP missions as well as their differing political-constitutional models. Oversight practices were investigated in four case studies of ESDP missions, two civilian and two military. They were: EU Force (EUFOR) Althea in Bosnia and Herzegovina; EU Force in the Democratic Republic of Congo (EUFOR DRC); the European Police Mission in Bosnia and Herzegovina (EUPM Bosnia); and the EU Border Assistance Mission at the Rafah Crossing point in the Palestine Territories (EU BAM Rafah).

The results of this research highlight the wide variation in the practice of ESDP oversight across EU national parliaments. This lack of uniformity has negative consequences for the effectiveness of Europe's parliamentary oversight architecture. Whilst 14 of the 25 respondent national parliaments wield the power of prior approval, with the authority to reject and therefore prevent deployment of personnel, it is often more theoretical than practical; national legislatures are often left to approve a *fait accompli*, already decided by their governments in Brussels. Only in the cases of Finland, Luxembourg and Sweden did governments seek parliament's approval before signing an agreement (Joint Action) in Brussels.

Variations in practice were noted in every aspect of scrutiny, such as: the legal basis for oversight; the power of prior approval; handling of civilian versus military ESDP missions; parliamentary interest in scrutinising ESDP in light of other priorities (such as Iraq and Afghanistan); or executive practices of information-sharing with legislatures. It was noted that the traditional means of parliamentary control of defence, the 'power of the purse', is a particularly blunt and ineffective tool in the case of military ESDP missions; such missions are often not anticipated at the time of consideration of the annual budget and are financed on the basis of reserve or crisis funds.

Four models of national parliamentary oversight of ESDP were identified from the research, along a spectrum that ranges from a strong role for parliament (Model A) to no parliamentary involvement (Model D). They are:

(A) Prior authorisation role before the adoption of a legal basis (Joint Action) for the operation: parliament authorises the government to proceed with an ESDP mission before the Council adopts a Joint Action. By so doing, parliament influences its government's position in the Council debate on the future ESDP mission in question.

(B) Prior authorisation role before the deployment of troops: parliament authorises its government to proceed with an ESDP mission after a Joint Action is adopted by the EU Council but before the deployment of troops abroad.

(C) Consultative role: though parliament does not have the formal power of prior authorisation of deployments, it debates ESDP missions before the adoption of the Joint Action by the Council or before the deployment of troops. According to this model, even if the government fails to obtain parliamentary approval, it may proceed with signing the Joint Action and deploying troops under ESDP auspices.

(D) No role: parliament is neither informed nor consulted about imminent ESDP missions, even when its country deploys troops in the operation.

Following the identification of models of oversight, 25 parliamentary best practices at the national level were collated (see Chapter 7). These were organised into categories that consider: legislation regarding the deployments of troops abroad; oversight at the early stages of crisis management decision-making; prior approval powers; executive-legislative relations; parliamentary practices that contribute to swift and effective decision-making; and committee practices that contribute to swift and effective decision-making.

As a result of these findings at the national level, 17 recommendations are put forward on how to strengthen the EP's role in filling the present void in ESDP parliamentary scrutiny (see Chapter 7). The EP currently exercises a highly circumscribed role in overseeing ESDP, largely reliant on the goodwill of the Council to receive timely and relevant information. We suggest that a number of steps may be taken to reinforce the EP's role, largely on the basis of improvements in customary practice. These recommendations focus on improvements in: inter-parliamentary cooperation, Council-EP relations, and internal EP oversight practice.

However, such steps to strengthen the EP's power to scrutinise ESDP, even improvements in customary practice, would be best implemented through revised treaty or legal provisions, so as not to rely solely on the goodwill of each actor involved in ESDP decision-making.

## Abbreviations

AFET	Committee on Foreign Affairs, Human Rights, Security and Defence of the European Parliament
BiH	Bosnia and Herzegovina
CIVCOM	Committee for Civilian Aspects of Crisis Management
CFSP	Common Foreign and Security Policy
CONOPS	The Concept of Operation
COREPER	Committee of Permanent Representatives (in the Council of the European Union)
COSAC	Conference of Community and European Affairs Committees of Parliaments of the European Union
DCAF	Geneva for Centre the Democratic Control of Armed Forces
DG RELEX	Directorate General for External Affairs
DRC	The Democratic Republic of Congo
EP	European Parliament
EUBAM Rafah	European Union Border Assistance Mission at the Rafah border crossing
EUFOR Althea	European Union Force in Bosnia and Herzegovina
EUFOR RDC	European Union Force in the Democratic Republic of Congo
EUMS	European Union Military Staff
EUPM BiH	European Union Police Mission, Bosnia and Herzegovina
EUSR	European Union Special Representative
ESDP	European Security and Defence Policy
FCO	Foreign and Commonwealth Office (UK)
GAERC	General Affairs and External Relations Council
GDP	Gross Domestic Product
GNP	Gross National Product
HR for CFSP	High Representative for Common Foreign and Security Policy
IIA	Inter-institutional agreement
IPTF	International Police Task Force in Bosnia
ISAF	International Security Assistance Force
JA	Joint Action (Council of Ministers)
KSK	Kommando Spezialkräfte (German Special Forces)
KFOR	Kosovo Force (Nato-led force in Kosovo)
MEP	Member of the European Parliament
MOD	Ministry of Defence
MONUC	United Nations Mission in the Democratic Republic of Congo
MP	Member of Parliament
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
OPLAN	The Plan of Operation
PA	Palestinian Authority
PSC	Political Security Committee
SEDE	Subcommittee on Security and Defence (of the European Parliament)
SDP	German Social Democratic Party
SFOR	Stabilisation Force (NATO-led stabilisation force in Bosnia)
TEU	Treaty on the European Union



UN  
UNIFIL  
UNSC  
WEU

United Nations  
United Nations Force in Lebanon  
United Nations Security Council  
Western European Union

# Part I: Introduction

## Chapter 1. Objectives and Methodology

While the use of force under international auspices has increased substantially, the democratic accountability of such action has lagged behind. With decisions regarding the use of force increasingly being made by national governments in the framework of international organisations, even established democracies – where the control of armed forces is taken for granted – are struggling to adapt their parliamentary control mechanisms to new realities. The role of parliamentary institutions is particularly essential to ensure democratic accountability of national armed forces deployed by international organisations such as the United Nations (UN), the North Atlantic Treaty Organisation (NATO) and the European Union (EU) (Born and Hänggi, 2004, p. 1).

Increasingly, the EU is carrying out civilian and military crisis management operations within the framework of the European Security and Defence Policy (ESDP). Since the EU launched its first military mission in 2003 (operation Concordia in the Former Yugoslav Republic of Macedonia- FYROM), it has undertaken 17 operations, including 4 military and 13 civilian ESDP operations, not only in Europe but also in the Caucasus, Middle East, Southeast Asia and sub-Saharan Africa.

The increasing importance and number of ESDP missions has provoked strong debate regarding the complex nature of EU crisis management decision-making and resulting implications for parliamentary accountability (EP, 2006c, p. 1). In this context, the Subcommittee on Security and Defence (SEDE) of the European Parliament (EP) has mandated the Geneva Centre for the Democratic Control (DCAF) to conduct a study on: ‘Comparison in parliamentary involvement in the decision-making process for ESDP missions (at European and national levels).’ (EP, 2006c, p. 1)

### 1.1. Research Objectives

Based on the EP’s terms of reference for this study (EP, 2006c), the aims of this study are two-fold: (a) to examine the role of the EP and national parliaments of EU Member States in exercising their democratic and legal rights to scrutinise ESDP crisis management operations; (b) to analyse how these different parliaments deal with ESDP missions, and; (c) to set out different options for improving EP oversight (both ex ante and post hoc ) of ESDP missions. The report will analyse not only laws and formal procedures, but also the application of these laws and procedures in practice.

### 1.2. Methodology and Report Structure

The methodology used for meeting the research objectives includes three elements: (a) literature review, (b) quantitative EU-wide questionnaire of 27 national parliaments (see annex D), (c) qualitative in-depth research in selected EU member states. Whereas the literature review is a secondary analysis of existing research publications and documents,

the two latter elements of the methodology form the primary analysis collected for the purpose of this report. As such, this is a unique comprehensive analysis of the parliamentary dimension of ESDP.

(a) The objective of the literature review is to collate the existing body of research on parliamentary oversight of ESDP missions. The review includes both official EU documents and scholarly publications. It offers an analysis of EU executive ESDP decision-making and the role of the EP in the oversight of ESDP operations. It is intended to place parliamentary oversight in the context of the specific complexities of ESDP decision-making, highlighting the challenges posed to national parliaments and the EP. The results of the literature review on ESDP decision-making and EP oversight are presented in Part II of the report (Chapters 3 and 4).

(b) The second element of the research is of a quantitative nature. It consists of an EU wide survey with the objective of forming a general overview of the involvement of national parliaments in the oversight of ESDP missions. The questionnaire that provided the basis for the survey can be found in Annex B. It was distributed among the parliaments of all 27 EU Member States. 25 parliaments replied to the questionnaire. Since more than one parliamentary committee deals with civilian and military ESDP missions in most member state parliaments, 39 replies were received from a combination of European Affairs, Foreign Affairs, Defence and Interior Committees, as well as General Secretariats. The questionnaires were filled out by members of staff of these parliamentary committees or secretariats. The results of the survey are analysed in Chapter 5 (see Annexes B-E).

(c) The third element of the research contained within this study is of a qualitative nature and consisted of six in-depth case studies. The practice of parliamentary scrutiny of ESDP was investigated in six EU members states: France, Germany, Poland, Romania, Spain and the United Kingdom. These countries were selected as they constitute different political-constitutional models; France, Poland and Romania are presidential democracies whereas Germany, Spain and United Kingdom can be seen as examples of parliamentary democracies. Furthermore, these six states are examples of major troop-contributing EU Member States and are geographically dispersed across the EU. 41 in-depth interviews with members of parliaments (MPs) and parliamentary staff were undertaken in the six states. In each country, members of parliament of both opposition and government parties were interviewed as well as staff of the relevant parliamentary committees or research/policy units. The goal of this part of the research is to go beyond the constitutional and legal framework and to discuss with members of parliament and their staff about how parliamentary oversight of civilian and military ESDP missions is exercised in practice. The results of the interviews are analysed in Chapter 6.

Part IV of the report provides an overview of the lessons identified from the research, highlighting current gaps and inconsistencies in the practice of scrutinising ESDP decision-making. Options for improving EP oversight of ESDP missions are identified as policy recommendations.

In order to detail oversight practices, the study focuses on four ESDP mission case studies, in order to identify how far parliamentary oversight occurred at the national level. Two military ESDP missions were chosen: EU Force (EUFOR) Althea in Bosnia Herzegovina and the EU Force in the Democratic Republic of Congo (EUFOR DRC). Furthermore,

two civilian ESDP missions were selected: the European Police Mission in Bosnia and Herzegovina (EUPM Bosnia); and the EU Border Assistance Mission at the Rafah Crossing point in the Palestine Territories (EU BAM Rafah). Overviews of the selected missions may be found in Annex A. These missions were chosen for their variety: EUFOR Althea is conducted within the Berlin Plus Agreement, using NATO assets and capabilities, whilst EUFOR DRC was an autonomous EU mission with Germany as the lead nation. With regards to the civilian missions, EUPM was chosen since it was a substantial mission in terms of human and material contributions from EU Member States. All four missions were chosen to maximise the involvement of the six selected states.

## Chapter 2. Parliamentary Oversight of ESDP Missions: Scope and Issues

The objective of this chapter is to give a concise overview of the existing literature regarding democratic accountability of ESDP and to present the principal schools of thought on the subject.

### 2.1. Contrasting Views on Democratic Accountability of ESDP Decision Making

ESDP decisions are taken collectively and unanimously at the European level by the Council of Ministers. The literature on ESDP accountability focuses on whether there is a 'double democratic deficit' at both the European and national level or at the national level only, if at all. Two groups of scholars have developed contrasting views on democratic accountability of ESDP, alternatively from an 'intergovernmental' or a 'trans-national' perspective. In addition, the European Parliament's toolbox for scrutinising ESDP has also begun to attract closer examination (Nickel & Quille, 2007).

Scholars favouring an intergovernmental view deny the existence of a democratic deficit at the European level for three reasons. Firstly, for intergovernmentalists, foreign policy positions are formulated in advance at the national level and defended in the Council by member states governments during negotiations (Moravcsik, 1998). According to this view, CFSP/ESDP decisions are comparable to classical international agreements and originate in pure intergovernmental bargaining between member state governments (Tsebelis, 1999). Consequently, the democratic deficit, if it exists at all, must be evaluated at the national level (Moravcsik, 2004). Secondly, intergovernmentalists dismiss the argument put forward by advocates of the democratic deficit thesis that CFSP/ESDP development leads to an increase of executive power and a decrease of national parliamentary control (Follesdal and Hix: 2006). National governments remain individually accountable to their respective parliaments for the position defended in the Council (Thym, 2006). Thirdly, intergovernmentalists stress that member states commit their national troops and financial resources to implement ESDP decisions (especially those of a military nature). For this reason, national oversight practices alone should be enhanced, if required (Thym, 2006).

In contrast, scholars favouring a trans-national perspective contend that CFSP/ESDP decisions represent more than the result of mere intergovernmental bargaining (Stavridis, 2001, Smith, 1998). These scholars consider CFSP/ESDP from a transgovernmental or an institutionalist perspective. They consider the European Council to be a unique institutional setting where predetermined national positions are constantly adjusted and accommodated to reach compromise and consensus (Lewis, 2000). Institutionalists point to a sense of commonness forged between the member states' permanent representatives in Brussels by day-to-day interaction in the Council (Smith, 1998). They underline the collective nature of ESDP decisions and stress that only the means of implementation - troops and assets - remain the prerogative of national governments. In sum, institutionalist/transgovernmentalist analysis of national and the European level oversight mechanisms warns against an increase of governmental weight in foreign and security policy affairs (Wagner, 2006) and points to the emergence of a 'double democratic deficit' in ESDP (Nickel & Quille, 2007, Bono, 2002, Born & Hänggi, 2005, Gourlay, 2004, Maurer, 2002).

The democratic deficit as constituted at the national level is primarily the result of four factors. Firstly, as the findings of this study show (in chapters 5 and 6 on the role of national parliaments), there are only a few national parliaments empowered to provide their government with a clear negotiating mandate prior to the adoption of a decision by the Council (Wessels et al, 2002). Secondly, due to diverging national legal procedures, few national parliaments are mandated to formally approve troop deployments in an international operation (Born and Urscheler, 2004: 61-67). Parliaments' powers of approval are often limited to the deployment of armed forces and do not extend to the secondment of national police personnel to external police missions. Thirdly, national parliaments receive security and defence-related information from their respective governments and are therefore dependent upon their government's transparency or goodwill in making information available. Finally, national parliaments' powers of scrutiny are largely limited to the annual approval of funds for external operations, as part of the overall national defence budget (Gourlay, 2004: 195). As a result, national parliaments possess an incomplete view of ESDP affairs and their oversight powers are limited to overseeing their national government's actions. They are neither collectively associated with the ESDP decision-making process nor able to collectively scrutinise the implementation of a Council decision.

At the European level, the European Parliament is, according to Article 21 of the Treaty on the European Union (TEU) 'consulted' by the Presidency 'on the main aspects and the basic choices of the common foreign and security policy'. The Presidency 'shall ensure that the views of the European Parliament are duly taken into consideration'. Furthermore, the Parliament is 'informed' of the development of CFSP by the Presidency and the Commission. The parliament may ask questions, make recommendations and 'shall hold an annual debate on progress in implementing the common foreign and security policy'. As article 21 TEU does not explicitly state that the EP shall receive information prior to a Council action in the field of CFSP/ESDP(though it does not preclude it), the academic literature has underlined the fragile oversight position of the EP (Diedrichs, 2004; Gavrilescu, 2004; Gourlay, 2004, Wagner, 2005; Bono, 2006). The EP has earned its current oversight legitimacy by engaging in a day-to-day dialogue with the Council and the Commission (Nickel & Quille. 2007, Gourlay, 2004). The EP has, without calling for a treaty modification and as a result of sustained dialogue with the EU executive institutions, managed to increase its formal oversight powers in CFSP by concluding Inter-institutional Agreements (IIA) with the Council and the Commission (Nickel & Quille. 2007, Maurer, Kiez and Völkel, 2005). In this sense, the 2006 IIA (articles 42-43) on budgetary discipline and sound financial management has opened the door for the EP to be informed prior to the moment a decision entailing CFSP expenditure is taken and 'no later than five working days following the final decision'.

The European Parliament has recently expressed the opinion that Article 21 of the TEU provides the basis for 'the right of the Parliament to be consulted *ex ante* on forthcoming aspects and choices (...)'. It expects the Council to revise its '*a posteriori* approach of merely submitting a descriptive list of Common Foreign and Security Policy (CFSP) activities carried out in the previous year instead of consulting Parliament beforehand as provided for in Article 21 (...)'. It requests the Council 'once and for all [to] replace that [a posteriori] practice with a genuine consultation of Parliament as to ensure that Parliament's views have a real impact on the choices made for the following year.' (European Parliament 2007: pnt. A-B and pnt 41). These statements reflect the EP's ambition to become an actor with the power to influence policy choices and activities in the area of CSFP. Significantly, the exchange of letters between the EP and the 2006 Finish Presidency enable the EP to be

regularly informed ex ante on CFSP/ESDP actions entailing CFSP budgetary expenditures (Nickel & Quille, 2007: 32).

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

In order to assess the role of the European Parliament (Chapter 4) and the national parliaments (Chapter 5 and 6) in this study, a distinction is made between ex ante and post hoc parliamentary accountability of ESDP missions (Bono2005, Born & Hänggi 2005, Born et al., 2003).

Ex ante parliamentary accountability of ESDP missions refers to any oversight exercised by a parliament before the troops are deployed, whether it occurs before or after the Joint Action is signed in the Council (see Chapter 3). The most important instrument for exercising ex ante accountability is the power of prior authorisation, that is parliament's power to approve, reject or even amend the executive's proposal to deploy troops abroad. Ex ante accountability can also allow parliament to exercise budget control, raise questions, organise (public) hearings and invite experts to voice their opinion on upcoming missions.

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

Three factors determine the effectiveness of parliamentary accountability: authority, ability and willingness. Firstly, authority refers to the power of parliament to hold government accountable, which is derived from the constitutional and legal framework as well as customary practice. Customary practices are often non-binding but are powerful nevertheless, particularly if they are reinforced by the power of parliament to send the government (or a minister) home or to reject/amend the yearly budget for deployments abroad. If these additional powers are lacking, parliament depends on the willingness of the government to cooperate. Secondly, the ability of parliaments to hold the government accountable refers to resources, expertise, staff and access to (sometimes classified) information necessary to assess government decision-making. Thirdly the willingness of members of parliament to hold government accountable depends, among others, on party discipline (Born & Hänggi 2005).

The concepts of ex ante and post hoc parliamentary accountability are used here in order to achieve a clearer understanding of parliamentary involvement in ESDP decision-making. Having analysed ESDP decision-making in Chapter 3, the focus of the remainder of the report is on how the EP (Chapter 4) and national parliaments (Chapter 5 and 6) are able to exercise ex ante and post hoc accountability of ESDP missions.

## Part II: ESDP Decision Making: Executive and Legislative Practices

### Chapter 3. ESDP Executive Decision Making

In order to understand how parliamentary oversight of ESDP occurs, the context of executive decision-making in Brussels must first be understood. Legislative scrutiny and influence in this process is the essential objective of parliamentary oversight as discussed in this study.

The Political and Security Committee (PSC), composed of national representatives at the ambassador/senior level, plays a central role in the definition and follow-up of the EU's response to crisis. The PSC drafts opinions and may recommend that the Council adopt a Joint Action (European Council, Nice, 2000). The Commission is associated through a representative attending PSC meetings and is more active in the case of civilian crisis management. In the end, all decisions are taken by the Council in one of its formations<sup>1</sup>.

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

- Phase 1: Routine;
- Phase 2: Crisis build-up and development of the draft Crisis Management Concept (CMC);
- Phase 3: Approval of the CMC and development of strategic options;
- Phase 4: Formal decision to take action and development of planning documents;
- Phase 5: Implementation;
- Phase 6: Refocusing of EU action and termination of operations.

From a democratic accountability perspective, phases 1 to 4 are of particular interest to ex ante parliamentary scrutiny as they take place before the actual launch of the mission. Occurring after the commencement of the mission, phase 5 and 6 are of interest to post hoc scrutiny by parliament. The CMP is used here as a framework of analysis for ESDP decision-making.

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<sup>1</sup> Denmark has opted out from actions with military and defence implications carried out under the EU Treaty.



### 3.1. Decision-Making Process before the Launch of an ESDP Mission

#### *Phase 1 – routine*

The routine phase refers to on-going monitoring, analysis and early warning of a crisis situation. During the routine phase, Member States and Commission representatives exchange information within the PSC. The European Union Military Staff (EUMS), the Police Unit, the Council General Secretariat (CGS), the Joint Situation Centre, and the Commission planning staff, in cooperation with other relevant bodies in the Council Secretariat and the Commission, carry out advance planning and preparatory actions, including civil-military co-ordination. Consultations with non-EU NATO countries and EU accession candidate countries take place regularly. The EU also maintains contact and cooperates with global (e.g. UN) and regional (e.g. OSCE) international organisations (Council Document 11127/03: 5-6). Furthermore, in respect to civilian ESDP operations, the EU increasingly maintains contacts and cooperates with NGOs throughout different phases of the decision-making process (Gourlay, 2006). To date, the Council has decided to intervene militarily only in agreement with a UN mandate and with consent of the government of the country where a crisis is identified.

#### *Phase 2 – Crisis build-up and development of the draft Crisis Management Concept (CMC)*

In case a crisis builds up, the PSC receives increased information from Member States, the CGS and the Commission and identifies specific areas where more information is needed. At the initiative of the PSC, fact-finding missions may be dispatched on the ground jointly by the Council General Secretariat and the Commission, as was the case by the past with EUFOR DRC (Quille, 2006a: 8) or EU BAM at Rafah (WSI, 2006).

If EU action is judged appropriate, the PSC may call for an ad-hoc Crisis Response Coordinating Team (CRTC) to develop the Crisis Management Concept (CMC). The CMC includes an assessment of the situation on the ground and sets out options for EU action. The CRTC is composed of ‘representatives of the Commission, SG/HR Cabinet, EUMS, Police Unit, Policy Unit, Council Legal Service and SITCEN (mostly at senior official level)’ (Ruys, 2007: 23-24). The EUMS, under the direction of the European Union Military Committee (EUMC), leads in formulating the political and military objectives, outlining the desired outcome of the operation and defining the CMC in relation to military operations (EP, 2006a: 4). Furthermore, a possible Operation Headquarters is identified by the EUMS during this phase and recommended by the EUMC to the PSC, after prior consultation with Member States. Similarly, the Police Unit leads in preparations for civilian police missions (Ruys, 2007: 24). Also during this phase, the PSC may initiate the appointment of an EU Special Representative (EUSR) to the region or country in crisis (Council Document 11127/03: 7-8). The SG/HR for CFSP presents the draft Crisis Management Concept to the Political Security Committee. The PSC issues an opinion on the CMC and submits the document for approval to the Council.

### *Phase 3 – approval of the crisis management concept and development of strategic options*

The Crisis Management Concept is adopted by the Council during phase 3 of the decision-making process. The timeframe for the development (phase 2) and the adoption (phase 3) of the Crisis Management Concept may differ from mission to mission, depending on its complexity and size. It took nearly one year, in the case of EUFOR Althea, or a few weeks in the case of Artemis and the Aceh Monitoring Mission, for the CMC to be adopted.

The strategic options for both military and civilian missions are developed during phase 3. The PSC, following an EUMC recommendation, identifies Operational Commanders. In the case of police missions, recommendations for a Police Head of Mission are put forward by the Police Unit. The military strategic options (MSOs), the police strategic options (PSOs) and the civilian strategic options (CSOs) are elaborated during this phase by the EUMS and the Police Unit with, in the case of civilian operations, input from other Council bodies. The Commission is associated to the process. The PSC, based on advice from the EUMC and CIVCOM, evaluates the MSOs, PSOs and CSOs (Council Document 11127/03: 12-15).

In this phase, the draft decision to take action (i.e the Joint Action) is elaborated. As a general rule, one of the 35 CFSP Working Groups within the Council is charged with the drafting. The draft text is forwarded to the Relex Counsellors (national diplomats) for legal examination and clarification of the financial statement. Once the legal and the financial aspects are finalised at the Relex Counsellors' level, the draft Joint Action text is sent to the PSC for clearance. The PSC submits to the Council for approval the draft Joint Action.

### *Phase 4 - formal decision to take action, development of planning documents*

The Joint Action must be adopted by unanimity within the Council. Abstentions cannot hinder its adoption unless they represent more than one third of weighted votes in the Council. The text of a CFSP Joint Action covers: the mission mandate; its objective; its scope; the resources put at the Union's disposal by the member states; the initial duration of the mission; as well as the chain of command (article 14-1 TEU; Council Document 11127/03: 25). The Joint Action specifies the date when a civilian operation will start whilst, in the case of military operations, the starting date is established by a separate Council decision. The whole process of adopting a Joint Action can take between four and nineteen weeks, depending on the level of urgency and the political consensus among member states.<sup>(2)</sup> For example, in the case of EUFOR Althea, only four weeks passed between the Council's tasking of the PSC to develop the Joint Action (14 June 2004) and the adoption of the Joint Action (12 July 2004). By contrast, the decision-making process for EUFOR DRC involved a twelve week period between the moment when the competent Council bodies were tasked to draft the Joint Action and the moment when the Joint Action was adopted (12 June 2006).

Following the adoption of a Joint Action, the Council appoints the Operation Commander (Op Cdr). The Operation chain of command is set in place. The PSC requests the EUMC to task the EUMS to write the Initiating Military Directive (IMD) (Council Document 11127: 18; EP, 2006a: 4). The IMD provides clarification of the military operational aspects

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<sup>2</sup> The scheme with the Procedure for the definition and adoption of Joint Actions is available at: [http://ec.europa.eu/external\\_relations/cfsp/fin/procja.pdf](http://ec.europa.eu/external_relations/cfsp/fin/procja.pdf)

of the mission. The concept of operation (CONOPS) (also for civilian missions) and the plan of operation (OPLAN) are prepared. In the case of military operations, a force generation conference is called, where individual EU Member States and third country contributions of personnel and assets are identified. The GAERC decision to launch a military operation is based on the adoption of the OPLAN and the CONOPS and specifies the date when the operation will begin.

### 3.2. Decision-Making Process after the Launch of an ESDP Mission

#### *Phase 5 – implementation*

The PSC exercises political control and strategic guidance over the operation, be it civilian or military. In the case of military operations, the EUMC, supported by the EUMS, monitors the implementation of the mission and receives reports from the Operation Commander. The EUMC further reports to the PSC. In the case of civilian missions, reports by the Head of Mission are addressed to the EUSR. The SG/HR and the PSC also receive reports from the EUSR.

#### *Phase 6 – refocusing of EU action and termination of operations*

In case there is need for a change in the mandate or duration of the mission, the Crisis Management Concept is examined and revised. Consequently, after a recommendation from the PSC, the Council issues a new decision, amending the initial Joint Action and following the procedural path described above. In case the Union's action is refocused or terminated, the relevant EU bodies assess the mission and look for lessons learned both in terms of inter-institutional cooperation and ground implementation.

## Chapter 4. European Parliament Oversight of ESDP

This section addresses the oversight role of the European Parliament - both ex ante and post hoc - in the launching of an ESDP civilian or military mission. In so doing, it considers formal and informal parliamentary practices and oversight powers which can be either binding or non-binding. Furthermore, this chapter focuses on three additional important aspects of European parliamentary oversight which warrant special attention: budgetary oversight (as a component of ex ante oversight); the ability and capacity of the European Parliament to exercise oversight (staff, expertise, resources); and dialogue between the European Parliament and national and international assemblies. It also considers the impact of the Constitutional Treaty and the Reform Treaty (based on the Brussels European Council of 21/22 June 2007). Before turning to oversight practices, a brief overview is given of the legal framework of the European Parliament's oversight powers and practises.

### 4.1. European Parliament Ex Ante Powers in Oversight of ESDP

Ex ante oversight has been defined as any oversight by parliament before the launch of an ESDP mission (see Section 2.2). In the case of the EP, ex ante oversight covers the phases 1 to 4 of the Crisis Management Procedure (see Chapter 3), from the identification of a crisis to the formal decision to take action.

Ex ante instruments may include: prior authorisation of the mission; the issuing of non-binding resolutions or recommendations about an upcoming mission; budget control (discussed separately in Section 4.4); the raising of questions; or the organisation of (public) hearings.

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

The EP does not have the formal power to authorise an ESDP mission. Article 21 of the Treaty of the European Union states that the Presidency shall consult and keep the EP informed on the main aspects and choices of the common foreign and security policy. However this refers to dialogue and information exchange between the EP and the Presidency, not to prior authorisation powers (see also Chapter 2.2 of this study).

Article 21 TEU does not exclude explicitly the EP from being informed and consulted ex ante during phases 1-4 of the Crisis Management Procedures. However, these procedures do not associate the EP to the decision-making process unless additional resources are required from the CFSP Budget for a civilian crisis management operation, in which case the Council must approach the EP for a budget increase (Nickel & Quille, 2007). Thus, the EP's ex ante role in overseeing ESDP missions is largely based on access to information and dialogue with the EU's executive institutions and, if additional resources are required, a decision on an augmentation of the EU budget.

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

The EP may issue non-binding resolutions and recommendations before a Joint Action decision is taken or before an ESDP mission is launched, using them as a means to express support for an ESDP mission.

A Motion for a Resolution is initiated by any MEP, submitted for approval to the Conference of Presidents, and referred to the competent Committee (Corbett, Jacobs, Shackleton, 2005: 131), namely AFET/SEDE. The EP has issued, ex ante, Resolutions in respect to two ESDP military missions, EUFOR Althea and EUFOR DRC. The Resolution on EUFOR Althea was adopted on 17th November 2004, almost half a year after the adoption of Council Joint Action (12 July 2006) and two weeks prior to the launch of the operation (2nd December 2004) (the end of CMP phase 4). The Resolution on EUFOR DRC (16<sup>th</sup> March 2006) was adopted prior to the Council Joint Action (the end of CMP phase 3 and beginning of phase 4). In the case of the civilian missions, no EP Resolutions were passed ex ante.

The EP also may adopt Recommendations to the Council within the framework of CFSP based upon Article 21 of TEU. Rule 114.1 of the EP Rules of Procedure allows a political group or at least forty MEPs to initiate a proposal for a Recommendation to the Council. In case of an emergency, the authorisation is issued by the President of the EP who may permit the competent Committee to meet to consider the proposal for Recommendation. To date, the EP has not used this procedure for ESDP missions.

#### *Parliamentary questions and hearings*

A Committee or a political group or forty MEPs can table questions to the Council and the Commission, whilst an individual MEP may address written questions to the Council or the Commission. Out of the four missions of interest to the present study, only EUFOR Althea was subject to an ex ante question by Baroness Sarah Ludford on the capacity of the mission's personnel to comply with human rights standards and avoid abuses.

In addition, public hearings with experts may be organised on a subject of interest to the work of the EP (sub-) Committee. To date, no public hearing on a specific ESDP mission has been organised prior to the adoption of a Joint Action or the launch of an ESDP mission.

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

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

## 4.2. European Parliament Post Hoc Powers in Oversight of ESDP

Post hoc oversight has been defined as any scrutiny action by a parliament after the launch of an ESDP mission (see Section 2.2). In the case of the EP, post hoc oversight covers phases 5 and 6 of the Crisis Management Procedure (see Chapter 3), referring to the implementation and possible refocusing of EU action, as well as termination of operations.

Post hoc instruments may include: recommendations or resolutions; reports; statements made by national and EU officials in the EP; parliamentary questions; or visits to the troops followed by an evaluation or report of the mission.

### *Post Hoc Resolutions or Recommendations*

No post hoc Resolution, Opinion or Recommendation has so far been issued by the EP on individual civilian or military missions.

### *Reports on ESDP*

The EP receives an annual report from the Council on CFSP/ESDP developments, under Article 21 TEU. It provides an overview of actions taken during the course of the year by the Council in the field of security and defence, including civilian and military missions. The EP responds by issuing its own report and making recommendations on future developments of ESDP. AFET is in charge of drafting this report and submitting it to a vote during the annual plenary session on CFSP/ESDP affairs. The Council is obliged to consult the EP and, according to Article 21 of the TEU, the Council “shall ensure that the views of the European Parliament are duly taken into consideration”. It is arguable to what extent and under what procedures the Council takes the EP's views into consideration. Nevertheless, the report expresses the parliament's position and vision on ESDP developments, including the implementation of civilian and military missions.

In addition to the annual report by the Council, the EP may be informed about the Union's external actions through reports from EU Special Representatives (EUSR). However, EUSRs are not obliged to report to the EP, some having reported on an ad hoc basis and others choosing not to do so at all.<sup>(3)</sup> Beyond written reports, EUSRs may appear before AFET to discuss the political situation in their relevant region/country. The former EUSR for the African Great Lakes Region, Mr Aldo Ajello, came to discuss with MEPs the situation in Congo on 11 July 2006, around two weeks after the launch of the EUFOR DRC mission.

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

Additionally, the EP is informed of ongoing developments in ESDP through the general foreign policy statements of Council, Commission and national officials (either in their capacities as national ministers or as representatives of the country holding the six month

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<sup>3</sup> For examples of past reports by the EUSR in Bosnia and Herzegovina see: the Report to the European Parliament by the OHR and EU Special Representative for BiH, January - June 2002 [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=30141](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=30141) , the Report to the European Parliament by the OHR and EU Special Representative for BiH, July-December 2002 [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=30140](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=30140) , the Report to the European Parliament by the OHR and EU Special Representative for BiH, June-December 2005 [http://www.operationspaix.net/IMG/pdf/UE\\_rapport\\_haut\\_representant\\_2006-01\\_.pdf](http://www.operationspaix.net/IMG/pdf/UE_rapport_haut_representant_2006-01_.pdf) and the Report to the European Parliament by the OHR and EU Special Representative for BiH, February 2006 - June 2006 [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=38511](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=38511)

rotating EU Presidency). During the Finish Presidency, on 6 September 2006, the minister of Foreign Affairs, Mr Erkki Tuomioja, delivered a speech on the general situation in the Middle East. The EUBAM Rafah mission was mentioned as one of the EU efforts to stabilise the region. During the same plenary session, the Commissioner for External Relations, Ms Benita Ferrero-Waldner, made a similar general policy statement on the Middle East. She reminded MEPs of the desire of the Commission to see the rapid re-opening of the Rafah crossing point and of the Commission's readiness to 'take further action to upgrade infrastructure and strengthen capacity on the basis of the Access and Movement Agreement' of November 2005 (Ferrero-Waldner, 2006).

#### *Hearings and Evaluations*

Another option for AFET/SEDE to gather information on ESDP developments is via the organisation of public hearings. For example, SEDE organised on 9 October 2006 a public hearing on lessons learned from EU external operations, for which it invited think-tank researchers and EU officials. The briefings focussed on decision-making in ESDP, financial aspects of civilian and military missions, operational lessons from military missions and lessons learned from police, rule of law and security sector reform missions under ESDP. The hearing enabled SEDE members to ask questions, assess ESDP developments, take evidence on lessons learned from ongoing operations, and shape the EP's future recommendations. However, no independent report/evaluation on ESDP decision-making and lessons learned from operations was presented during that hearing. The summary of discussions does not include conclusions or any follow-up measures.<sup>(4)</sup>

#### *Parliamentary Questions*

MEPs have addressed to the Council one specific question on EUFOR Althea, two questions concerning the EU BAM operation and one question on EUFOR DRC. Through questions, MEPs have looked for financial clarifications<sup>(5)</sup> or for evaluations on individual missions.<sup>(6)</sup> The EU executive institutions are obliged to answer MEPs either during question time or in writing at a later date.

#### *Parliamentary Visits to the Troops*

Members of AFET/SEDE have exercised their right to visit troops in both 2005 and 2006, visiting EUPM and EUFOR in Bosnia. During summer 2006, MEPs also visited both the operational Headquarters of EUFOR DRC in Potsdam and troops deployed in Kinshasa (Von Wogau, 2006). Visits enable MEPs to assess how missions are implemented and to become familiar with the problems faced by the military on the ground. Findings are put into a short report by the Chair of the delegation. Such reports include a concluding section with specific recommendations on the implementation of the mission, on the general situation in the country/region where the mission takes place or on the future development of ESDP (e.g. Von Wogau 2006).

### 4.3. Budgetary Aspects of Oversight

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<sup>4</sup> More information on the agenda and the summary of the hearing is available at:

[http://www.europarl.europa.eu/meetdocs/2004\\_2009/organes/sede/sede\\_20061009\\_1500\\_audition.htm](http://www.europarl.europa.eu/meetdocs/2004_2009/organes/sede/sede_20061009_1500_audition.htm)

<sup>5</sup> See, for example, MEP Tobias Pflüger's question of 1 December 2005 on the amount paid by the EU to NATO for the use of NATO capabilities in EUFOR Althea

<sup>6</sup> Such as the question of MEP Robert Evans of 8 November 2006 on EUFOR DRC

The budgetary instrument is an important oversight tool for the EP. The EP and the Council adopt the annual EU budget administered by the Commission. The EP oversees spending from the EU budget for or in connection with ESDP civilian crisis management missions. Spending supported by member states in connection to ESDP missions is based on the principle of ‘costs lie where they fall’. However, common costs for military missions are borne by member states via the Athena Mechanism (Quille, 2006b) This section explains the different funding streams for ESDP and the role of the EP in scrutinising their use.

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

The rules defining financing of civilian ESDP operations were established in the Commission Communication ‘Financing of Civilian Crisis Management Operations’ (COM(2001)647). The document distinguishes between three types of crisis management missions: (1) ‘operations under a Community instrument’, financed by the Community budget; (2) CFSP operations without military or defence implications, financed by the CFSP budget; (3) ESDP operations with military implications financed by the Member States (outside of the EU budget). The first category includes such elements as: humanitarian aid; civilian emergency assistance; institution building; and consolidation of democracy and the rule of law. The second category includes non-military CFSP actions such as: disarmament, fact-finding missions, and ‘certain executive police missions’ (COM(2001)647, Annex 2). The third category refers to those activities, including those outlined by the Petersberg tasks, of a military nature.

Operations falling within the first category are 1<sup>st</sup> pillar actions, implemented under the Community framework and charged to the European Communities budget over which the EP has scrutiny and co-decision power. Operations falling under the second category (i.e. executive police operations) are decided by Council Joint Action under the 2<sup>nd</sup> pillar. As a general rule, expenditures for this type of operation are charged to the CFSP budget in accordance with Article 28 TEU. This excludes costs that the Council decides upon by Joint Action to be borne separately by member states. This mixed network of funding sources has implications for the EP’s power to exercise budgetary oversight, discussed below (Nickel & Quille, 2007).

According to the EU budgetary procedure, the EP can set a ceiling on the annual budget for CFSP. CFSP expenditure is entered in one budget chapter with five articles, including one article on ‘crisis management operations expenditures, conflict prevention, resolution and stabilisation, monitoring and implementation of peace and security processes’ (Article 42, IIA, 2006). In addition, the EP is presented every quarter with a detailed list of CFSP commitment appropriations, including individual costs for civilian ESDP missions (EP, 2006b). It does not include military missions, since these are not paid through the CFSP budget.

In the case of insufficient CFSP budget appropriations for operations, the Council may adopt an ESDP Joint Action but has to request additional funds from the EP. Article 42 of the 2006 Inter-institutional Agreement (IIA) between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management stipulates that, in the case of insufficient budgetary means, ‘the European Parliament and the Council will seek a solution as a matter of urgency, on a proposal from the Commission’. Furthermore, according to Article 43 of the same 2006 IIA, the EP must be



informed every time CFSP expenditure is envisaged and no later than five days after the adoption of a final CFSP decision. The 2006 IIA also introduced Joint Consultation Meetings (JCM) (Article 43, IIA 2006), which take place at least five times a year between the EP and the Council and aim to keep the EP informed on financial planning and spending in CFSP, including spending for operations.<sup>(7)</sup> The exchange of letters between the EP and the Finnish Presidency in 2006 paves the way for the EP to receive ex ante information on CFSP/ESDP actions funded from the CFSP budget (Nickel & Quille, 2007:32).

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

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

A number of operational costs supported from the national budgets are difficult to attribute to individual states. A particular case in point is the cost of fact-finding missions. Such missions are dispatched during the preparatory phase of an operation and bring together international and national personnel working together. CFSP funds cannot be used for operational purposes during this pre-operational phase (Council Document S416/05, 2005: 8). Consequently, costs for fact-finding missions are borne by member states. Yet there is currently no common mechanism in place to administer national contributions and facilitate the rapid disbursement of funds in the pre-operational phase. As outlined in section 4.6 below, the Constitutional Treaty provided for the establishment of a start-up fund to finance the preparatory phase of ESDP missions. It remains to be seen if the Reform Treaty will endorse this proposal.

*Cost supported by member states in ESDP military missions*

Pre-operational phase costs (fact-finding missions) in the case of military missions are considered 'common costs' and can be funded via the Athena mechanism, a common fund for military missions. Fact-finding missions are, according to Article 27.2 of the 14 May 2007 Council Decision on the Athena mechanism (2007/384/CFSP), funded through member state contributions made in advance on the basis of a fixed gross national income (GNI) percentage or 'within five days following dispatch of the call' by the Council. These Athena funds can be used to conduct and terminate an ESDP mission as long as implied costs are common (as defined by Annex III of the same Council Decision). ESDP military mission costs that are not common continue to be borne by member states on the basis of the 'costs lie where they fall' principle.

National parliaments can, in accordance with national budgetary procedures, hold accountable their respective governments for finances spent on external operations but are

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<sup>7</sup> The bureaux of the 'two Committees Concerned' - AFET and the Committee on Budgets - along with their secretariats and policy departments, participate in JCMs, as do the chair of the PSC, Council General Secretariat, and a Commission representative.

not able to oversee the way the Athena Mechanism is administered. The EP is also unable to exercise any formal oversight role over Athena funds because military costs do not fall under CFSP expenditures. The Council may brief the EP on aspects related to the implementation of the Athena Mechanism during Joint Consultation Meetings but it is not obliged to do so.

In sum, the current nature of the Athena Mechanism is such that neither the EP nor national parliaments are able to scrutinise an important proportion of ESDP military spending.

#### 4.4. Capacity to Scrutinise ESDP Missions

Effective parliamentary oversight is not only determined by formal powers but also by institutional capacity. The European Parliament's oversight powers cannot be effectively exercised if they are not matched by necessary resources, staff, expertise and effective committees. This section outlines the current capacities and resources of the EP in dealing with affairs related to ESDP.

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

The committee mandated to monitor ESDP affairs is the Sub-committee for Security and Defence, established at the start of the current 2004-2009 parliamentary term. SEDE has a budget for 2007 of 160,000EUR to commission research studies.

The Sub-committee is mandated to follow ESDP developments, including: civilian and military operations; relations with NATO (including the NATO Parliamentary Assembly); counter-terrorism policy; non-proliferation of weapons of mass destruction; security sector reform; and disarmament, demobilisation and reintegration. As a Sub-committee, SEDE has a lower administrative status and its work plan is highly dependent on the priorities of the main Committee, AFET. Reports and motions for resolutions are drafted in the Sub-committee, amended and adopted through a vote by AFET, and voted by the EP in a plenary session.

##### *Expert staff*

MEPs are supported by expert staff in the Directorate-General (DG) for External Policies (including its Policy Department and SEDE Secretariat) and political group staff. The Policy Department for DG External Policies of the Union was established through an internal reform process known as 'raising the game' in the 2004-2009 legislature. This body is dedicated to providing expert *policy support* functions including in-house research and analysis on security and defence policy matters for the EP's main political organs (President, Committees and parliamentary delegations). The Policy Department is also responsible for seeking external expertise through developing networks with research institutes, universities, governments and international institutions and can commission external expertise in the form of studies. The DG for External Policies comprises around 160 staff, including expert staff and administrative staff. There is currently only one expert dedicated solely to security issues and twelve others with individual geographic focuses that may include security issues. The DG is responsible for dialogue with the Council and Commission, as well as other parliamentary fora, including national parliaments.

The SEDE secretariat, comprising 8 staff, is part of the DG for External Polices. The secretariat is in charge of briefing MEPs on past activities and positions adopted. In addition, secretariat staff assist rapporteurs with background research and may help in drafting texts (Corbett, Jacobs, Shackleton, 2005: 127). The mandate of the secretariat includes the organisation of meetings and public hearings and follow-up work in the period between Sub-committee meetings. A significant portion of the SEDE secretariat's work is allocated to organisational tasks thus limiting time allocated for research and expert support.

The EP's political groups have secretariats with staff dedicated to the follow-up of committee activities. In addition, MEPs have personal assistants who may be asked to carry out background research and draft amendments. Personal assistants may attend SEDE meetings, when public.

#### *Secrecy and Access to Classified Information*

As a general rule, (Sub-)committee meetings are open to the public (Rule 93.3 of the EP Rules of Procedure). One exception to this rule is when the Committee identifies a certain topic to be addressed in a closed meeting, or 'in camera' (Corbett, Jacobs, Shackleton, 2005: 326). Experts can attend meetings in camera, if they have been designated in advance (annex VII.A.3, EP Rules of Procedure). Most SEDE members do not have access to classified documents. Access to sensitive Council information in the field of security and defence is, under the terms of the 2002 Inter-institutional Agreement, granted to a Special Committee.

The 2002 IIA enables the President of the EP and a Special Committee, composed of the AFET Chairman and four MEPs nominated by the Conference of Presidents, to have access to sensitive ESDP documents. The Chairman of AFET chairs the Special Committee. The IIA does not specify whether the four nominated members of the Special Committee are appointed for the duration of the parliamentary term or if the configuration of the Special Committee may vary depending on the subject discussed. There is no indication of the Committee affiliation of the four MEPs. All members have to be security-cleared prior to taking part in the Special Committee (Annex VII.C.7, EP Rules of Procedure). The Special Committee meets every six weeks with the High Representative for CFSP or representatives from his office, where confidential information is discussed (Brok and Gresch, 2004: 189).

Article 9.1 of Regulation 1049/2001 refers to three degrees of classification of Council documents: 'top-secret', 'secret', 'confidential'. These degrees follow NATO's scale of classification of documents and have been agreed in close cooperation through an exchange of letters between SG/HR for CFSP, Solana, and the then NATO Secretary-General, Lord Robertson<sup>(8)</sup>. The Council retains the right to deny the EP any information it considers inappropriate to share (Article 9.7, Regulation 1049/2001). This right was exercised when the SG/HR for CFSP decided not to cooperate with the EP in its inquiry into illegal CIA detentions and transportations (Nickel & Quille, 2007: 25).

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<sup>8</sup> It is generally accepted that EU documents shall be made public (article 255.1 TEU) with the Council, the Commission and the European Parliament having to publish them in their respective registers of documents. Limitations to the general principle of public access to documents are to be found in article 251.2 TEU, the Council's Decision 2000/527/EC on public access to Council Documents and Council Decision, and in Regulation 1049/2001 on public access to European Parliament, Council and Commission documents.

The Council has the power to determine the degree of classification of documents and MEPs are not granted access to those documents classified as 'top-secret' (Articles 2.2, 3, IIA 2002). Documents disclosed by the Council can be consulted within the premises of the Council (Article 3.3 IIA 2002). There is no reference to the possibility of the Special Committee issuing an annual report on its work, either in the IIA or in the Rules of Procedure of the EP.<sup>9</sup>

#### 4.5. Dialogue and Cooperation between the EP, National Parliaments and Inter-Parliamentary Bodies

Inter-parliamentary cooperation on ESDP offers an additional stratum of oversight. Cooperation between EU member state parliaments and the EP or between member states alone currently takes five forms: (1) the Conference of the Community and European Affairs Committees (COSAC); (2) the Western European Union Assembly (WEU PA); (3) the Conference on the Future of Europe; (4) conferences of the Presidents of Foreign Affairs and Defence Committees. Additionally, the EP may exchange views on ESDP with inter-parliamentary bodies such as the NATO PA.

COSAC first met in Paris in 1989 and has been formally recognised by the Amsterdam Treaty additional Protocol on the Role of the National Parliaments in the European Union. COSAC is a forum for debate that brings together national parliamentarians, members of the European Affairs Committees, and European Parliamentarians twice a year. At these meetings, COSAC may make recommendations to the EU executive institutions which the later are not obliged to follow. The Conference meets at the invitation of the parliament of the country holding the EU Presidency. Each national delegation and the EP delegation have 6 members. COSAC's mandate is to cover community issues (1st pillar) affairs and does not specifically include ESDP affairs. This is in accordance with the mandate of the European Affairs Committees which, in many national parliaments, does not include oversight of ESDP missions (see also Chapter 5 and 6).

The WEU Assembly functions on the basis of Article IX of the 1948 Brussels Treaty, as amended in Paris in 1954. After the transfer in 2000 of the operational activities of the WEU to the EU, the Assembly is the only WEU institutional body still in place. The Assembly focuses on ESDP affairs. It meets in plenary twice a year and in committees several times a year. The activities of the Assembly are supported by a secretariat. The SG/HR for CFSP also is Secretary-General of the WEU. The Council presents an annual report to the Assembly. The Assembly responds to the Council's report and may put forward recommendations. The European Parliament has no official status in the WEU. Not all EU states are full members of the WEU Assembly.

A recently added framework for inter-parliamentary cooperation was established in May 2006, with the first Conference on the Future of Europe. The Conferences on the Future of Europe are based on Protocol 1 on the role of national parliaments attached to the Treaty Establishing a Constitution for Europe, as adopted by the 2004 Inter-governmental Conference (IGC). The Protocol encourages European Affairs Committees and the EP to organise 'inter-parliamentary conferences on specific topics, in particular debate matters of

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<sup>9</sup> On 18 April 2007, the Commission issued a Green Paper on Public Access to Documents held by the Institutions of the European Community in which it launched a review of the implementation of Regulation 1049/2001. Legislation on access to documents is currently subject to co-decision and the EP is thus well-placed to contribute to the review process.

common foreign and security policy, including common security and defence policy'. Currently, Conferences on the Future of Europe are joint meetings organised every six months. MEPs and MPs represent a broad spectrum of committees and gather together to exchange views. The topics covered are broad and do not offer a platform for continuous ESDP oversight. Beyond a decision on the Constitutional Treaty by member states, the future of the Conference is unclear.

In recent years, cooperation and exchange of information between national parliaments and the EP on ESDP has progressively developed through meetings of the Chairs of AFET/SEDE and Defence Affairs Committees. The meetings are called at the invitation of the parliamentary defence committee of the country holding the EU Presidency and offer MEPs and MPs the possibility to discuss ESDP issues. In addition, AFET/SEDE organise joint meetings with the Foreign Affairs and Defence Affairs Committees twice a year (Brok and Gresch, 2004; 188). Such meetings provide national parliaments with the opportunity to be briefed by the High Representative for CFSP on European security developments (Diedrichs, 2004: 36).

The EP has established close relations with the NATO Parliamentary Assembly (NATO PA). The latter is a forum where NATO member parliamentarians can exchange views on security issues. Meetings between an EP delegation and a NATO PA delegation take place almost every two months and focus on EU-NATO cooperation in the field of security.

In addition to the above, 23 national parliaments of EU member states have established liaison offices within the European Parliament in Brussels<sup>(10)</sup>, liaising with the EP and the EU executive institutions to channel information from Brussels to the national level. The EP has established a Directorate for Relations with National Parliaments, part of the Directorate General for Internal Policies. The Directorate hosts representatives for the national parliaments and acts as the point of contact for national parliaments. Its mandate includes facilitating communication, channelling information to the national parliaments and preparing the EP's participation in COSAC.

#### 4.6. Constitutional Treaty/Reform Treaty

On 21-23 June 2007, the European Council reached an agreement on a new Reform Treaty. Three elements with relevance to CFSP/ESDP are retained from the Constitutional Treaty: (1) a High Representative for Foreign Affairs and Security Policy (previously called Minister of Foreign Affairs); (2) an External Action Service; (3) structured cooperation, a specific form of 'enhanced cooperation' in the military and defence area. The details of the Reform Treaty will be clarified in an Intergovernmental Conference during the second half of 2007. Each of the three elements has implications for the EP.

The Reform Treaty introduces a High Representative for Foreign Affairs and Security Policy, combining the portfolios of the current SG/HR for CFSP and the Commissioner for External Relations. As Nickel and Quille argue (2007: 21), the position of High Representative for Foreign Affairs and Security Policy creates more of a 'personal union' and does not merge the existing positions of Commissioner for External Relations and

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<sup>10</sup> The list of parliamentary liaison offices is available at:  
<http://www.europarl.europa.eu/webnp/cms/lang/en/pid/18/cache/offonce>

High Representative for CFSP. The upcoming IGC must clarify the mandate and the rules of appointment of the new High Representative for Foreign Affairs and Security Policy. It is likely that the IGC will retain the formula envisaged in the Constitutional Treaty. It specified that the High Representative for Foreign Affairs and Security Policy would be appointed by the European Council and would have to be approved, due to the dual role as a Commissioner, by the EP.

The Reform Treaty introduces an External Action Service comprising, most likely, personnel from the Council General Secretariat, the Commission and seconded personnel from national diplomatic services. The Constitutional Treaty provisions, if retained, specify that the External Action Service is established by a Council decision, after prior consultation with the European Parliament and with consent from the Commission.

The concept of permanent structured cooperation, as defined by the Constitutional Treaty, envisaged closer military cooperation between select member states, integrating their military means as far as they had the military capabilities and assuming they had 'made more binding commitments to one another'. The list of Member States participating in permanent structured cooperation would be voted by qualified majority voting (QMV) in the Council. Only the member states that take part in structured cooperation would be able to participate in the vote on issues pertaining to 'structured cooperation'. Article 2(c) of Protocol No. 23 attached to the Constitutional Treaty raises the possibility of reviewing national decision-making procedures in order to facilitate 'interoperability, flexibility and deployability'. In terms of accountability, this provision, if retained, may limit the scrutiny capacity of national parliaments. However, structured cooperation may lead to enhanced variable geometry in inter-parliamentary cooperation and thus facilitate dialogue between the national parliaments of participating member states and the EP (Nickel & Quille, 2007).

The Presidency Conclusions adopted by the European Council on 21-23 June 2007 do not mention the possible establishment of a start-up fund to finance preparatory activities for ESDP civilian missions, as envisaged in the Constitutional Treaty. A start-up fund would enable member states to make contributions to cover preparatory activities that are not charged to the EU budget. The IGC may clarify this issue.

Ultimately, the IGC will determine how many of the provisions in the Constitutional Treaty will be retained and the resulting implications for European Parliamentary oversight. The EP is represented at the IGC by its President and 3 MEPs. The EP has used past IGCs to formalise informal practices and increase its institutional role (Corbett, 1998). Most likely this trend will continue during the 2007 IGC.

## Part III: National Parliamentary Oversight of ESDP in Practice

### Chapter 5. EU-wide Survey on Parliamentary Oversight of ESDP operations

The primary research undertaken for this study included an EU-wide survey on the topic of parliamentary oversight of military and civilian ESDP missions, focusing on two military missions - EUFOR Althea (Bosnia) and EUFOR DRC (Democratic Republic of Congo) - and two civilian missions - EUPM in Bosnia and EU BAM RAFAH in the Palestinian Territories. A questionnaire was formulated and distributed to the parliaments of the 27 Member States of the EU in February 2007<sup>(11)</sup>. 25 out of the 27 EU Member States provided us information about their parliaments. A total of 39 replies to our questionnaire were received, with a number of parliaments supplying more than one set of answers. This was due to the fact that several committees are involved in the oversight of ESDP missions<sup>(12)</sup>. The data provided in this chapter is based on the information given by staffers of defence committees, interior committees, foreign affairs committees and committees for EU affairs and/or the research department/secretariat of the 25 parliaments.

The majority of the responses (18) came from defence committees, 8 were returned by EU affairs committees, 6 from foreign affairs committees, as well as 3 from interior affairs committees and 4 from the general secretariat or research departments of the 25 parliaments. The information provided suggests that ESDP matters are seen as being the responsibility of the defence committees in the majority of parliaments. EU committees are less involved in these matters despite their formal mandate and furthermore, foreign affairs and interior affairs committees play an even more peripheral role in ESDP.

The staffers of these committees appeared to have some difficulty in pointing out exactly how their parliament scrutinised the four missions in question. Of the 39 responses received, 11 failed to offer any detailed information about parliamentary involvement in ESDP operations and stated that such matters are simply not discussed within their committees<sup>(13)</sup>. This might indicate that ESDP missions, and in particular civilian ESDP missions, do not figure highly on the agenda of the parliamentary oversight committees in EU Member States.

#### 5.1. Parliamentary Oversight of Four Selected ESDP Missions

The findings of the DCAF questionnaire survey on parliamentary oversight of the four ESDP missions are considered below, with an overview of the results given in Table 5.1. The full findings can be found in Annex D of this study.

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11 The questionnaire is available in Annex B

12 Annex C contains detailed information relating to the responses to the questionnaire

13 Interior Committees in Bulgaria, Spain and the UK; EU Committees in Spain and Romania; Foreign Affairs Committees in France, Spain, Romania and the UK; and the Secretariat of the Greek Parliament. In the case of Portugal, information about parliamentary oversight of ESDP missions, as part of information that is communicated between the Defence Ministry and the Parliament, is classified information and cannot, as such, be disclosed to the public.

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

**Table 5.1: Oversight of ESDP case study missions in respondent states. (source DCAF Survey 2007, see Annex D).**

\* This table represents strictly the results of the questionnaire survey of the four case study missions. Since some of the missions were launched, legislation dealing with parliament's role in scrutiny of deployments has been adopted in Bulgaria, Czech Republic and Romania. Consequently, the parliaments in these countries no longer exercise the formal power of prior approval.

\*\*For the purposes of this table, 'parliament' may refer to activity either in the plenary or in a committee. Debate means, at least, that some formal information was received from the government and the issue was on the agenda of a committee.

\*\*\* Denmark participates only in the civilian aspects of ESDP. It does not participate in ESDP military missions nor in the elaboration and implementation of any decisions or actions of the Union which have defence implications

### *EUFOR Althea*

Operation EUFOR Althea<sup>(14)</sup> received prior approval in 12 parliaments. This approval occurred during the period between the Joint Action decision in Brussels (12 July 2004) and either the official launch of the operation (2 December 2004), or the date of the deployment of national troops (which in some countries was after the date of the official mission launch)<sup>(15)</sup>. The 12 parliaments in question were: Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Netherlands and Luxembourg. The Finnish parliament even discussed and approved the mission before the Joint Action decision was taken at the European level.

Furthermore, 3 parliaments (France, Poland and the UK) that do not have formal approval authority, discussed the military participation of their respective countries in this ESDP operation, before the decision was taken in the Council. The EU committee in Poland debated EUFOR Althea on 9 July 2004, the UK European Scrutiny Committee debated and agreed upon the mission in June 2004, and the France EU Delegation approved the Joint Action draft on 8 July 2004. In practice, discussions meant that committees were only

<sup>14</sup> Annex A contains key information about EUFOR Althea

<sup>15</sup> Member states may join a mission once its initial phase on the ground is completed.



briefly informed about a text that had already been negotiated and the issues failed to raise any significant political interest within the committee debates.

Information about operation EUFOR Althea was received by the Slovak Defence Committee but there was no consultation or formal information received by the parliaments of Belgium, Greece, Romania and Spain. Despite these four countries contributing to the operation (with 45, 88, 86 and 495 troops respectively), no debates or hearings were held by parliamentary committees.

#### *EUFOR DRC*

Operation EUFOR DRC received prior approval in 10 parliaments: Austria, Cyprus, Czech Republic, Finland, Germany, Ireland, Italy, Luxembourg, Netherlands and Spain. In Luxembourg, the Committee for Foreign and European Affairs, Defence, Cooperation and Immigration, was consulted by the government and agreed on the Joint Action more than three weeks before the text was adopted by the Council, on 27 April 2006. The other parliaments appear to have approved the mission after that date.

Other parliaments which do not have the power of prior approval were informed by their governments and discussed EUFOR DRC within the EU Committee - in the cases of France and the UK - and within the Defence Committee - in the cases of Belgium, Poland and Slovenia. In France, the discussion took place one month before the Joint Action was adopted by the Council.

#### *EUPM BiH*

Operation EUPM BiH received prior approval in 9 parliaments: Austria, Czech Republic, Finland, Ireland, Italy, Latvia, Luxembourg, Netherlands and Romania. The operation was also discussed but not formally approved in 6 parliaments that do not have the power of prior authorisation. Debates took place in the Parliamentary Defence Committees of Belgium and Slovenia, in the EU Committees of Denmark, France and the UK, as well as in a joint session of the Defence, Foreign Affairs and EU committees in Poland. No debate or hearing was held and no information was provided to parliaments of other countries that contributed personnel to the operation. This was the case in: Bulgaria, Estonia, Greece, Slovakia and Spain.

#### *EUBAM Rafah*

Operation EUBAM Rafah received prior approval in 6 parliaments: Austria, Finland, Ireland, Italy, Luxembourg and the Netherlands. Austria and Ireland did not participate with personnel in the mission but approved it nevertheless.

EU committees in Denmark, France and the UK were informed about the mission and discussed the operation, around the date that it was launched. The parliaments of other countries that have contributed personnel to EUBAM Rafah were neither informed nor consulted about the operations. These include, Belgium, Greece, Romania and Spain.

## 5.2. Opinions of MPs and Parliamentary Staffers about Parliamentary Oversight of ESDP Missions

In addition to requesting factual information in the questionnaire, parliamentary staffers were asked to give their thoughts about parliamentary involvement in ESDP missions (Annex E gives an overview of the results). Some 26 staffers from 19 countries gave their personal evaluation of their parliaments' involvement in ESDP missions. Using a scale of 1 to 4, with 1 indicating strong disagreement and 4 indicating strong agreement, they evaluated six statements. These statements are briefly reviewed below.

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

Generally speaking, staffers were more satisfied with information concerning military missions than that relating to civilian missions. In some countries, staffers were unable to assess whether or not the information on civilian ESDP missions that was provided was sufficient. Staffers from Austria and the Czech Republic were most satisfied with the information supplied on both military and civilian missions. In Cyprus and Spain, staffers strongly agreed that their parliament received sufficient information on military missions but the information offered concerning civilian missions was deemed to be inadequate. Staffers in Portugal and Romania were among the least satisfied overall.

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

Once again, the results indicted a disparity between the results for civilian and military operations. In 5 of 19 responding countries, staffers felt they had greater legal powers concerning military rather than civilian ESDP missions. These countries were: Bulgaria, Cyprus, Estonia, Finland and Spain. Parliamentary staffers in Austria, the Czech Republic, Latvia and Luxembourg strongly agreed with the statement for both military and civilian missions. The strongest disagreement with the statement was found among staffers in: Belgium, France, Poland, Portugal, Romania, Slovenia and the UK.

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

In 3 countries, the willingness to be involved in scrutiny of military deployments was greater than that for civilian deployments. In another 3 countries, there was no knowledge about the willingness of MPs to be involved in civilian ESDP missions. Both facts presumably reflect a lower interest in civilian missions.

Staffers in Austria, the Czech Republic, Germany, Latvia, Luxembourg and the Netherlands noted the willingness of their parliament to exercise oversight of both civilian and military ESDP missions. Conversely, staffers in Belgium, Portugal, Romania and the UK felt that their parliaments had limited interest in exercising greater oversight of ESDP. In France and Poland, different committee staffers had opposing views concerning the level of interest that their parliament accorded to oversight issues.

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

Staffers from Belgium, Bulgaria, Cyprus, Finland, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Spain were among the most dissatisfied respondents regarding the resources at their disposal to exercise oversight of military or civilian ESDP missions. Significantly, Finland and Luxembourg belong to this group, where it would appear that

the parliament's strong legal prior authorisation powers (see Table 5.1) are not entirely matched by their resources. The most satisfied staffers belong to the parliaments of Czech Republic and Estonia.

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

Staffers from Austria, Cyprus, Czech Republic, Estonia, Germany (concerning civilian deployments), Spain and the UK (Defence Committee), all believed that their parliaments were sufficiently engaged in ESDP scrutiny already. On the other hand, in: Bulgaria, Finland (in the case of military missions), Luxembourg, Portugal and Romania, staffers felt that their parliaments should be more involved in scrutinising ESDP operations.

Interestingly, in France, Poland and the UK, divergent views were expressed by the different Committees as to whether their parliaments should seek greater involvement in oversight of ESDP. This reflects their overlapping mandate on ESDP, where no single committee possesses the sole role in scrutiny and each has its own institutional perspective.

### 5.3. Analysis

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

As far as parliaments that possess the power of prior authorisation are concerned (see Table 5.1, column 1), missions were approved before deployment but usually after the EU Council adopted the Joint Action.

Finland and Luxembourg are exceptions to this sequence, where the parliaments have approved missions before the Joint Action decision was taken. In Sweden, parliament is consulted prior to all European Council decisions, and has to decide formally on the participation of the Swedish forces in a mission, but no detailed information on how and when the four operations were approved was provided in the response to our questionnaire. According to Irish legislation, parliament should also be consulted as soon as the Joint Action is initiated but this rule can be ignored when "in the opinion of the minister" the issue "is confidential"<sup>(16)</sup>, which was the case in each of the four missions considered here.

Most governments are not required to secure parliamentary approval prior to signing a Joint Action in Brussels, even in countries that have prior authorisation power. Consequently, parliaments are often confronted with a *fait accompli*, due to the difficulty for a government to withdraw its commitment to contribute personnel to ESDP missions. Having committed to a Joint Action, such a withdrawal would have serious consequences for the international standing and negotiating position of the government concerned, as well as for the operational success of the ESDP mission.

Nevertheless, some parliaments receive information about Joint Actions before they are adopted. This practice is most prevalent within countries where parliaments have no formal power of approval, but contribute greatly to ESDP missions, such as France, Poland and the UK. Otherwise, parliamentary awareness about such negotiations and about Joint Actions adopted by the European Council is limited.

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<sup>16</sup> European Union Scrutiny Act, *Number 25 of 2002*, Sections 2 and 3

In the Netherlands, the Government and the Parliament make use of a "Decision framework for military deployments for international missions".<sup>(17)</sup> The goal of the framework is to improve the quality of military deployment decisions and to make those decisions more systematic as well as more transparent. The Framework puts forward 10 points of attention which are important for military deployment decision-making: (1) The rationale for the mission; (2) Political aspects; (3) Mandate of the mission; (4) Participating countries; (5) The extent of influence (by national government) on decision-making; (6) Feasibility of the mission; (7) Risks; (8) Suitability and availability of Dutch military units; (9) Duration of the mission and replacement - of Dutch units by units of other countries-provisions; (10) Financial aspects.<sup>(18)</sup> The reply to the questionnaire from the Dutch Parliament indicated that the procedures for debating and approving the deployment in parliament, can be done within one day, if need to be in case of emergency.

### *Role of Parliament: Plenary versus Committee*

Prior authorisation of national participation for at least one of the four ESDP operations was given in 15 out of 25 respondent parliaments. In some parliaments, this authorisation was given by the plenary, as in the cases of: Bulgaria, Cyprus, the Czech Republic, Estonia, Germany, Italy, Latvia, Romania<sup>(19)</sup> and Sweden. In other parliaments, it was a committee that took the decision in the name of the parliament. The Main Committee was charged with taking the decision in Austria and the Committees for Defence and Foreign Affairs in Netherlands. In Ireland, the decision came under the authority of the Joint Committee on European affairs. In Luxembourg, the Committee for Foreign and European Affairs, for Defence, for Cooperation and for Immigration, provided assent.

There are countries where the authority to approve national participation in a mission belongs to a committee or to the plenary, depending on the case. In Finland, the Plenary usually has to give its consent<sup>(20)</sup>. However, if less than ten personnel are assigned to an operation, the deployment is approved by the Foreign Affairs Committee. As a result, the plenary approved the participation in EUFOR Althea, whereas the Committee approved participation in EUFOR DRC, EUPM BIH and EUBAM Rafah. In Spain, the Standing Bureau of the Congress determines whether the matter is to be decided in the Defence Committee or in the Plenary. This decision taken is dictated by the importance of the mission. Participation in EUFOR DRC was approved by the Defence Committee, while the Spanish involvement in other recent international missions was approved by the plenary.

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

Of the 25 respondent parliaments, greater emphasis was placed on parliamentary approval of military ESDP operations than civilian missions, with 14 of the 25 parliaments giving their approval to at least one military mission compared with 10 parliaments approving civilian operations (see Table 5.1). Yet the figures are low even for military missions, possibly indicative of a general lack of parliamentary scrutiny of ESDP.

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<sup>17</sup> Tweede Kamer (Second Chamber of Parliament), 2000-2001, 23 591, nr. 7, The Hague, The Netherlands

<sup>18</sup> Tweede Kamer (Second Chamber of Parliament), Onderzoek NATO Response Force (Research into NATO Response Forces), 2005-2006, nr. 30162, The Hague, The Netherlands

<sup>19</sup> Romanian and Bulgarian parliaments had the power of prior approval for national participation in all missions abroad before adopting new legislation in 2004 and 2005 respectively. Following the legislation, decisions to participate in ESDP operations are taken by the executive, with parliaments only informed later.

<sup>20</sup> Mandatory if there is no UN mandate for an operation.

Participation in civilian missions frequently escapes parliamentary attention because of the small number of personnel deployed. For these operations, deployment decisions are often taken at a lower executive level than would be applied to a military mission, with no obligation to report the decision to parliament. The deployment of personnel by member countries passes through a further selection process at the EU level, with the selection criteria being based upon experience and relevant skills for the operation, as opposed to nationality.

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

#### *Parliamentary committees with overlapping mandates*

The information provided in the questionnaire suggests that ESDP operations often fall under the competency of several parliamentary committees. The slow machinery of committee structures and overlapping committee mandates have served to dissipate awareness on ESDP issues. The following committees may all potentially be involved in ESDP scrutiny: foreign affairs, EU affairs, defence, interior, development aid, budget and human rights committees. The roles of these committees differs from country to country, ranging from non-involvement to a lead role. For example, in Romania, up until Act 42 of 2004 abolished parliamentary oversight of ESDP missions, the Parliamentary Committee of Defence, National Security and Public Order oversaw both civilian and military ESDP missions. In Germany, formally the Foreign Affairs Committee advised the Plenary on deployment approval but, in practice, the substantive debates on military deployments take place in the Defence Committee and on civilian deployments in the Interior Committee. In some parliaments, like the Polish and the Dutch ones, joint meetings of the several committees is a common practice when ESDP operations are debated.

In most countries, all international operations abroad, including ESDP, are seen as a competence of Defence Committees. In spite of the rapid development of civilian missions, it appears that interior committees neither play a role in approving nor overseeing civilian ESDP operations. Only in Germany does the Interior Committee play a role in exercising *post hoc* accountability over civilian ESDP missions. In most cases, the Foreign Affairs Committees do not discuss individual ESDP operations, but only the broader issues of CFSP and ESDP.

In those parliaments that do not possess the authority to approve missions, Defence Committees are less active in ESDP oversight and EU committees tend to have a stronger role. This is especially true in countries with a long parliamentary tradition and who make a strong contribution to ESDP operations, such as France and the UK. EU committees in new member states are, it could be said, still acquiring the necessary experience and expertise to deal with the vast and complex issues of European Affairs, particularly in the newly-emerging realm of ESDP.

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

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

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

The exceptions are Italy and Germany, where the approval for a mission includes the approval of its estimated budget. In Germany, the Parliamentary Participation Act prescribes that any military deployment proposal of the government to parliament should include information about the estimated costs<sup>(21)</sup>. In Italy, the approval of national participation in a mission is given through a budgetary approval law. Furthermore, every year the parliament must pass a law in order to allow for the renewal and extension of the mandate. Detailed information about costs, type of forces, tasks and status of forces must be provided.

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<sup>21</sup> See sub-chapter 6.3 in this report on the German Bundestag

## Chapter 6. In-depth Study of Parliamentary Oversight of ESDP Missions in Six Selected Member States

### 6.1. Introduction

This chapter presents the findings of in-depth interviews with parliamentarians and their staffers in the six member states selected (France, Germany, Poland, Romania, Spain and the UK). Detailed interviews were conducted with 41 MPs and staffers from both governing and opposition parties, all in the native language, with the aim of gaining a deeper insight into the role of national parliaments in the oversight of ESDP missions. The interviews with both MPs and parliamentary staff provided an opportunity to discuss how parliamentary oversight of ESDP missions is carried out in practice. More specifically, the questions asked during the interviews were designed to uncover more information about *ex ante* accountability, *post hoc* accountability and the possible mechanisms through which parliamentary oversight of ESDP missions could be strengthened. The case studies presented below are organised according to this structure. The same set of questions was put to each interviewee and responses were provided on the condition that the identity of respondents would remain anonymous (please refer to Annex F for the position and party of the interviewees and Annex G for the list of interview questions).

### 6.2. France

#### *Ex Ante Accountability*

The French Parliament does not approve *ex ante* or *post hoc* the deployment of French troops to an ESDP mission, although it is mandated to clear the Council Joint Action prior to adoption<sup>(22)</sup>.

Article 88-4 of the French constitution offers the legal basis to exercise oversight of European affairs. The two parliamentary bodies which receive information about ongoing ESDP negotiations prior to the adoption of a Council Joint Action are the Delegation for the European Union at the Senate and its counterpart at the National Assembly<sup>(23)</sup>. The main task of each Delegation is to provide *ex ante* political clearance of EU documents. Based on the 13 December 1999 Government note (Circulaire) on the application of Article 88-4 of the Constitution, the French Government regularly submits ESDP documents to Parliament for *ex ante* political clearance by the two Delegations.

In the case of EUFOR DRC, EUPM in BiH and EU BAM in Rafah, the Government informed in writing the Delegations about the EU's intention to conduct the operations. In all three cases, the Government requested that each Delegation examine the Joint Actions according to an emergency procedure. The Presidents of the Delegations decided to follow the emergency procedure, lifting the parliamentary scrutiny reserve and clearing Joint Actions for the three missions. The members of the Delegations were only informed of these decisions during meetings that were subsequently scheduled.

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<sup>22</sup> Interview held Paris on 21 February 2007, F3

<sup>23</sup> Interview held in Paris on 23 February 2007, F4

The President of each Delegation can refuse the emergency procedure and can ask for a debate. In practice, the emergency procedure is only ever refused in the event of a potentially contentious document<sup>(24)</sup>. In such a case, the specialised committee (defence or foreign affairs) is notified. The French representative in the EU Council is not permitted to vote until the specialised committee has examined the contentious document. The aforementioned specialised committee has one month to adopt a non-binding resolution or to submit the resolution to the plenary. In spite of this power, this procedure has yet to be applied to an ESDP operation.

The Delegations may still debate a Joint Action in spite of the emergency procedure. This occurred in the National Assembly during the planning of operation EUFOR Althea. Parliament was informed on 1 July 2004 about the ongoing negotiations for a future EU military operation in BiH and the Government requested that the emergency procedure be applied. The text of the Joint Action was discussed and approved during the National Assembly Delegation's 8 July 2004 meeting, after the President of the Delegation, Mr. Pierre Lequiller, presented the details of the operation (the size of the force, the chain of command, the rules of engagement, the participation of non-EU member states, as well as the intention to use Berlin plus mechanisms)<sup>(25)</sup>.

The EUFOR DRC operation received more attention in Parliament, due to the French interest in the Great Lakes region and the past contributions that France has made to Operation Artemis and MONUC. In this context, on 22 March 2006 General Henri Bentégeat, Chief of Staff of the Army, informed the Senate Committee on Foreign Affairs, National Defence and Armed Forces about the planning for operation EUFOR DRC.

### *Post Hoc Accountability*

Parliamentary oversight in France takes place post hoc during the debate on the budget rectification. This was particularly valid until two years ago, when the initial budget law (*loi de finance initiale*) did not individualise the estimated costs for external operations within the general defence budget. Today, part of the yearly estimated costs for external operations are individualised in the initial budget law<sup>(26)</sup>. Yet, individual costs per operation are only provided to MPs on request, either when the initial budget law or the rectification of the budget is discussed.

The members of the Defence Committee of the National Assembly have visited troops in Bosnia, Palestine and Congo<sup>(27)</sup>. In addition, the MPs of the National Assembly were informed about the status of the four missions in the plenary by the Minister of Foreign Affairs, Mr Philippe Douste-Blazy, and the Minister Delegated to European Affairs, Mrs Catherine Colonna, during the June 2006 parliamentary session.

In the Senate, two questions concerning EUFOR Althea were addressed in the plenary by Senator Joëlle Garriaud-Mylam to Mrs Michèle Alliot-Marie, Minister of National Defence. The first question, addressed on 6 December 2004, sought clarification of the costs charged to the French MoD and EU CFSP budgets respectively. The second question,

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<sup>24</sup> Interview held in Paris on 16 February 2006, F5

<sup>25</sup> Minutes of the debate held on 8 July 2004 by the National Assembly Delegation for the European Union <http://www.assemblee-nationale.fr/12/europe/c-rendus/c0092.asp>

<sup>26</sup> Interview in Paris, on 15 February 2007, F2

<sup>27</sup> Interview with F2



asked on 27 June 2006, requested an evaluation of the operation and the funds expended. In the plenary of the National Assembly, there was only one question regarding EUFOR Althea, posed by Mr. Jean-Claude Guibal to the Minister of Foreign Affairs, Mr Philippe Douste-Blazy on 25 January 2005. The question sought clarification on the duration of the operation and the mandate, as well as requesting that the Minister provide an overview of planned EU operations.

The Council decides on a new Joint Action in case of a change of mandate, the prorogation of an operation or if there is need to terminate an operation. When this occurs, the French Government submits the new Joint Action to the two Delegations for clearance<sup>(28)</sup>. A recent example of this took place on 7 February 2007, when the two Delegations cleared, under the emergency procedure, the Joint Action pertaining to the end of the EUFOR DRC operation.

To sum up, the French Parliament did not approve the four missions by a formal vote. At present, procedural mechanisms exist which enable the Parliament to exercise limited oversight of ESDP operations. All of the persons interviewed in Paris stressed that at present there is a significant degree of consensus on French participation in ESDP operations and therefore MPs tend to focus on other more conflicting issues. It is possible that the role of the Parliament in foreign and security policy may be re-evaluated during the next legislature. However, even if institutional reforms are made in this area, it is likely that only those operations of significant interest to MPs will receive greater scrutiny.

### *Strengthening Parliamentary Accountability*

The MPs and their staff who were interviewed stressed that the French Parliament has a limited oversight role in foreign affairs and defence under the framework of the 1958 Constitution<sup>(29)</sup>. All of those interviewed had precise ideas about strengthening parliamentary accountability of ESDP missions, both at the national and at the European level.

As far as the French Parliament is concerned, the reform of the legislature's role is under consideration<sup>(30)</sup>. Suggested reforms would give Parliament the power to vote ex ante on the deployment of French troops to external operations.<sup>31</sup> Furthermore, the presidents of the defence committees in the Senate and the National Assembly could become members of a reformulated Defence Council<sup>(32)</sup>.

All the individuals interviewed in Paris were in agreement that the oversight role of national parliaments in ESDP should be enhanced. At the same time, interviewees pointed out that the EP ought to have only a limited oversight role in ESDP and on the condition that the approval of the implementation of ESDP missions remains at the national level<sup>(33)</sup>. The EP's role should be limited to expressing critical opinions on ESDP developments which can serve to influence national parliaments in their oversight work<sup>(34)</sup>. In this context, it was suggested that a body combining the features of the WEU Assembly and COSAC may

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<sup>28</sup> Interview with F5.

<sup>29</sup> Interview with F1 and F2 in Paris on 15 February 2007.

<sup>30</sup> Interview with F4 in Paris on 23 February 2007.

<sup>31</sup> Interview with F4.

<sup>32</sup> Interview with F4.

<sup>33</sup> Interview with F2. Interview with F5 in Paris on 16 February 2007.

<sup>34</sup> Interview with F1.

be more appropriate to facilitate communication between the national parliaments, and ensure ESDP oversight<sup>(35)</sup>.

### 6.3. Germany

The German *Bundestag* exercises strong ex ante and ex post oversight over military ESDP missions. However, for civilian ESDP missions, its ex ante oversight is virtually non-existent and its ex post oversight is somewhat limited.

#### *Military ESDP missions*

For historical reasons, the German Parliament has a strong role in military deployments abroad when compared to its European counterparts. The high level of control is embodied in the German doctrine of ‘Combined Power’ (*konbinierte Gewalt*) which stipulates that power to control foreign, security and defence policy must be shared between the Government and Parliament<sup>(36)</sup>. In 1994, after international engagements by the German *Bundeswehr* in the former Yugoslavia, the German Constitutional Court ruled that military deployments abroad are permissible under certain circumstances and that parliamentary consent must be obtained in advance<sup>(37)</sup>. The 1994 court ruling served as the foundation for the 2004 Parliamentary Participation Act, which deals with any form of military deployment abroad<sup>(38)</sup>.

#### *Ex Ante Accountability*

According to the Parliamentary Participation Law, any participation of armed forces personnel in armed missions requires prior parliamentary authorisation. However, no parliamentary consent is required for unarmed missions, the preparation of armed missions, humanitarian missions and operations in which military personnel will not be involved in conflict<sup>(39)</sup>. The Government needs to inform the *Bundestag* ‘in good time’ before the military is deployed abroad. Nevertheless, certain members of opposition parties complained that, on a number of occasions, the Government has been too late in furnishing the Parliament with information<sup>(40)</sup>. According to law, Parliament must be informed about the following elements of a deployment:<sup>(41)</sup> the mandate, geographical scope of operations, legal basis of the military deployment, maximum number of troops to be deployed, the capabilities of these troops, the duration of the mission and the estimated financial costs<sup>(42)</sup>.

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<sup>35</sup> Interview with F3, F4 and F5.

<sup>36</sup> Roman Schmidt-Radefeldt, p. 148

<sup>37</sup> International Military Deployments Case (1994), Federal Constitutional Court of the Federal Republic of Germany, 90, BverfGE 286. An English version is available in International Law Reports (I.L.R.), 1997, Vol. 106, pp. 318-352.

<sup>38</sup> Parliamentary Participation Act (*Parlamentsbeteiligungsgesetz*), Bundesgesetzblatt Jahrgang 2005, Teil 1, nr. 17, Bonn, 23 March 2005, available at: <http://www.bundestag.de/ausschuesse/a03/ParlBetG.pdf>

<sup>39</sup> Parliamentary Participation Act, Para. 2.

<sup>40</sup> Interview G1, Berlin, 26 February 2007; Interview G4, Berlin, 26 February 2007.

<sup>41</sup> Parliamentary Participation Act, Para 3(2).

<sup>42</sup> However, the provision of a detailed proposal and information applies to regular armed forces only. The deployment of Germany’s special military forces (*Kommando Spezialkräfte* - KSK) is exempt from this procedure. Parliamentarians only receive general information about their deployment, normally as part of a wider military deployment. Given the secret nature of the tasks of KSK soldiers, such as in counter-terrorist operations, no specific information is given about their exact mandate, area of operations or number of soldiers. Interview G1, Berlin, 26 February 2007

Parliament does not have the power to alter the Government's plans; it can only accept or reject Government proposals to deploy troops abroad<sup>(43)</sup>. To date, the *Bundestag* has never refused such a proposal, due to prior informal talks between Government and selected parliamentarians. These discussions seek to defuse potential controversies in upcoming parliamentary debates on the deployment and to negate the risk of the Government being defeated in Parliament<sup>(44)</sup>. Votes held in the plenary on upcoming military deployments are free votes. This means that, in theory, parties do not require their MPs to follow the party line. However, it was mentioned that in practice, pressure is exerted upon MPs to adhere to the party line<sup>(45)</sup>.

The Defence Committee, together with the Foreign Affairs Committee, informs the plenary of its decision on the upcoming deployment. Defence Committee meetings are always held behind closed doors and the level of secrecy surrounding them depends on the nature of the issue being considered. This applies to all parliamentary committees in order to foster open debates and an atmosphere of trust. There was a consensus among the MPs interviewed on the need for Defence Committee meetings to retain this practice of secrecy. MPs are prohibited from repeating or commenting on what has been said by participants during the meeting. Despite these secrecy rules, the content of these committee meetings is often documented in the media. The military EUFOR DRC mission - which was German-led - was extensively discussed in the German *Bundestag* in terms of mandate, number and quality of German troops.

The *Bundestag* is not involved in the early stages of preparation and planning of any military ESDP mission, nor do the cabinet ministers or the chancellor inform the Bundestag about Germany's role in future ESDP missions. Policy-making and planning in this field are regarded as being the prerogative of the executive and outside of the responsibility of Parliament<sup>(46)</sup>. Therefore, the *Bundestag* deals with ESDP missions on a case by case basis. Federal Chancellor Angela Merkel tried to alter this practice when in 2005 (at the beginning of her term as Chancellor) she suggested that the *Bundestag* Defence Committee gives her a free mandate to commit Germany to upcoming military ESDP missions during her entire term (4 years). This proposal was refused by the Defence Committee<sup>(47)</sup>.

### *Post Hoc Accountability*

The *Bundestag* has four oversight powers at its disposal once the decision has been taken to deploy troops abroad: the right to be frequently informed; the power to withdraw troops; the power to approve the extension of the mission; and the right to visit troops deployed abroad.

At each parliamentary session of the Defence Committee – of which there are twenty-two to twenty-four per year - the Defence Minister or its deputy, accompanied by high-ranking military personnel, gives an overview of all current military deployments abroad, including ESDP missions. Furthermore, Defence Committee members receive a confidential report from the Defence Ministry on all military ESDP missions on a weekly basis. These weekly situation reports contain information about each of the military deployments abroad,

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<sup>43</sup> Parliamentary Participation Act, Para 3(3), and Interview G1.

<sup>44</sup> Interview G2 and G4, Berlin, February 2007.

<sup>45</sup> Interview G2, Berlin, February 2007 and Interview G3, Berlin, 26 February 2007.

<sup>46</sup> Interview G1.

<sup>47</sup> Interview nr. G2; see also Timo Noetzel and Benjamin Schreier, *Parliamentary Control of the Bundeswehr: The Need for Legislative Reform*, SWP Comments nr. 4, SWP, Berlin, February 2007, p. 1, available at [http://swp-berlin.org/en/common/get\\_document.php?asset\\_id=3784](http://swp-berlin.org/en/common/get_document.php?asset_id=3784)

regarding: the political situation, the security situation, incidents, visits, and the performance of the military units concerned. These briefs provide vital information for members of Parliament as they may be confronted with questions about current military ESDP missions from their constituents<sup>(48)</sup>. The deployment of special military forces (*Kommando Spezialkräfte* or KSK) constitutes a special case, and therefore their progress is not included in the weekly reports and only the party leaders are informed about their activities<sup>(49)</sup>. The Parliamentary Participation Act gives the *Bundestag* the power to withdraw German troops and to discontinue their mission<sup>(50)</sup>. However, parliamentarians are of the opinion that pulling out troops from an ESDP mission is a blunt instrument, given its likelihood of undermining the ESDP mission and harming Germany's international reputation as a reliable partner.

Article Seven of the Parliamentary Participation Act stipulates that the *Bundestag* must approve the extension of mission mandates. As mandates are often given for a six-month period, every six months the *Bundestag* gives or withholds approval for current ESDP missions.<sup>51</sup>

Finally, members of Parliament can visit troops deployed abroad. MPs visited troops deployed to the mission in Congo in 2006 and Parliament has exercised similar rights by recently visiting German troops stationed in Afghanistan. The intention of these field visits is to give the MPs the opportunity gain a closer insight into operations on the ground. Visits normally include meetings with political leaders in the region, as well as extensive discussions with troops, which provide soldiers with the opportunity to make comments or complaints directly to the MPs<sup>(52)</sup>.

### ***Civilian ESDP Missions***

In contrast to its ex ante and ex post oversight of ESDP military missions, the *Bundestag* has a weak oversight role with regards to civilian ESDP missions. It has no ex ante oversight or approval power in civilian missions. However, Parliament does have a limited ex post oversight role, after personnel have been deployed.<sup>(53)</sup>

Parliamentary oversight of civilian ESDP missions is complicated by the fact that police missions are not only staffed by federal police but also by the police services of the German *Länder* (counties). Therefore, legislative control takes place not only on the federal level, but also at the regional level. Within the *Bundestag*, the Interior Committee (*Innenausschuss*) is responsible for oversight of civilian ESDP missions, the meetings of which are always held behind closed doors.

The *Bundestag* has no role in controlling the finances of the civilian ESDP missions as they are mainly paid for through the EU common budget. MPs do not receive information about the budgets or expenditures of civilian ESDP missions.<sup>(54)</sup> Therefore, it is difficult,

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<sup>48</sup> Interview G3.

<sup>49</sup> Interview G3.

<sup>50</sup> Parliamentary Participation Act, Para. 8.

<sup>51</sup> Interview G3.

<sup>52</sup> Interview G3.

<sup>53</sup> Interview G5, Berlin, 26 August 2007, Former minister Otto Schilly (SDP) described the role of parliament in ESDP civilian missions, when he stated in an Interior Committee meeting that 'ESDP civilian missions are part of executive decision-making (*Exekutiv Sache*).' Interview G8 in Berlin on 28 February 2007

<sup>54</sup> Interview G7 held in Berlin on 28 February 2007

if not impossible, for Parliament to hold the executive financially accountable for civilian ESDP missions<sup>(55)</sup>

### *Ex Ante Accountability*

The German *Bundestag* does not possess parliamentary control over policy developments and the Interior Committee does not oversee policy documents concerning civilian ESDP missions.<sup>56</sup> The *Bundestag* was not informed about the EU BAM Rafah before it started, and MPs asserted that there was no significant parliamentary debate before the decision to deploy police officers to the EUPM in Bosnia.<sup>(57)</sup>

### *Post Hoc Accountability*

Article 8 of the Police Act forms the legal basis for ex post parliamentary involvement in decision-making on civilian deployments abroad. The relevant stipulations are the right for the German *Bundestag* to be informed about deployments of police abroad and the right to end a deployment.<sup>(58)</sup> While the Federal Police Act requires the *Bundestag* to be informed, it does not specify when and how this should happen. Moreover, the *Bundestag* has yet to use its power to withdraw German forces from a ESDP mission.

There is no procedure in place relating to the regular flow of information from the Ministry of the Interior to the Interior Committee of the *Bundestag*. The lack of access to relevant information has presented a significant obstacle to MPs in exercising *ex post* oversight. The Interior Committee is dependent upon the initiative of individual MPs if it is to receive information about the current state of civilian ESDP operations. Committee members have exercised their right to place an issue on the Committee agenda on (at least) two significant occasions: when there were problems between (German) police officers and KFOR in Kosovo and following reports that police officers suffered trauma after exposure to mass graves in Bosnia. MPs urged the Minister of the Interior to take proper care of the police officers involved.<sup>(59)</sup> Despite these powers of committee members, the Ministry of the Interior is able to delay providing an answer and it generally takes three or more weeks before an MP can expect a reply.<sup>(60)</sup>

MPs have been able to receive firsthand information through their visits to the civilian ESDP missions, which have been made to both the EUPM BiH and the EU BAM Rafah missions. During the visits, a series of both formal and informal discussions are held with both German and other staff of the mission, as well as NGOs and local government officials. The talks have typically centred on the mandate, the efficacy of the mission, cooperation between states and equipment issues. Interviewees perceived these visits to be crucial to the ex post parliamentary oversight of civilian ESDP missions.<sup>(61)</sup>

### *Strengthening Parliamentary Accountability*

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<sup>55</sup> Interview G5, Berlin

<sup>56</sup> Interview G6, Berlin, 28 February 2007

<sup>57</sup> Interview G8, Berlin, 28 February 2007

<sup>58</sup> Federal Police Act (*Bundespolizeigesetz*), Art. 8(1) - version of 1 February 2007, available at <http://bundesrecht.juris.de/bundesrecht/bpmsg.1994/gesamt.pdf>

<sup>59</sup> Interview G8.

<sup>60</sup> Interview G8.

<sup>61</sup> Interview G5 and G8.

The majority of the MPs and staffers interviewed argued that there is a need for a greater parliamentary oversight role, both at the national level in the *Bundestag* and at the European level through the EP. A variety of proposals were put forward to strengthen the role of the *Bundestag* in both civilian and military ESDP missions. These suggestions can be summarised as follows: ensuring that the legislative committees have better access to information about missions at an earlier stage in the planning process; the organisation of public parliamentary hearings; and improved cooperation between national parliaments of EU member States in the sharing of information and experiences. With regards to civilian ESDP operations, several interviewees stated their belief that oversight powers should parallel the *Bundestag's* powers of scrutiny for military ESDP missions.<sup>(62)</sup> Thus, a new law should be introduced that would require parliamentary authorisation for civilian armed deployments abroad. It was also recommended that the Government be obliged to keep the Interior Committee regularly informed regarding civilian ESDP deployments.<sup>(63)</sup>

The interviewees placed an even greater emphasis on the need to strengthen the oversight role of the EP which, they argued, has failed to acquire increased oversight capacity, despite the expanding competences and increasing executive powers of the EU. It was argued that the EP's *ex ante* role should be buttressed through the requirement for EP authorisation of all ESDP missions, through the co-decision procedure.

#### 6.4. Poland<sup>(64)</sup>

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

There is a distinction between international police and international military missions, in terms of the bodies that are responsible for participation in any particular mission. The armed forces are constitutionally subordinate to the President and Council of Ministers of the Republic of Poland and therefore, the deployment of the armed forces falls under their control. The responsibility for dispatching police personnel to overseas missions is not stipulated in the Constitution, but has generally fallen under the jurisdiction of the Ministry of Interior. This has led to various committees such as the Committee of Internal Affairs of the *Sejm* being tasked with post hoc oversight of civilian missions. In Parliament, there is a complete division of labour between military and police missions. The committees tasked with dealing with each type of mission are usually very different and information does not appear to be exchanged between the committees that are responsible for the oversight of military missions and those that deal with civilian missions.

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<sup>62</sup> Interview G6 and G8.

<sup>63</sup> Interview G5.

<sup>64</sup> The field report on Poland was prepared by Mr. Antoni Mickiewicz of DCAF Brussels.

### *Ex Ante Accountability*

The prerogative to deploy troops lies solely with the President and the Council of Ministers. There is no formal ex ante oversight mechanism established for the Polish Parliament and this has meant that each mission has been treated differently. Nevertheless, the Polish Government has usually informed the Defence Committees of the *Sejm* and *Senat* of decisions to participate in ESDP missions<sup>(65)</sup>.

According to Article 26/2 of the Constitution of the Republic of Poland: 'The Armed Forces will remain politically neutral and will be subordinate to civil and democratic control.' It is alleged that the term democratic replaced the term parliamentary in the final instance before the constitution was ratified<sup>(66)</sup>. According to senators, the initial idea was to have far greater provisions for parliamentary oversight<sup>(67)</sup>. Article 117 of the Constitution of the Republic of Poland stipulates that 'The terms of deployment of Armed Forces outside the borders of the Republic of Poland are defined by specific international agreement or national legislation.' This constitutional provision could potentially provide an opportunity for specific future international agreements pertaining to ESDP to be presented with parliamentary oversight.

Polish parliamentarians do not receive information on a systematic basis from either national or international sources regarding ESDP missions.<sup>(68)</sup> They do however, often task their staffers with keeping track of international developments.<sup>(69)</sup> A further tool for obtaining information has been the participation of parliamentarians in international fora, and their contact with members of Parliament from other EU Member States. For instance, on 20 February 2007, Senator Andrzej Person, the Head of the Polish Delegation to the WEU Assembly, presented a report to the Senate Defence Committee on his attendance at the WEU Assembly conference on ESDP which took place in February 2007, in Berlin<sup>(70)</sup>. As is mentioned below, on 15 March 2007, the *Senat* Defence Committee held a joint meeting with the *Senat* Committee on European Affairs to discuss the need to improve Poland's role in ESDP. The meeting included a detailed discussion on improving the flow of information regarding ESDP missions<sup>(71)</sup>.

### *Post Hoc Accountability*

Despite not being legally obliged to inform the Parliament of its decision to participate in ESDP and other international missions, on most occasions the Government has communicated these decisions to Parliament. This information appears to have been provided to Parliament as a matter of informal politeness<sup>(72)</sup>. Furthermore, efforts - classed as satisfactory by interviewees<sup>(73)</sup> - have been made in recent years to inform the *Senat* and

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<sup>65</sup> Confirmed in three interviews with Members of Parliament on 23 and 24 April and also 11 May 2007.

<sup>66</sup> Interview P1, 24 April 2007.

<sup>67</sup> Interview P2, 24 April 2007.

<sup>68</sup> Interview P2, P3 and P4.

<sup>69</sup> Interview P3, 24 April 2007.

<sup>70</sup> <http://www.senat.gov.pl/k6/kom/kon/2007/070220.htm>

<sup>71</sup> <http://www.senat.gov.pl/k6/kom/ksz/2007/070315.htm>

<sup>72</sup> Interview P1 and P2.

<sup>73</sup> Interview P1 and P2.

*Sejm* of many of the decisions taken by the Government regarding defence matters. In a number of cases, the missions were discussed in joint sessions of the *Senat* and *Sejm* defence committees, whilst at other times the discussions were convened in other fora. Moreover, Cabinet Ministers, the Ministry of Defence staff, military officials and relevant foreign parliamentary committees have made regular appearances in front of the *Sejm* and *Senat* committees<sup>(74)</sup>. These appearances have served as an additional source of information for Parliament.

No formal visits are made by Polish parliamentarians to ESDP missions.<sup>(75)</sup> However, it is worth noting that, during the course of larger international missions in which Poland has participated, such as in Iraq, the Government has invited parliamentarians to accompany them on visits to the field. Planned visits are never made with the specific aim of parliamentary oversight. However, one of the senators who was interviewed described his visit to Iraq as highly instructional and emphasised this participation as being a manifestation of good practice<sup>(76)</sup>.

Parliamentarians mentioned several other oversight mechanisms as being useful, including the MoD holding committee briefings and hosting MPs from other national parliaments for discussions on ESDP. During the past year, the Defence Committee of the *Senat* has held several specific hearings on ESDP together with the European Affairs Committee. The outcome of these meetings was several recommendations for improving the flow of information and the discussion of potential future mechanisms to introduce regularity in the Polish parliamentary approach to ESDP oversight<sup>(77)</sup>.

In common with other national parliaments, the Polish Parliament is able to exercise scrutiny of external missions through its budgetary powers. However, this capacity is limited in its extent as the budget for Polish missions abroad is set out in a block that also contains many other defence provisions. It is possible for parliamentarians to withdraw money from one item within the block and transfer it to another item within the same block. This provides the Parliament with minor budgetary oversight capacity of ESDP missions<sup>(78)</sup>.

### *Strengthening Parliamentary Accountability*

The parliamentarians interviewed all expressed the belief that more information relating to ESDP missions should be exchanged between the EU and the defence committees of the *Sejm* and *Senat*. This improved flow of information would negate the need for the defence committees to rely on incomplete information about ESDP missions provided by the Government. Moreover, it was suggested that, as the *Senat's* mandate already includes oversight of all issues which involve Polish troops deployed abroad, this could be extended to include Poles deployed in ESDP operations<sup>(79)</sup>. Nevertheless, this would in reality require profound legal changes and additional funding would have to be allocated to increase the *Senat's* administrative capacity<sup>(80)</sup>.

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<sup>74</sup> Interview P1 and P2

<sup>75</sup> Interview P1, P2 and P4.

<sup>76</sup> Interview P1, P2 and P4.

<sup>77</sup> The recommendations are available at: <http://www.senat.gov.pl/k6/kom/kon/2007/070220.htm>

<sup>78</sup> Process as described during interviews P5 and P4.

<sup>79</sup> Interview P1, P2, P5.

<sup>80</sup> Interview P1, P2, P3, P5.



## 6.5. Romania

The Romanian Parliament is neither consulted nor requested to approve national participation in ESDP operations. The Romanian Parliament is bicameral, both Chambers having similar powers and committee structure. There is one committee in each Chamber which presently has the mandate to oversee ESDP missions: the Committee for Defence, Public Order and National Security.

The participation of Romanian armed forces in operations abroad is regulated by a specific law<sup>(81)</sup>, which stipulates that the decision to send troops on missions abroad belongs to the President, with the sole obligation being to inform the Parliament of this decision within five days. The prior approval of Parliament is an exception from the general rule, being necessary only in the case of peace support and coalition operations where troops are not deployed on the basis of an international treaty to which Romania is party. Therefore, ESDP and NATO missions are excluded from parliamentary approval. It was suggested that the decision to participate in operations outside the framework of NATO and the EU<sup>(82)</sup> has more potential for political dispute and public differences of opinion, so parliamentary involvement in the decision-making process must be preserved. Civilian operations are submitted to the same procedures, since the provisions of the same law extend to the other security sector agencies that may send personnel to participate in operations abroad<sup>(83)</sup>. Since this law entered into force on 15 March 2004<sup>(84)</sup>, the Romanian Parliament has not been requested to approve any overseas mission.

Before the March 2004 law came into force<sup>(85)</sup>, prior approval of Parliament was requested for all international operations, including the approval of their budgets. The Government considered the procedure to be time-consuming, leading to a slow military reaction in the event of a crisis. NATO officials were critical of the state of readiness of the Romanian armed forces and this proved decisive in convincing MPs to vote for legislation that reduced the power of Parliament in such an important area of defence and security policy. Many MPs are displeased with the current legislation, which gives them a minimal role in the decision-making process regarding missions abroad. A legislative proposal sponsored by several senators and deputies is presently before Parliament and aims to give to the Parliament the last word on sending troops abroad, authority it had had until 2004<sup>(86)</sup>.

The debate and the approval of the Budget Law remains the main, if not the only, opportunity which Parliament has to exert influence over decision-making regarding participation in international operations<sup>(87)</sup>. The Ministry of Defence prepares an annual plan for all forces and the means to be available for international operations in the upcoming year<sup>(88)</sup>. After the plan is analysed and approved by the Supreme Council of

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<sup>81</sup> Law no. 42 from 15 March 2004 regarding the participation of armed forces in missions outside Romanian territory, Article 7, paragraph (1) and (2).

<sup>82</sup> Romania presently participates in 2 coalition missions: Iraqi Freedom (499), and Enduring Freedom (95).

<sup>83</sup> Article 27, Law no. 42/2004. The other security sector agencies that may send personnel to missions abroad are not referred to in the law, but to our knowledge, these are the Gendarmerie, the police and the border police, all subordinated to the Ministry of Administration and Interior, and the Service for Guard and Protection.

<sup>84</sup> This was only 2 weeks after Romanian Parliament ratified the Washington Treaty and became a member of NATO on 1 March 2004.

<sup>85</sup> Article 5, Law no. 45/1994 on national defence.

<sup>86</sup> Interview R3, Brussels, February 2007.

<sup>87</sup> Interview R1, Brussels, February 2007.

<sup>88</sup> Article 4 - 5, Law no 42/2004.

National Defence, the Government introduces the necessary funds in the draft of the budget for the following year.

The Defence and Budget committees commonly amend the budget. Changes are rarely significant and no amendments to international missions have been enforced in recent years. The total financial burden of international operations abroad is very difficult to calculate from the defence budget documents, as costs are spread over numerous budgetary appropriations. While discussing the budget, members of the Defence Committees address questions and request supplementary information from the MOD representatives about the total cost of international operations; the response usually comes in the form of an oral reply. The budget rectifications are approved by Parliament but expenses for international missions are spread across many appropriations. Theoretically the approval of the budget is a strong tool of scrutiny, yet, in practice it is largely a formality<sup>(89)</sup>.

### *Ex Ante Accountability*

Parliament does not usually receive formal information about future ESDP missions negotiated within EU institutions. Nevertheless, Committee chairmen, members of the Standing Bureau and members of the national delegations in parliamentary assemblies receive background information which they use to prepare their meetings and activities. They are occasionally able to obtain relevant information regarding intergovernmental negotiations and national means available for future ESDP missions. However, it was pointed out in interviews that this information is usually lost within the vast amount of documentation. It is consequently neglected and not discussed with other MPs<sup>(90)</sup>.

As far as the ESDP missions in this study are concerned, Romania participates in three of them, EUFOR Althea, EUPM BiH and EU BAM Rafah. The first two received a formal prior approval of the Parliament, before the current legislation (discussed above) came into force in 2004.

The Romanian participation in EUFOR Althea was based on prior parliamentary approval, which was given when the mission was still under NATO mandate. Between 1996 and 2002, Parliament adopted 11 parliamentary decisions on national participation in SFOR. These decisions pertained to each modification of the mandate, extension of the mission and supplementation of the forces. No further Act of Parliament relating to this operation was adopted after June 2002.

The Romanian participation in EUPM BiH was approved by a Parliamentary Decision on 4 November 2002 (after the Council Joint Action adopted on 11 March 2002 but before the mission was launched on 1 January 2003). On 12 November 2003, the Parliament also ratified a Treaty with the EU regarding Romania's participation in EUPM.

The participation of Romania in EUBAM RAFAH was approved by the Minister of Administration and the Interior. Small police missions do not need the approval of the President<sup>(91)</sup>. The status of the police officers dispatched to such operations is similar to that of liaison officers. No information about this mission was received by the Parliament, before or after it was launched<sup>(92)</sup>.

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<sup>89</sup> Interview R1, R2, Brussels, February 2007.

<sup>90</sup> Interview R2, Brussels, February 2007.

<sup>91</sup> Article 9, Law no. 42/ 2004.

<sup>92</sup> Interview R2, Brussels, February 2007.

### *Post Hoc Accountability*

The Parliament's right to be informed in the post hoc phase is clearly stipulated in the Constitution<sup>(93)</sup>. The participation of ministers in plenary or committee meetings is mandatory if they are requested to appear. The President informs the Parliament about forces deployed abroad through a letter which is read to the plenary at the beginning of each session. However, ESDP operations have not provoked any questions or statements in the plenary, nor in the hearings and consultations of the Defence Committees.

Small numbers of MPs, who are usually members of Defence Committees or Foreign Affairs Committees, visit troops deployed abroad, accompanying the Minister of Defence or other Government officials on their visits. Romanian troops deployed in different operations in BiH were visited several times. In spite of these trips, there are no official follow up mechanisms and MPs neither formally share information about the visits with their colleagues, nor present reports to the committee<sup>(94)</sup>.

### *Strengthening Parliamentary Accountability*

Parliamentary oversight of ESDP missions is presently limited at least in part because, generally, there is no special interest or political will for the Romanian Parliament to become more involved in this area.

Compared with the recent past, the Romanian Parliament has very few mechanisms through which to influence the government's ESDP policy. Consequently, most of the interviewed MPs expressed their belief that a complete change in the legislation is needed, to give Parliament the power of prior approval for national participation in international missions. Along with this major change in legislation several other suggestions were made. The MPs remarked that the material provided by the MoD within the annual defence budget (or within budgetary rectifications), should contain more clear information about the financial burden of different types of international operations. Not only the information flow between the Government and the Parliament should be improved, but also the one between MPs, especially from the Defence Committee chairman to the other members. It was suggested that MPs should be given automatic access to classified information, without vetting procedures, that emergency procedures should be established, to allow the defence committee grant approval instead of the plenary, when the decision must be taken quickly. It was also recommended that an important role should be played by the committee for the oversight of intelligence, when the missions involves participation of military intelligence.

Due to the recent accession of Romania to the EU, the present situation may soon change even without other legislative changes. Ex ante accountability of ESDP missions might find a strong legislative foundation in the Romanian Constitution<sup>(95)</sup> which stipulates that the Government should transmit to the Parliament the drafts of all documents with are of a binding character, before they are agreed in Brussels. A Joint Committee for European

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<sup>93</sup> Article 111, Romanian Constitution.

[http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=3#t3c4s0a111](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=3#t3c4s0a111)

<sup>94</sup> Interview R2, Brussels, February 2007.

<sup>95</sup> Article 148 (5), Constitution of Romania.

Affairs has been established by both Chambers<sup>(96)</sup> and this committee is mandated to 'exercise parliamentary oversight of European affairs'. To date, the committee has yet to adopt its Standing Orders, which will define in detail how and what the committee will oversee<sup>(97)</sup>. It remains to be seen how the constitutional provisions will be utilised in executive-legislative relations and what the precise role of the new Committee for European Affairs will be. Nevertheless, a stronger role for Parliament in the oversight of ESDP missions is foreseeable.

## 6.6. Spain

The Spanish Parliament gives prior approval to the participation of armed forces in all military operations abroad. This authority lies with the lower Chamber of the Spanish Parliament, the Congress of Deputies.

Spanish legislation makes the distinction between two procedural steps, consultation and authorisation, both prior to mission deployment.<sup>(98)</sup> When intergovernmental negotiations start within an international organisation or alliance, the Ministry of Defence prepares a draft agreement that gathers information about the international requirements of the mission and the means available at the national level. After the Council of Ministers approves the text, the draft is submitted for the prior consultation of the Defence Committee. After the Defence Committee agrees with the general terms of the draft, the MOD has to elaborate on the official text of the agreement, which contains detailed information about the mission and the level of participation. This final text is submitted to the Plenary of the Congress for formal approval. This process takes place in parallel to the intergovernmental negotiations that define the mandate of the international mission<sup>(99)</sup>.

There are exceptions to the rule of prior consultation and approval, these being missions directly related to the defence of the country or its national interests. Prior consultation and approval can be conducted through emergency procedures, when, in accordance with international agreements, an immediate response is required. If prior consultation is not possible, for reasons of extreme urgency, the Government takes the decision alone and submits it to the Congress as soon as possible for ratification.

The Government has requested prior approval of Parliament for international missions on three occasions since the new legislation was adopted, in December 2005: for Spanish participation in EUFOR DRC, in UNIFIL Lebanon, and for the increase in the number of Spanish troops deployed in ISAF. This practice demonstrated that the law needs to be clarified through further procedural regulations<sup>(100)</sup>. Most importantly, it was noted that Parliament must determine whether the authority belongs to the Defence Committee or to the Plenary<sup>(101)</sup>. When receiving a request from Government, the Standing Bureau of the Congress determines if the matter is to be decided in the committee or in the plenary,

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<sup>96</sup> Parliament Decision no.52, 20 December 2006.

<sup>97</sup> Interview R5, Brussels, February 2007.

<sup>98</sup> Article 17 of the Law on National Defence no5/ December 2005.

<sup>99</sup> Interview S5 held in Madrid in February 2007.

<sup>100</sup> Interview S1 held in Madrid in February 2007.

<sup>101</sup> Furthermore, there is no specification about what type of information related to the operation the Government request should contain. It is not specified whether or not the decision to end participation in an operation also belongs to Parliament, considered an important issue in view of the recent public controversy about Spain's deployment to Iraq. It should be noted that civilian missions are not covered by the legislation.

depending on the importance of the mission<sup>(102)</sup>. In each of the three missions mentioned above, the distinction between consultation and authorisation was not clarified, and instead the two distinct procedures were fused into one.

Parliament approves the funds for external operations, as part of the overall budget law on an annual basis. However, it is an 'expandable budget', meaning that a small amount of spending is forecast in the MOD budget and it is increased during the year by using the Emergency Fund, which is under the administration of the Ministry of Economy. There is no requirement for parliamentary approval when money is transferred from this fund<sup>(103)</sup>.

### *Ex Ante Accountability*

In the case of ESDP missions, prior consultation of the Defence Committee and approval of Congress are not officially linked with the date of a Joint Action approval in the Council. There is no formal flow of information between Parliament and the Government prior to the Government's submission of the decision to participate in an operation for parliamentary approval. No discussion occurred in the political groups or committees about future ESDP missions<sup>(104)</sup>.

Participation of Spanish armed forces in EUFOR DRC was submitted by the Government for parliamentary approval on 19 May 2006. The Standing Bureau of the Congress considered that it was the competence of the Defence Committee to decide on the matter. The decision to approve participation was taken in a committee meeting held on 30 May, (one month after the Council Joint Action of 27 April 2006) after a debate during which the Defence Minister was present.

The Joint Committee for the European Union has a marginal role in the scrutiny of ESDP operations. It can call for the plenary to debate EU issues, but ESDP operations are seen as a competence of the Defence Committee and are therefore not scrutinised by this committee.<sup>(105)</sup>

There is no legislative provision regarding parliamentary involvement in the decision-making process on ESDP police missions and the Interior Committee is not involved in the scrutiny of civilian ESDP operations<sup>(106)</sup>.

### *Post Hoc Accountability*

Since the Spanish Parliament has the power of prior approval for all international military operations, post hoc scrutiny has been somewhat neglected. Parliament receives information and analysis from the Government about ESDP operations. However, these missions have aroused limited debate; there have been little political confrontation surrounding ESDP operations. Members of the Defence Committee visited troops deployed in Afghanistan, BiH and Kosovo. However, there were no committee hearings or questions about ESDP missions in Parliament<sup>(107)</sup>.

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<sup>102</sup> EUFOR DRC was decided in the Defence Committee, UNFIL Lebanon and ISAF in the Plenary.

<sup>103</sup> This "*presupuesto ampliable*" started in 2006 for example, with an allocation of €10 million, approved by parliament within the defence budget. At the end of the year it reached around €450 million, with the additional money coming from the Emergency Fund.

<sup>104</sup> Interviews S1, S2, and S3 held in Madrid in February 2007.

<sup>105</sup> Interview S3 held in Madrid in February 2007.

<sup>106</sup> Interview S2 held in Madrid in February 2007.

<sup>107</sup> Interview S1, S2, and S3 held in Madrid in February 2007.

The Government has pledged to limit the number of personnel it will deploy in all missions abroad to a maximum of 3,000 persons<sup>(108)</sup>. The Parliament has taken note of the Government's self-imposed limitation and frequently receives information about the number of total deployments<sup>(109)</sup>.

### *Strengthening Parliamentary Accountability*

Spanish Parliamentary oversight of international military operations has changed radically in the last year, from little involvement to its current role of exercising decisive authority on the matter. There is still a need for some procedural clarifications but generally the level of parliamentary involvement in military operations is considered to be satisfactory by most MPs. The military is also pleased with parliamentary approval as it gives political and democratic legitimacy to the military deployments abroad<sup>(110)</sup>.

Most MPs and staffers interviewed, thought Parliament's role in the oversight and the decision-making process regarding civilian missions is limited. Parliamentary procedures do not currently specify what details of civilian deployments the Government should present to the Parliament when the approval is requested (such as: duration, budget, rules of engagement or transfer of authority).

It was suggested that ESDP scrutiny could be better performed by an inter-parliamentary organisation, such as the WEU Parliamentary Assembly, which is based on an international treaty and on 50 years experience in overseeing the European security. This Assembly should be endowed with powers for ex post scrutiny, which could include, the powers to summon European and national officials to hearings, and to request documents.

## 6.7. United Kingdom

The bicameral Parliament of the United Kingdom does not have powers to formally approve any aspect of British contributions to ESDP operations. Indeed, the authority to declare war has traditionally been the preserve of royal prerogative. However, the Parliament does exercise a scrutiny role over CFSP and ESDP that is underestimated in light of the country's reputation of possessing weak legislative oversight, particularly in the realm of military deployments. The most active scrutiny of ESDP is exercised not through the Defence Select Committee, which has little engagement in ESDP in light of other priorities, but through the European Union Select Committee of the House of Lords.<sup>111</sup> Although the European Scrutiny Select Committee of the House of Commons possesses a similar mandate to that of the Lords Select Committee, it does not have a specialised sub-committee to focus on matters of EU foreign and security policy. Since more than 1,000 EU documents are deposited per year, the task of close scrutiny of ESDP is difficult. The House of Commons committee reports quickly on the broad array of documents put before it, whilst its Lords equivalent considers fewer documents in greater detail. (European Scrutiny System in the House of Commons, 2005: 18) For that reason, this report focuses

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<sup>108</sup> At present this number is approximately 2500. The maximum number of Spanish deployments was 4200 when the pledge was made and at the time they also had troops in Iraq.

<sup>109</sup> Interview S1, S4, S5 held in Madrid in February 2007.

<sup>110</sup> Interview S1 held in Madrid in February 2007.

<sup>111</sup> It should be noted that the House of Lords is currently a fully appointed, not directly elected chamber.

on the role of the Lords committee, which coordinates with its House of Commons equivalent in the scrutiny process.

### *Ex Ante Accountability*

The Lords European Union Committee has a mandate to approve all legally-binding decisions of the Council of Ministers, including those relevant to ESDP, before the Government signs them, thus implying ex ante approval power.<sup>(112)</sup> Since this mandate is document-oriented, civilian and military missions are scrutinised equally, as are extensions to existing ESDP mandates. The Committee ‘sifts’ scrutiny where appropriate down to its seven sub-committees, with Sub-Committee C handling foreign affairs, defence and development policy. The Sub-Committee receives a draft agreement from the Government, accompanied by an ‘explanatory memorandum’. It may: approve the document; hold the document under a scrutiny reserve, requesting further information or clarification; or conduct a full inquiry.<sup>(113)</sup> If the Government proceeds to sign a Joint Action without approval from the Committee, it is deemed an ‘override’. An override is politically sensitive and thus not desirable for the Government, but is not legally prohibited.<sup>(114)</sup>

Despite these powers, the realities of ESDP decision-making are such that ex ante scrutiny over ESDP is difficult to exercise in practice. The Government may deposit a draft Joint Action for the Committee’s approval, already agreed in Brussels, which may not yet be legally binding but is essentially politically binding; the Committee’s approval comes after the political decisions have been negotiated.<sup>(115)</sup> This lack of transparency in the political decision-making process is reinforced by the fact that the Government is reluctant to reveal publicly its position in sensitive negotiations in the Council of Ministers in Brussels.<sup>(116)</sup>

A second factor that severely hampers effective ex ante oversight by Sub-Committee C is the imperative of time in deploying EU troops. In a fast-moving and fluid political environment, taking the time to break from political negotiations in Brussels to seek approval from Parliament is cumbersome. It is frequently the case that a Joint Action is not deposited in time for ex ante approval. In such circumstances, a good relationship between Government and Parliament is needed to ensure that some scrutiny may occur. For example, during negotiations over the EUBAM Rafah Mission, the Government wrote to warn the Sub-Committee that it may not deliver the documents for scrutiny in time to secure approval for signing the Joint Action in Brussels. It nonetheless made an effort to keep the Sub-Committee informed of developments, through the use of letters from ministers.

### *Post Hoc Accountability*

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<sup>112</sup> The core scrutiny power of the Lords Committee derives from the Scrutiny Reserve Resolution, of 6 December 1999, which commits the Government to awaiting the completion of parliamentary scrutiny before agreeing to a legislative proposal in the Council of Ministers. It expressly does not give power to mandate ministers or force their hand.

<sup>113</sup> Interview in House of Lords, 5 March 2007. UK1

Although the power to refer a document to the chamber for debate exists (via the approval of the full European Union Committee), it was deemed it to be an extreme measure and thus largely a theoretical power. Interview in House of Lords, 6 March 2007. UK2

<sup>114</sup> Nonetheless, the Government is expected to justify its decision to override the Committee in writing. All overrides are listed in the Committee’s Annual Report.

<sup>115</sup> Ibid.

<sup>116</sup> Equally, much of the political bargaining in Brussels over ESDP occurs bilaterally and thus outside of the Committee’s mandate. Interview with UK2

The Sub-Committee is kept informed of ESDP through various means. ESDP reports by EU Presidencies receive close interest from the Sub-Committee members, to provide forewarning of upcoming issues as well as ongoing missions. Additionally, the UK Minister for Europe, who has responsibility for ESDP operations, appears before the Sub-Committee twice per year, as do senior officials from the Ministry of Defence (MoD) and Foreign and Commonwealth Office (FCO). These mechanisms provide for post hoc scrutiny, where members may question Government or civil service representatives about ongoing missions. Such questions include detailed scrutiny of budget allocations for ESDP missions.<sup>(117)</sup> The Chairman may also write at any time to request information from ministers. Although time is not a pressing factor in ESDP mandate renewals, since their due date is known long in advance, the Joint Actions are often still left until close to the mandate deadline, not allowing for extended scrutiny by the Committee.<sup>(118)</sup>

The Defence Committee of the House of Commons plays a marginal role in ESDP oversight, with no ex ante power of approval of deployments. The Committee's mandate is to scrutinise the work of the MoD whereas ESDP policy is primarily the jurisdiction of the FCO. This means that priorities of the Committee reflect those of British defence policy; current deployments in Iraq and Afghanistan, the latter under NATO auspices, dominate the agenda of military operations, with ESDP operations considered a lower priority and thus less worthy of debate.<sup>(119)</sup> Its principal means of scrutiny is through the requesting of information from the MoD. The Committee does have the power to approve the UK's military budget, yet it is a blunt instrument of oversight, largely amounting to a rubber-stamping exercise. An explanatory memorandum accompanies the supplementary budget request for operations, forwarded by the Government to Parliament for approval. Iraq and Afghanistan have dominated the operations budget, with British deployments in the Balkans as a whole included on the explanatory memorandum, whilst other ESDP contributions appear to be under the radar. Therefore, although theoretically an ex ante power, budgetary endorsement does not allow for approval of specific ESDP operational budgets. The Defence Committee has not been directly involved in oversight of any of the ESDP operations in question.<sup>(120)</sup> There is limited appetite to take a greater role in scrutiny of ESDP, although related issues may arise through inquiries in other policy areas (such as the future of NATO or the Western Balkans). There is therefore no systematic scrutiny of ESDP in the Defence Committee,<sup>(121)</sup> or in any other House of Commons committee.

The UK Parliament has increasingly moved to centre stage in military deployments, particularly in light of the Government's decision to seek approval for the war in Iraq. However, scrutiny of CFSP and ESDP is a new and evolving practice, in which Parliament is still developing its role.(European Union Committee, 2005-6) The most realistic hope is for the Government to comply with best practice in its relationship with Committees by providing more informal information beyond the limits of its legal obligation, which for the most part only provides the Parliament with a *fait accompli*.( European Union Committee, 2005-6) Evidently, no panacea exists in attempting to devise the best means of scrutiny of CFSP and ESDP, yet practices are improving.

The wider issue of the democratic legitimacy of the royal prerogative in troop deployment has become high profile since the war in Iraq, with many supporting a stronger role for

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<sup>117</sup> Interview with UK1

<sup>118</sup> Interview with UK1

<sup>119</sup> Interview with UK3, 5 March 2007

<sup>120</sup> Interview with UK3, 5 March 2007

<sup>121</sup> Interview with UK4, 5 March 2007



parliament. The government has argued however, that a formal approval power in troop deployments would be impractical.(Assembly of the WEU, 2007)

### *Strengthening Parliamentary Accountability*

The interviewees in the UK diverged in their perceptions of the need to strengthen national parliamentary accountability for British involvement in ESDP operations. Some parliamentarians argued that parliamentary oversight powers should not be extended in the area of ESDP operations, due to the time constraints imposed by the nature of ESDP missions and the lack of parliamentary expertise in the field of military operations.<sup>(122)</sup> Conversely, one MP contended that parliamentary oversight powers should be greatly enhanced through legislation that would transfer the power to deploy armed forces from the executive to parliament.<sup>(123)</sup> It was also suggested that there may be scope for increased parliamentary oversight of the renewal of ESDP mission mandates, as committees would have greater time to scrutinise the progress of ESDP operations.<sup>(124)</sup>

It was pointed out that there are already several oversight bodies at the inter-parliamentary level (such as the NATO Parliamentary Assembly and the WEU Parliamentary Assembly), that exist alongside the EP and national parliaments to form a ‘confused’ legislative architecture.<sup>(125)</sup> One interviewee recommended that platforms such as COSAC could provide a valuable forum for national parliaments to exchange ideas and experiences relating to ESDP scrutiny.<sup>(126)</sup> The opaque decision-making process of the GAERC was ultimately considered to be a primary impediment to legislative oversight, be it at the national or European level.

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<sup>122</sup> Interview with UK3

<sup>123</sup> Interview with UK4

<sup>124</sup> Interview with UK1

<sup>125</sup> Interview with UK4

<sup>126</sup> Interview with UK2

## Part IV: Conclusions and Recommendations

### Chapter 7. Lessons Learned and Options for Improving Parliamentary Accountability

As outlined in the introduction to this study, its principal aims are to identify best practices in national parliamentary oversight of ESDP missions and to formulate recommendations for how EP oversight may be strengthened, based in part on the findings of our research at the national level. These goals provide the central focus of this concluding chapter.

The conclusions formulated here are presented on two distinct levels. Firstly, the existing role of the EP in oversight of ESDP decision-making is assessed and shortcomings identified. Secondly, the contribution of national parliaments in overseeing ESDP missions is considered, identifying models of practice in parliamentary oversight of ESDP. Following from these conclusions, a series of policy recommendations are posited. These recommendations are intended to provide options to improve the EP's role in overcoming the current democratic deficit in ESDP, highlighting those improvements that are feasible under the current treaty arrangements.

#### 7.1. EP Oversight of ESDP Missions

Although the EP is not currently a decision-making actor in ESDP beyond aspects of budgetary control, it exercises a degree of oversight. What can we learn from EP oversight of ESDP missions?

##### *Ex Ante Oversight*

The EP does not have the formal power to authorise ESDP missions. Nevertheless, Article 21 of the Treaty of the European Union states that the EU Presidency shall consult the EP and keep it informed of CFSP developments. However, this amounts primarily to dialogue and information exchange between the EP and the Presidency, not to a policy-making role for the Parliament.

The EP may issue non-binding resolutions and recommendations before a Joint Action is adopted or before an ESDP mission is launched, a means of expressing or withholding support for the operation. This instrument has not been systematically used prior to the launch of ESDP military missions and has never been applied to civilian ESDP missions. The EP can also raise questions and organise hearings before adopting a resolution on an upcoming ESDP mission. To date, no hearings on specific ESDP missions have been organised as the Sub-Committee has preferred to scrutinise ESDP Missions in its more regular monthly Sub-Committee meetings. Finally, the EP may invite EU officials to appear before parliament – though they are not obliged to attend - to give statements and to reply to questions from MEPs. This power has been exercised frequently, though not in relation to all upcoming ESDP missions.

### *Post Hoc Oversight*

Post hoc oversight by the EP is limited to issuing reports, organising visits to EU troops, holding hearings and tabling questions in plenary sessions. The value of the EP's response to the Council's annual report is political and the Council is not formally obliged to act upon the recommendations beyond a commitment that to "ensure that the views of the European Parliament are duly taken into consideration". MEPs have also frequently visited EU personnel in the field, enabling them to see firsthand how missions are implemented and to become familiar with the problems they face.

### *Budgetary oversight*

The budget is an important instrument for parliaments to control expenditure and as a result to control government activity. With regards to ESDP, the EP can only apply this instrument to civilian missions, since they are funded from the CFSP budget. However, seconded personnel to civilian missions are paid for by member states directly. The 2006 Inter-institutional Agreement improved the timely flow of budgetary information from the Council to EP, including, for example, the introduction of regular Joint Consultation Meetings between the Council and EP, with the aim of keeping the EP informed about financial planning and CFSP expenditure. The exchange of letters between the EP and the Finnish Presidency (2006) contributes to ensure that the EP receives ex ante information on CFSP/ESDP planned actions entailing CFSP expenditure.

The costs of military ESDP missions are borne exclusively by member states. Where costs are deemed to be 'common', they are funded via the Athena mechanism, comprising pooled member state contributions. Since all such costs do not fall under the CFSP budget, the EP is not mandated to scrutinise their use. It has been found in this study that national parliaments also have difficulty overseeing the use of the Athena mechanism. This has resulted in a double democratic deficit, since legislative oversight of Athena occurs at neither the national or European level.

In sum, ESDP mission costs are met through a network of funding sources, the fragmented character of which is not conducive to parliamentary oversight.

### *EP Capacity to oversee ESDP missions*

Beyond the question of formal oversight powers, the EP must also possess sufficient capacity if it is to oversee ESDP operations effectively. The creation of a Sub-committee on Security and Defence (SEDE) in 2004, represented an important step forward in oversight of ESDP. However, as a sub-committee, its annual budget of 160,000 Euros to commission research on the entire spectrum of ESDP as well as a secretariat of eight staff, appears insufficient. Additionally, within the Policy Department of the Directorate-General for External Policies, only one expert is tasked to focus on issues related to defence and international security.

The status of SEDE as a sub-committee of the EP Committee on Foreign Affairs (AFET) reduces its political independence. Reports and motions for resolutions formulated in the sub-committee must be adopted by AFET, which may also slow its capacity to act rapidly, a key element in oversight of crisis management.

The capacity of parliament to oversee government is also dependent upon access to information, in particular classified documents. The 2002 IIA granted the EP President and a special committee of 5 members access to sensitive information. However, this

mechanism is problematic; the majority of SEDE members do not have access to sensitive information on which to base judgements of ESDP. Moreover, access to those documents classified ‘top-secret’ by the Council is not extended even to the special committee. The Council retains the right to deny the EP any information it deems inappropriate to share.

#### *Dialogue and Cooperation between EP and National Parliaments*

Since the responsibility for parliamentary oversight of ESDP is shared between national parliaments and the EP, inter-parliamentary cooperation is an additional component of scrutiny. However, not all inter-parliamentary fora are conducive to oversight of ESDP missions, for a number of reasons. Firstly, some inter-parliamentary platforms do not include members of national parliamentary defence committees, the principal national body for scrutiny of military deployments abroad in many countries. COSAC, for example, is comprised of national parliamentary European affairs committees. Secondly, there is no inter-parliamentary body with a membership corresponding directly to EU membership. This holds true even in the case of the WEU Assembly. Thirdly, the EP has no official status in many inter-parliamentary bodies. Again, this holds true even in the case of the WEU Assembly, where relations with the EP are characterised more by rivalry than cooperation. Fourthly, the relevant inter-parliamentary cooperation structures generally deal with defence and security issues in general, not with ESDP specifically.

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

#### *Models of National Parliamentary Oversight*

Based on the EU-wide survey and select interviews conducted for this study, four models of national parliamentary ESDP oversight may be extrapolated, along a spectrum that ranges from a strong role for parliament (Model A) to no parliamentary involvement (Model D) (See box 7.1).

These models, based on the findings of this report, indicate that it is feasible to involve parliament at an early stage of the ESDP decision-making process, contrary to the assumptions of some MPs interviewed; the commonly-held belief that ESDP crisis management decision-making does not allow sufficient time for parliaments to be given a strong ex ante role, is defied by practice in Finland, Sweden and Luxembourg. In these countries, parliamentary approval is given before the Council has adopted a Joint Action. Moreover, in 14 out of 25 countries, parliaments are currently involved in prior authorisation before the actual launch of military ESDP missions (Models A and B combined).

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

**Box 7.1: Models for national parliamentary oversight of ESDP missions in EU member states**

(A) Prior authorisation role before the adoption of a Joint Action: Parliament authorises the government to proceed with an ESDP mission before the EU Council adopts a Joint Action. By so doing, parliament influences its government's position in the Council debate on the future ESDP mission in question. This practice was followed, for example, in Finland, Luxembourg and Sweden.

(B) Prior authorisation role before the deployment of troops: Parliament authorises its government to proceed with an ESDP mission after a Joint Action is adopted by the EU Council but before the deployment of troops abroad. Currently, this practice is followed in: Austria, Germany, Cyprus, Czech Republic, Estonia, Ireland, The Netherlands and Spain. Germany and Spain apply this model to military ESDP missions only.

(C) Consultative role: Though parliament does not have the formal power of prior authorisation of deployments, it debates ESDP missions before the adoption of the Joint Action by the EU Council or before the deployment of troops. According to this model, even if the government fails to obtain parliamentary approval, it may proceed with signing the Joint Action and deploying troops under ESDP auspices. This practice is followed, for example, in Belgium, France, Poland, Portugal and the United Kingdom.

(D) No role: Parliament is neither informed nor consulted about imminent ESDP missions, even when its country deploys troops in the operation. In Bulgaria, Greece and Romania, parliament is involved in neither military nor civilian ESDP mission decisions. In Cyprus, Estonia and Spain, parliament is not involved in civilian ESDP mission decisions.

### ***Best Practice in National Parliamentary Oversight***

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

***A. Special legislation on sending troops abroad*** (*Annex H provided examples of laws from several countries*)

1. A specific law on military and/or civilian deployments abroad, which identifies: types of missions; conditions for participation; and procedures and actors involved (e.g. in: Austria, Bulgaria, Finland, Germany, Latvia, Luxembourg, Poland, Portugal, Romania), provides a clear legal basis for ESDP decision-making.
2. A special law on the role of parliament in deploying personnel abroad provides a clear mandate for scrutiny. Such a law may address issues such as: prior authorisation powers; the power to withdraw troops; the type of information which must be provided by the government to parliament; emergency decision-making procedures (e.g. Germany).
3. Legal provisions for authorising expenditures related to deployments abroad (e.g. Italy)

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

4. After receiving notice of a proposal for a Joint Action establishing an ESDP mission, the government informs parliament without delay. The government explains and

justifies its negotiating position and is obliged to take into account parliament's views (e.g. Finland and Sweden).

5. As part of EU document scrutiny, parliament gives political clearance to binding EU documents, including Joint Actions establishing ESDP missions. This practice occurs in the UK and France. However, the government can override parliament's opinion because of the prerogative of the government in security and defence matters.
6. Before the EU Council meets to decide upon a Joint Action, the government briefs parliamentarians about the annotated agenda of the upcoming EU Council meeting with parliament, including the Joint Action (e.g. The Netherlands).
7. After meetings of the EU Council, including those that establish an ESDP mission, the government briefs parliament (e.g. Finland).

### ***C. Prior parliamentary approval of deployments abroad***

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

### ***D. Executive-Legislative Relations***

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

mission; the feasibility of the mission; potential risks; suitability and availability of military units for the deployment; duration; replacement; and the mission budget.

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

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

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

23. With a view to achieving a full and frank exchange of information, committee meetings dealing with deployments are held behind closed doors (e.g. in Germany). Updates on the developments of international missions abroad are on the agenda of each committee meeting, including briefings from a minister or deputy minister.
24. Regular or special committees organise meetings and conduct investigations into the wider aspects of ESDP decision-making and deployments abroad, in order to improve parliamentary involvement (e.g. Poland).
25. Parliamentary reports on ESDP decision-making are published online (e.g. the UK).

### 7.3. Recommendations for Improving EP Oversight of ESDP Missions

Based on the best practices formulated from investigation of current European Parliamentary and national parliamentary oversight of ESDP, a series of recommendations to enhance EP oversight of ESDP missions is provided below. These recommendations have been grouped into three categories: (a) strengthening EP oversight through improved inter-parliamentary cooperation; (b) strengthening EP oversight through improved EP-Council cooperation; (c) strengthening oversight practices within the EP.

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

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

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

4. The Political Security Committee (PSC) regularly invites independent experts to brief it on particular crises or international security issues. To date, the PSC has never invited MEPs to such briefings. Such invitations would allow involvement of parliamentarians in the early stages of crisis management.
5. Two MEPs could attend GAERC meetings as observers when Joint Actions are discussed. These MEPs could be selected through rotation of the five members of the special committee established in order to receive classified documents from the Council, since they already have security clearance.
6. The EP should be given a greater role in ex ante approval of ESDP missions. Although formal ex ante approval remains politically unlikely in the near future and would require revisions to the current treaty arrangements, the EP could be awarded the power of document scrutiny as customary practice, similar to that exercised in France and the UK. This would allow the EP to approve or reject binding EU documents in draft form, such as the Joint Actions that formally initiate ESDP deployments. This right would not amount to formal prior authorisation, since the Council would not be legally bound by the result. However, much like the UK 'override', when the UK government proceeds without parliamentary approval, it would indicate the mission's diminished democratic legitimacy.



7. The democratic legitimacy of Joint Actions establishing ESDP missions would be enhanced by making reference to the non-binding opinion of the EP. It would demonstrate that ESDP is not excluded from prior parliamentary scrutiny.
8. In order to keep MEPs informed, the Council should provide the members of the SEDE committee with situation reports about all current ESDP deployments.
9. To achieve genuinely effective budgetary oversight – the so-called ‘power of the purse’ - ESDP funding should be restructured, streamlined and brought under the CFSP budget, for which the EP has a scrutiny mandate. Again, this is politically unlikely in the near future and would require changes to the current treaty arrangements. However, an indicative or ‘virtual’ budget could be created for each ESDP mission. These virtual budgets would bring together all mission-related costs into a single explanatory document, in turn enhancing accountability and transparency of ESDP. Ideally, this process would be initiated before a mission deployment, then updated in light of new realities.

### **C. Strengthening oversight practices within the EP**

10. EP resolutions should be used as an instrument to voice the EP’s (non-binding) opinion in each of the successive stages of ESDP mission decision-making, from the discussion of options in responding to a crisis, through to calling for a lessons learned analysis of a mission.
11. The EP should upgrade the status of SEDE from that of a sub-committee to a full committee, in response to the rapid expansion of ESDP. Political independence would allow for more effective oversight of ESDP.
12. Though the EP and MEPs have policy and expert staff at their disposal, greater resources are needed. Only one expert within the Directorate-General for External Relations is dedicated solely to research on defence and security issues at present. The SEDE budget for commissioning expert reports in the field of foreign affairs and security amounts to 160,000 Euro per year. These represent limited resources. Nonetheless, the annual expert report budget is currently not fully utilised and should be.
13. Additionally, creative thinking on how resources for scrutiny can be efficiently used in partnership with national parliaments and experts is needed, as seen in the growing use of national detached experts in the EU institutions. The idea of staff exchanges between EP and national parliamentary staffers should be explored.
14. The EP should develop emergency procedures for issuing (non-binding) resolutions and recommendations in situations of urgency.
15. Votes on ESDP missions in SEDE and the Plenary format should be free votes, in which party and country groups abstain from imposing a party line on particular deployments.
16. All SEDE committee members should have security clearance, in order that the sub-committee is able to discuss effectively matters pertaining to confidential documents released by the Council.
17. In order to protect security-sensitive information, SEDE sessions dealing with deployment issues could be held behind closed doors. Practices of national parliaments in establishing an infrastructure for protecting classified information could be adopted.

### *Implementation*

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

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

## Annexes

### Annex A: Overview of Case Study ESDP Missions<sup>127</sup>

#### 1. EUFOR Althea in Bosnia and Herzegovina

EUFOR Althea was deployed in BiH in December 2004 to replace NATO's SFOR stabilisation force. It is the largest ever ESDP military operation, deployed under the Berlin Plus arrangements.. The mission is ongoing, although the decision was recently taken to make significant reductions to the size of the force, in light of the improved security situation.

UNSC Resolution 1551 provided the EU with the mandate to take over from SFOR, acting under Chapter VI of the UN Charter. This decision was formalised through a Council Joint Action (2004/570/CFSP) on 12 July 2004 which defined the objectives, timeframe and structure of the mission. In September 2004, a committee of contributors was set up to organise the 7,000 troops required to replace SFOR. The final decision to launch the mission was taken after EUFOR Althea had been provided with further UNSC endorsement, through Resolution 1575 of 17 November 2004. The mission has been subject to review every six months, as was provided for by the initial Joint Action. In December 2006, a preliminary decision was taken to transform the mission, greatly reducing the military presence and this was confirmed on the 27 February 2007.

The primary aim of EUFOR Althea has been to continue the work of SFOR in providing a credible military deterrent to ensure the continued compliance with and implementation of the General Framework Agreement for Peace, signed in 1995. Althea forces have also been involved in weapons collection, the search for indicted war criminals and security sector reform.

Thirty three countries have contributed personnel to the operation, including 11 non-EU members. Prior to the recent decision to reduce the force size to 2,500, there were 5,100 troops in the theatre. Troop numbers of the principal contributors were as follows: Germany 819, UK 590, France 524, Spain 495, Poland 195 and Romania 86 troops. The troops are divided into three regional task forces (under French, British and Greek command), in addition to a nationwide Integrated Police Unit.

As a military mission, the common costs of Althea are funded through the Athena mechanism of GDP-based budgetary contributions, whilst the costs of sending troops are borne by the deploying states. The JA outlined an initial budget of €71.7m and additional funds of €43m were allocated in 2006.

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<sup>127</sup> The overview of case study ESDP missions was prepared by Aidan Wills of DCAF

## 2. The European Police Mission in Bosnia and Herzegovina (EUPM)

The EUPM in BiH was the EU's first ESDP mission and was established to replace the UN's International Police Task Force (IPTF.) This civilian operation was launched on 1 January 2003 and is likely to remain in BiH until at least the end of 2007.

The UNSC officially endorsed the mission in Resolution 1396 on the 5 March 2002. The EU's decision to establish the EUPM was formalised through a Council Joint Action (2002/210/CFSP) on 11 March 2002, which set out the aims, structure and budget of the operation. A final important step in the planning process was the signing of an agreement with the Bosnian authorities on 2 October 2002, which established the terms and conditions of the mission. On 24 November 2005, a Council Joint Action extended the mandate for an additional two years. This decision was taken after it became clear that local law enforcement agencies were not yet self-sustaining

The principal aims of EUPM are to preserve the achievements of the IPTF and to further improve the operational and managerial capacities of the Bosnian police. This is to be achieved through the monitoring, mentoring and inspecting of police practices. It is noteworthy that EUPM is a policing support mission and is therefore not directly involved in policing operations and does not have powers to deploy an armed component.

The EUPM currently has 177 members of staff, the majority of whom are police officers seconded by member states, with a further six contracted staff. France and Germany have the largest contingents with twenty-four and twenty-one seconded personnel respectively. The UK currently contributes seventeen officers, Romania seven, Poland six and Spain five officers.

EUPM is a civilian mission and therefore, the common costs are financed through the Community budget. The wages of the officers seconded by member states (and third states) continue to be paid by the member states themselves, under the 'costs lie where they fall' principle. Common costs include: all set-up costs; operational running costs; and the wages of contracted international and local staff. The 2002 JA specified a budget of €14m for start-up costs and a further €20m for the years 2003-2005, to cover running costs and the wages of contracted staff. When the mission was extended in November 2005, additional budgetary allocations were made, amounting to €3m for 2005, €9m for 2006. The personnel costs borne by the member states were estimated at €17m for the period 2003-2005.

### 3. EUFOR RD Congo

The EU's EUFOR military operation was deployed in support of the Congolese electoral process in July 2006 and remained until Joseph Kabila was nominated as President on 30 November 2006. The mission was established at the request of the UN after it had been unable to obtain additional troops for its MONUC peacekeeping operation.

The large member states (UK, France and Germany) initially were reluctant to lead the mission. On March 21 2006 Germany acquiesced but on the condition that it was provided with a UNSC mandate, an invitation from the DRC and received the required Bundestag approval. The UNSC passed resolution 1671 authorising the EU to deploy forces in support of MONUC on 25 April 2006. This was followed by the Council's adoption of a Joint Action (2006/319/CFSP) establishing the mission. Bundestag assent was finally secured on the 1 June, paving the way for the mission to be launched on 30 July 2006.

The primary objective of EUFOR DRC was to support the UN MONUC operation during the presidential elections, in the event that MONUC faced 'serious difficulties' in fulfilling its mandate. The mission's aims also included the protection of civilians from the threat of physical violence in the areas of deployment and the protection of Kinshasa airport.

The mission was comprised of three elements: an 'advance force' of 800 deployed to Kinshasa; an 'on-call force' of 1,200 based in neighbouring Gabon; and a 'reserve force' in Europe of approximately 800 troops. Germany was the leading troop contributor with 780, France provided 500, Spain 100 and the UK contributed two personnel to the operational HQ in Germany.

As a military mission, the common costs of €16.7m were funded through the Athena mechanism. Personnel costs were paid under the principle of costs 'lie where they fall' and therefore, borne by the troop-contributing member states.

#### **4. European Union Border Assistance Mission for the Rafah crossing point (EU BAM Rafah)**

EU BAM Rafah is a civilian ESDP operation that was launched to monitor and support the re-opening of the Gaza Strip's only external border crossing. The mission was launched on 30 November 2005, the EU's first operation with the specific aim of monitoring a border. Two weeks prior to the start of the mission, an 'Agreement on Movement and Access' was reached between Israel and the Palestinian Authority (PA) which included the re-opening of the Rafah Border between the Gaza Strip and Egypt. The agreement required the participation of a third party to monitor the border crossing and at the invitation of both parties, the EU formally accepted the role in November 2005.

The decision to deploy the mission was formalised through a Council Joint Action (2005/889/CFSP) on 12 December 2005. The mission was undertaken through the civilian framework of ESDP, though the Commission played a significant role in the planning of the operation, taking part in a joint fact-finding mission with the Council.

The overall aims of the mission are to provide a third party presence to contribute to the opening of the Rafah crossing and to build confidence between Israel and the PA. In pursuit of these ends, the mission's tasks are; to monitor and evaluate the PA's performance in security and customs agreements established between the PA and Israel; to develop PA capacity in border management; and to contribute to the liaison between Israeli, Egyptian and Palestinian authorities. EU officers have the authority to order re-inspections of persons and cargo but they are not intended to substitute for the role of PA officers and are not empowered to conduct searches.

There are approximately seventy staff seconded from fifteen member states, most of whom are seconded customs and border personnel. This cohort includes twelve officers from Spain, eight from France, four from both Germany and Romania and three from the UK.

The BAM Rafah mission is a civilian operation and thus funded from the Community CFSP budget. The budget established by the Council (in Joint Action 2005/889/CFSP) for the mission was €1.7 million for 2005 and €5.9m for 2006. This budget included set-up and operational costs. Member states pay all the costs relating to their personnel that are seconded to the mission.

## Annex B: EU Wide Survey - Questionnaire

### Questionnaire - Parliamentary Oversight of European Security and Defence Policy (ESDP) Missions

**1. Explanatory note.** At the request of the European Parliament, the Geneva Centre for The Democratic Control of Armed Forces (DCAF) is undertaking a study to compare parliamentary involvement in the decision-making process regarding ESDP missions.

To fill in the gaps identified in the existing body of research, DCAF is asking all EU member national parliaments to collect factual information about parliamentary scrutiny of ESDP missions.

ESDP missions are an area of rapid growth of EU activity, with 16 operations launched in just over 3 years. Two military and two civilian crisis management operations have been chosen to be examined as case studies:

1. EUFOR Operation ALTHEA, the largest EU military operation, was launched on December 2, 2004, in Bosnia and Herzegovina, as the legal successor of NATO- led Operation SFOR;
2. EUFOR Operation RDC, an EU autonomous military operation in support of the UN Mission in the Democratic Republic of the Congo during the 2006 election process, was deployed on July 30 and concluded on November 30 2006;
3. The European Union Police Mission in Bosnia and Herzegovina (EUPM), was the first ESDP operation, launched on January 1 2003.
4. The European Union Border Assistance Mission at Rafah crossing point, (EU BAM RAFAH) , began on 30 November 2005, to provide a third party presence and to monitor the operations of this border crossing point.

This questionnaire should be filled in by staffers or members of the parliamentary committees for defence and security, for European affairs or any other parliamentary committee which has the lead in ESDP matters. In case other committee(s) in your parliament have competence over the matters addressed in the questionnaire, please forward this questionnaire to them, or let us know so that we are able to collect the information about your country in due time. If you require additional information, please contact Ms. Teodora Fuior at [t.fuior@dcaf.ch](mailto:t.fuior@dcaf.ch) , phone + 41 22 741 77 07 or fax + 41 22 741 77 05.

**2. Contact Details.** Please fill out some information about the committee for which you work, your name and contact details, in case we need to contact you for further clarification.

Country	
Parliamentary Chamber	
Committee	
Your name and contact details	

**3. Statements.** Please read the statements below and indicate how strongly you agree with them on a scale of 1 to 4, with 1 indicating strong disagreement and 4 indicating strong agreement. If you do not feel able to answer a question or if a question does not apply, please mark with an X.

	1 - 4	
	CIVILIAN ESDP MISSIONS	MILITARY ESDP MISSIONS
1. My parliament receives sufficient information about ESDP missions		
2. My parliament has the power to approve or reject national participation in ESDP missions, before these missions are launched		
3. My parliament has the power to approve or reject the budget of national participation of ESDP missions		
4. My parliament has the political will and interest to be involved in the decision making process of national participation in ESDP missions		
5. My parliament has sufficient capacity in terms of committee staff, expertise and financial resources, to actively oversee ESDP missions		
6. My parliament needs to be more involved in scrutinising ESDP missions		

**4. Factual Information.** The activities mentioned in the table below refer to the decision-making process **prior to the deployment** of ESDP missions. Please complete the table as much as possible, indicating whether the statements apply to your committee with ‘YES’, ‘NO’ or ‘N.A.’ (non applicable), if your country did not participate in the mission. **In case the answer is ‘YES’ and if possible, please indicate the date on which the activity occurred.**



	Committee Activity, <b>prior</b> to the mission deployment:						(g) Mission approved in Plenary, <b>prior</b> to deployment
	(a) Received formal information from government	(b) Received information from EU officials	(c) Debated or held hearings	(d) Mandated or made recommendations to the minister for specific action on ESDP mission	(e) Approved participation	(f) Approved mission budget	
1. EUFOR ALTHEA							
2. EUFOR DRC							
3. EUPM BiH							
4. EU BAM RAFAH							

**5. Comments.** If you have any further comments, remarks or examples of good practices related with parliamentary scrutiny of ESDP missions in your committee, before or after mission deployment, please feel free to add it below:

.....  
.....  
.....  
.....  
.....

If you are unable to complete the questionnaire fully, please return it anyway, since any applicable information is of use to our study.

### Annex C: EU Wide Survey - Overview of Parliamentary Replies

	Respondents	European Affairs	Foreign Affairs	Defence	Interior	General Secretariat
1.	Austria (1)	X				
2.	Belgium (2)			X		X
3.	Bulgaria (2)			X	X	
4.	Cyprus (1)					X
5.	Czech Republic (1)			X		
6.	Denmark (1)	X				
7.	Estonia (2)			X		
8.	Finland(2)		X	X		
9.	France(3)	X	X	X		
10.	Germany (2)			X		
11.	Greece (1)					X
12.	Ireland (1)	X				
13.	Italy (1)			X		
14.	Latvia (1)			X		

15.	Lithuania (1)			X		
16.	Luxembourg* (1)	X				
17.	Netherlands (1)		X			
18.	Poland (2)			X		X
19.	Portugal (1)			X		
20.	Romania** (3)	X	X		X	
21.	Slovakia (1)	X				
22.	Slovenia (1)		X			
23.	Spain (3)	X		X	X	
24.	Sweden (1)	X				
25.	United Kingdom(3)	X		X	X	
	TOTAL 39					

\* Luxembourg has the same committee competent for European affairs, foreign affairs and defence

\*\* Romania has the same committee competent for both defence and interior affairs

Out of 39 respondents 2 were MPs and 37 parliamentary experts. Ten staffers responded that their committees (or their parliaments) have no involvement in ESDP operations, and therefore did not fill out the information required in the questionnaire. They represented interior committees from Bulgaria, Spain, UK; EU committees from Spain and Romania; foreign affairs committees from France, Spain, Romania, UK; and the Secretariat of Greece Parliament.

From other two countries we did not receive any response: Hungary and Malta.

## Annex D: EU Wide Survey - Parliamentary Oversight of the four ESDP Missions

The table indicates the date when the Joint Action was adopted by the European Council (JA), the date when the operation was officially launched (OL) and the number of personnel deployed by each country in the respective operations (the number in the lower right corner of each box). Dash marks signify that the parliament did not take any action, since the country did not participate in the mission.

		<b>EUFOR ALTHEA</b> JA: 12.07.2004 OL: 02. 12.2004	<b>EUFOR DRC</b> JA: 27.04.2006 OL: 30.07. 2006	<b>EUPM BIH</b> JA: 11.03.2002 OL: 01.01.2003	<b>EUBAM Rafah</b> JA: 12.12.2005 OL: 30.11.2005
1	Austria	Debated 22.11.06 Main Committee approved 287	Debated 11.05.06 Main Committee approved	Debated 22.11.06 Main Committee approved 5	Debated 22.11.06 Main Committee approved 0
2	Belgium	No debate or approval 45	Defence Committee debated 50	Defence Committee debated 4	No debate or approval 4
3	Bulgaria	Approved by plenary 25.11.2004 134	- 0	No information or approval 2	- 0
4	Cyprus	- 0	Approved by plenary	No information or approval 0	- 0
5	Czech Republic	Approved by plenary 15.12.2004 65	Approved by plenary	Approved by plenary 9.10.2002 3	- 0
6	Denmark	-	-	Debated by committee 22.11.2002 2	Debated by committee 4.11.2005 3
7	Estonia	Approved by plenary 23.11.2005 33	- 0	No information or approval 2	No information or approval 1
8	Finland	Approved by plenary before the date of JA 177	Approved by Foreign Affairs Committee before the date of JA <10	Approved by Foreign Affairs Committee before the date of JA 5	Approved by Foreign Affairs Committee before the date of JA 5

9	France	Debated by the EU Delegation 08.07.2004  <b>524</b>	Senate Committee on Foreign Affairs and Defence received information on 22.03.2006 EU Delegation Cleared the Joint Action  <b>500</b>	EU Delegation Cleared the Joint Action  <b>25</b>	EU Delegation Cleared the Joint Action  <b>8</b>
10	Germany	Approved by plenary  <b>819</b>	Approved by plenary 1 June 2006  <b>780</b>	No approval  <b>23</b>	No approval  <b>4</b>
11	Greece	No information or approval  <b>88</b>	No information or approval	No information or approval  <b>4</b>	No information or approval  <b>2</b>
12	Ireland	Approved by Committee 16.12.2004  <b>62</b>	Approved by Committee 10.07.2006	Approved by Committee 16.04.2003  <b>8</b>	Approved by Committee 26.01.2006  <b>0</b>
13	Italy	Approved by plenary  <b>882</b>	Approved by plenary 11.08.2006	Approved by plenary  <b>16</b>	Approved by plenary 23.02.2006  <b>17</b>
14	Latvia	Approved by plenary  <b>2</b>	-	Approved by plenary  <b>2</b>	-
15	Lithuania	Approved by plenary  <b>1</b>	-	-	-
16	Luxembourg	Approved by committee 27.11.2006 (prolongation)  <b>1</b>	Approved by committee 3.04.2006	Approved by committee 17.11.2005  <b>2</b>	Approved by committee 6.11.2006  <b>1</b>
17	Netherlands	Approved by committee  <b>298</b>	Approved by committee	Approved by committee  <b>10</b>	Approved by committee  <b>3</b>
18	Poland	Debated by EU committee 9.07.2004  <b>195</b>	Debated by Defence committee 12.07.2006	Debated by EU, Defence, Foreign Affairs Committee 4.06.2002  <b>6</b>	-  <b>0</b>
19	Portugal	Debated by defence committee  <b>193</b>	Debated by defence committee  <b>100</b>	Debated by defence committee  <b>2</b>	Debated by defence committee  <b>4</b>

20	Romania	No debate or approval 86	- 0	Approved by plenary November 2002 7	No information or approval 4
21	Slovakia	Received information 45	Received information	Received information 6	Received information
22	Slovenia	Debated by committee 80	Debated by committee	Debated by committee 4	-
23	Spain	No information or approval 495	Approved by Defence Committee 30.05.2006 100	No information or approval 7	No information or approval 12
24	Sweden*	67	50	5	5
25	United Kingdom	Cleared by European Scrutiny Committee April June 2004 590	Cleared by European Scrutiny Committee May 2006 2	Cleared by European Scrutiny Committee March 2002 20	Cleared by European Scrutiny Committee November 2005 3

\*Sweden did not provide the details for every mission.

## Annex E: EU Wide Survey - Parliamentary Staffer's Opinions on ESDP Oversight

Respondents and their Committees:	1. My parliament receives sufficient information about ESDP missions		2. My parliament has the power to approve or reject national participation in ESDP missions, before these missions are launched		3. My parliament has the power to approve or reject the budget of national participation of ESDP missions		4. My parliament has the political will and interest to be involved in the decision making process of national participation in ESDP missions		5. My parliament has sufficient capacity in terms of committee staff, expertise and financial resources, to actively oversee ESDP missions		6. My parliament needs to be more involved in scrutinising ESDP missions	
	M	C	M	C	M	C	M	C	M	C	M	C
1. Austria, 1-UEC	4	4	4	4	4	4	4	4	3	3	2	2
2. Belgium, 1-DC	2	X	1	X	4	X	2	X	2	X	3	X
3. Bulgaria, 1-DC	2	2	3	1	4	X	4	2	1	3	4	4
4. Cyprus, 1-SG	4	X	4	X	X	X	X	X	1	1	1	1
5. Czech Republic, 1-DC	4	4	4	4	4	4	4	4	4	4	1	1
6. Estonia, 2-DC	3	X	4	X	2	X	4	X	4	X	1	X
7. Finland, 1-DC	3	X	3	X	4	X	3	X	2	X	3	X
8. France, 1 - DC	2	X	1	1	1	1	X	X	3	3	X	X

1 - UEC	3	3	1	1	1	1	3	3	3	3	2	2
1 - FAC	1	1	1	1	1	1	1	1	3	3	4	4
9. Germany, 1-DC	3	3	3	3	2	2	4	4	3	3	3	2
10. Latvia, 1.-DC	3	3	4	4	4	4	4	4	2	2	3	3
11. Lithuania, 1-DC	3	3	3	3	3	3	X	X	3	3	X	X
12. Luxembourg, 1-DEUC	2	2	4	4	X	X	4	4	1	1	3	3
13. Netherlands 1-FAC	4	3	3	3	X	X	4	4	2	2	2	3
14. Poland, 1-DC	3	3	1	1	1	1	4	4	2	2	3	3
1-SG	3	3	1	1	2	2	2	2	2	2	2	2
15. Portugal, 1-DC	1	2	1	1	1	1	2	1	1	2	3	3
16. Romania, 1-DC	2	1	1	1	2	2	2	2	2	2	3	3
17. Slovenia 1-FAC	3	3	1	1	4	4	3	3	2,5	2,5	2,5	2,5
18. Spain, 1-DC)	4	2	4	1	1	1	3	2	3	3	2	2
19. UK, 1-DC	3	3	1	1	1	1	2	2	3	3	2	2
1-EUC	2	2	1	1	1	1	1	1	1	1	3	3

Where M = military operations; C = civilian operations,

DC = Defence Committee, EUC = European Affairs Committee, FAC = Foreign Affairs Committee, DEUC = Defence and European Affairs Committee

1 = strongly disagree; 4 = strongly agree; X = Do not know OR not applicable

Respondents from six countries, Denmark, Greece, Ireland, Italy, Slovakia and Sweden choose not to respond to this part of the questionnaire.



## Annex F: Interviews with National MPs and Parliamentary Staff - Overview

Study Country	The date and the place of the interviews	Number of interviewed people	The official quality of the interviewed
<b>France</b>	Paris, February 2007	Five	<ul style="list-style-type: none"> <li>- One MP, Vice-President of the French Senate Budget Committee and President of the WEU Assembly, opposition party</li> <li>- Four staffers from National Assembly Defence Committee, Foreign Affairs Committee and the both Chambers Delegations for the European Union</li> </ul>
<b>Germany</b>	Berlin, February 2007	Eight	<ul style="list-style-type: none"> <li>- Six MPs, members of the Bundestag Defence Committee and Interior Committee, including three of the opposition and of the government parties</li> <li>- Three staffers belonging to the Bundestag Defence Committee, Interior Committee and the Research Department</li> </ul>
<b>Poland</b>	Warsaw April 2007	Five	<ul style="list-style-type: none"> <li>- Two senators of the Senate Defence Committee, one of the opposition and one of a government coalition party</li> <li>- One MP of the Sejm Defence Committee, opposition</li> <li>- Two staffers of the Senate Defence Committee and Parliamentary Research bureau.</li> </ul>
<b>Romania</b>	Brussels, February 2007 Bucharest, March 2007	Ten	<ul style="list-style-type: none"> <li>- Two senators of the Senate Defence Committee, government coalition party</li> <li>- One MP of the Chamber of Deputies Defence Committee, opposition</li> <li>- Five staffers of the Chamber of Deputies committees for defence, foreign affairs, general secretariat and Joint Committee for European affairs</li> </ul>
<b>Spain</b>	Madrid, February 2007	Five	<ul style="list-style-type: none"> <li>- One Senator of the Senate foreign affairs committee, government party</li> <li>- One MP of the Congress Defence Committee, government party</li> <li>- Three staffers from the Congress European affairs and defence committees</li> </ul>
<b>UK</b>	London, March 2007	Nine	<ul style="list-style-type: none"> <li>- Two MPs of the House of Commons Defence Select Committee, one Conservative, one Labour)</li> <li>- Two Lords of the House of Lords European Union Committee, Sub-Committee C, one Conservative, one Liberal Democrat)</li> <li>- Five staffers of the House of Commons Defence Select Committee and the House of Lords European Union Committee</li> </ul>

## Annex G: Interviews with National MPs and Parliamentary Staff - Interview Questions

1) Does your parliament have the power to approve your country's participation in ESDP missions?

- If so, does your parliament discuss ESDP missions prior to the mission deployment? What details of the mission are discussed and/or approved by the committee: budget, mandate, duration, rules of engagement, number of personnel?
- Does legislation and parliamentary procedure distinguish ESDP missions from other international missions?
- Does legislation and parliamentary procedure distinguish military missions from police missions?

2) Is your parliament informed or consulted about negotiations carried out in the Council on a possible future ESDP mission?

- If so, is the parliament deciding on the specific mandate for the government?
- In case there is no obligation for the government to inform the parliament/committee, is information on ESDP future missions transmitted through informal channels (e.g. parliamentary groups; discussion with the ministers from the same party)?

3) In case of a mandate change, of an extension of the duration of the missions or of a need for a supplementary budget, is your parliament's approval necessary?

4) Does your committee receive sufficient and timely information about ongoing ESDP missions your country participates in?

5) Does your committee have sufficient capacity in terms of time, staff and financial resources to actively exercise oversight over the ESDP missions?

6) Did your committee organise hearings on these missions after they had deployed? Did you or your colleagues visit the troops deployed in one of the ESDP missions?

7) Were there any political sensitivities within your committee regarding the missions?

8) Do you think that your parliament should have a bigger, equal or smaller role in the oversight of ESDP missions?

9) What possibilities does the parliament have to influence the government's policy on ESDP?

10) Do you think that ESDP policy has sufficient democratic legitimacy?

- If not, what would you recommend to improve national and European oversight of ESDP?

## **Annex H: Selected Legislation from European Countries**

### **GERMANY - Act governing Parliamentary Participation in Decisions on the Deployment of Armed Forces Abroad (Parliamentary Participation Act) of 18 March 2005, Sections 1 - 8**

#### **Section 1 - General and Common Provisions**

1. This Act regulates the form and extent of the Bundestag's participation in decisions concerning the deployment of German armed forces abroad. Article 115a of the Basic Law shall remain unaffected.
2. The deployment of German armed forces outside the area of application of the Basic Law shall require the German Bundestag's approval.

#### **Section 2 - Definition of Terms**

1. A deployment of armed forces shall be defined as the involvement, or anticipated involvement, of Federal Armed Forces personnel in armed operations.
2. Preparatory and planning measures shall not constitute "deployment" for the purposes of this Act. Such measures shall not require the Bundestag's approval. The same shall apply to the conduct, by the armed forces, of humanitarian relief or support operations in which arms are borne solely for the purposes of self-defence, provided that no involvement of the service personnel in armed operations is anticipated.

#### **Section 3 - Request for Deployment**

1. The Federal Government shall forward its request for approval of a deployment of the armed forces to the Bundestag in good time, prior to the start of deployment.
2. The Federal Government's request shall contain the following details in particular:
  - the operational mandate,
  - the operational area,
  - the legal bases for the mission,
  - the maximum number of service personnel to be deployed,
  - the capabilities of the armed forces to be deployed,
  - the planned duration of the mission, and
  - the anticipated costs and funding arrangements.
3. The Bundestag may approve or reject the request. Amendments to the request shall not be permissible.

#### **Section 4 - Simplified Approval Procedure**

1. For deployments of minor scope and intensity, approval may be granted in a simplified procedure. The Federal Government must give reasons why the proposed deployment is of minor scope and intensity. The President of the German Bundestag shall refer the request for approval to the chairpersons of the parliamentary groups, the chairpersons of the Committee on Foreign Affairs and Defence Committee and one spokesperson of each parliamentary group on these committees, and shall arrange for the request to be distributed to all Members of the Bundestag as a printed paper. Approval shall be deemed to be granted unless, within seven days of the printed paper's distribution, a parliamentary group or five per cent of the Members of the Bundestag demand that the Bundestag hold a debate. If a debate is demanded, the decision shall lie with the Bundestag.

2. A deployment shall be deemed to be of minor scope and intensity if the number of service personnel deployed is small, it is apparent from the accompanying circumstances that the deployment is of minor significance, and it does not entail any participation in warfare.

3. As a rule, a deployment shall be regarded as being of minor scope and intensity if:
- it involves a reconnaissance team bearing arms solely for the purpose of self-defence,
  - it involves individual service personnel who are serving with allied armed forces on the basis of exchange agreements, or
  - it involves the deployment of individual service personnel within the framework of a mission led by the UN, NATO or the EU, or by another organization in fulfilment of a UN mandate.

### **Section 5 - *Ex-post* Approval**

1. Deployments in the event of imminent danger which allow no scope for delay shall not require the Bundestag's prior approval. The same shall apply to operations whose purpose is to rescue persons from particularly dangerous situations, provided that the holding of a public debate in the Bundestag would endanger the lives of the persons in need of rescue.

2. The Bundestag shall be informed appropriately prior to and during deployment.

3. The Bundestag's *ex-post* approval for the deployment must be sought promptly. If the Bundestag rejects the request for approval, the ongoing operation must be terminated.

### **Section 6 - Obligation to Furnish Information**

1. The Federal Government shall inform the Bundestag regularly about the progress of the missions and about developments in the operational area.

2. In cases dealt with in accordance with Section 4 (1) (Simplified Approval Procedure), the Federal Government shall report promptly to the committees responsible and to the spokespersons of the parliamentary groups represented on these committees.

### **Section 7 - Extension of Deployment**

1. The procedure defined in Section 4 shall also apply to decisions to extend the approval of deployments in cases where no substantive amendments arise.

2. If the Federal Government requests the extension of a deployment, approval shall be deemed to be granted until two days of sittings have passed following distribution of the request as a Bundestag printed paper. If the request is dealt with in accordance with the simplified procedure defined in Section 4, approval shall be deemed to be granted until the expiry of the time period defined in Section 4 (1), fourth sentence; if a debate in the Bundestag is demanded within the time period, approval shall be deemed to be granted until the end of the sitting week following the demand for a debate. The period of validity of the original approval shall remain unaffected by the provisions of the first and second sentences.

### **Section 8 - Right of Revocation**

The Bundestag may revoke its approval for a deployment of armed forces at any time.

## **FINLAND - Act on Military Crisis Management (211/2006), Sections 2 and 3**

### **Section 2 – *Decisions on participation and on making provision***

(1) The decision on Finland's participation in military crisis management and on the termination of such participation is taken separately in each case by the President of the

Republic on the basis of a proposal put forward by the Government. The decision to place a military force on high readiness is also taken by the President of the Republic on the basis of a proposal put forward by the Government (*standby unit*).

### **Section 3 – Parliament's participation in decision-making**

(1) Before submitting a proposal referred to in section 2 concerning Finland's participation, the Government must consult Parliament's Foreign Affairs Committee. If the proposal concerns a crisis management operation that presents a particularly demanding military challenge or an operation that is not based on a UN Security Council mandate, the Government must, before submitting its proposal, consult Parliament by providing it with a report on the matter. If the proposal concerns the assignment of no more than ten persons to military crisis management duties, the Government must provide a report on the matter to Parliament's Foreign Affairs Committee before submitting its proposal.

(2) If plans are made for significant changes to the duties assigned to a Finnish crisis management force during the course of an operation, the Government must consult Parliament or Parliament's Foreign Affairs Committee in accordance with subsection 1.

(3) Before submitting a proposal concerning the establishment of a standby unit, the Government must consult Parliament by providing it with a report on the matter. Before submitting a proposal on the participation of Finland in crisis management by using a standby unit, the Government must consult Parliament's Foreign Affairs Committee.

## **SPAIN - Organic Law on National Defence 5/2005, 17 November 2005, Articles 4, 17 and 18**

### **Article 4. The Parliament**

2. In particular, it corresponds to the Congress of Deputies to authorize, with prior character, the participation of Armed Forces in missions outside national territory, according to what this law establishes.

### **Article 17. The Authorization of the Congress of Deputies**

1. To order operations abroad which are not directly related with the defence of Spain or with the national interest, the Government shall realize a prior consultation and shall obtain the authorization of the Congress of Deputies.
2. For the missions abroad where, according to international obligations, there is a need for a rapid or an immediate response to determined situations, the process of prior consultation and authorization shall be done in emergency procedures which allow the fulfilment of the above mentioned obligations.
3. In those missions referred to in the previous paragraph, where for reasons of maximum urgency the prior consultation is not possible, the government shall, as soon as possible, submit its decision to the Congress, for ratification.

### **Article 18. Monitoring the operations**

The Government shall inform the Congress of Deputies periodically, but not less than once per year, about the development of the operations of the Armed Forces

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