

## The European Parliament in CFSP: More than a Marginal Player?

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The European Parliament (EP) has traditionally played a rather marginal role in the Common Foreign and Security Policy (CFSP) of the European Union. Unlike the first pillar of the Union, CFSP is not a policy field particularly responsive to parliamentary participation. Accordingly, it comes as no surprise that the EP's role in CFSP has not been a major area of academic research.

Foreign and security policy are still regarded as sensitive fields of sovereignty in which nation states are not willing to concede competencies to supranational bodies.<sup>1</sup> It is also widely accepted that national parliaments are the prime institutions for controlling and legitimising decision-making; but even in the national setting, foreign and security policy belongs to the

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<sup>1</sup> S. Stavridis, "The CFSP/ESDP, Parliamentary Accountability, and the 'Future of Europe' Convention debate", Dossier El Parlamento Europeo en la Política Exterior, no. 1 (Bellaterra-Barcelona: Observatorio de Política Exterior Europea, 2003) <[http://selene.uab.es/\\_cs\\_iuee/catala/obs/parlament\\_europeu/PE\\_Analisis/PE200301 .pdf](http://selene.uab.es/_cs_iuee/catala/obs/parlament_europeu/PE_Analisis/PE200301.pdf)>

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executive sphere of action in which governments enjoy a comparatively high degree of autonomy and discretion.<sup>2</sup>

However, for different reasons there has been growing pressure in recent years to review the role and functions of the EP in CFSP:

- A broader discourse on the legitimacy of the EU as a whole has emerged in which parliamentary involvement in European decision-making is regarded as one – although not the only – expression of democratic accountability.
- The overall institutional evolution of the EU system has made the need for reform of EP participation in CFSP more urgent, as it otherwise risks being “detached” from the dynamics of the integration process.
- The expansion of the EU's sphere of activities in foreign and security policy, in particular with a view to ESDP, has renewed demands for improving parliamentary participation as a contribution to controlling and overseeing this area better.

So far, the demands for increased parliamentary participation have not been satisfied within the legal framework of the Treaty of European Union (TEU), but the European Parliament has over the years developed a number of activities to strengthen its role and position in CFSP. This mixture of formal competencies and political practice provides a more comprehensive picture of the EP's powers in this area.

#### The European Parliament in CFSP under the EU Treaty: no escape from Maastricht?

Since the conclusion of the Treaty of Maastricht, the powers of the European Parliament in CFSP have not been substantially expanded – except for the budgetary provisions. This is in striking contrast to other policy areas, especially within the first pillar of the EU, where a dynamic evolution has taken place in the last ten years, bringing the EP closer to the role of a “co-legislator” together with the Council.<sup>3</sup> From a legal perspective, the EP's influence in CFSP does not go far beyond the “Maastricht level”.

<sup>2</sup> See T. Grunert, “The Association of the European Parliament: No Longer the Underdog in EPC?”, in Regelsberger, E., P. de Schoutheete and W. Wessels (eds) *Foreign Policy of the European Union, From EPC to CFSP and Beyond* (Boulder: Lynne Rienner, 1997) pp. 109-31.

<sup>3</sup> See A. Maurer, “The Legislative Powers and Impact of the European Parliament”, *Journal of Common Market Studies*, vol. 41, no. 2, pp. 227-47.

When assessing the role of the EP, it is useful to mention some overarching principles. Art. 3 TEU states that the Union is endowed with a "single institutional framework", and underlines the principle of consistency in its external policies, for which the Commission and the Council bear responsibility. The objectives of CFSP, according to Art. 11 TEU, include the safeguarding of the "common values, fundamental interests, independence and integrity of the Union" as well as the development and consolidation of "democracy and the rule of law, respect for human rights and fundamental freedoms". They serve as points of reference and guidelines for CFSP, to which all institutions are committed.

More specifically, Title V of the TEU contains concrete provisions on the powers of the EP in CFSP. Art. 21 TEU stipulates that the European Parliament shall be consulted by the Presidency on "the main aspects and the basic choices of CFSP"; furthermore, the Presidency is called to "ensure that the views of the European Parliament are duly taken into consideration". The wording of the Treaty leaves the Council considerable room for manoeuvre.<sup>4</sup> Unlike the consultation procedure in the EC, there is no formally secured *ex ante* possibility for the EP to voice its opinion on legal acts before they are taken by the Council.

The EU Treaty also stipulates that the EP shall be kept regularly informed by the Presidency and the Commission on the development of CFSP. The EP may ask the Council questions and make recommendations; an annual debate on the progress in implementing CFSP is also foreseen.

Another field where the EP enjoys explicit rights of information is enhanced cooperation, introduced into CFSP by the Treaty of Nice. Based upon Art. 27c, the EP is informed of a request to establish enhanced cooperation according to Articles 27a -27e TEU. Pursuant to Art. 27d TEU, the European Parliament is also kept fully informed on the implementation of enhanced cooperation by the High Representative on CFSP. Yet, these provisions seem to indicate rather "soft" rights of consultation, information, questioning, recommendation and debate. There is no binding commitment for the Council to take the EP's position into account or to follow its views.

In contrast, the financing of CFSP offers considerable opportunities for parliamentary participation.<sup>5</sup> Art. 28 paragraph 2 TEU stipulates that all administrative expenditure for CFSP shall be covered by the budget of the

<sup>4</sup> F. Fink-Hooijer, "The Common Foreign and Security Policy of the European Union", *European Journal of International Law*, vol. 5, no. 2, 1994, pp. 173-98.

<sup>5</sup> See A. Laschet, "Parliamentarisation of the European Security and Defence Policy", *Working Paper Series*, no. 82 (Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), August 2002) p. 5-6.

Communities, while paragraph 3 sets out that operating expenditure will also be charged to the EC budget, except in case of operations having military and defence implications or when the Council decides otherwise by unanimity. This does not mean that all matters falling under ESDP are by definition excluded from parliamentary influence. When it comes to civilian crisis management, there are indeed possibilities for coverage through the EC budget and thus for parliamentary participation in decision-making. Art. 28 paragraph 4 explicitly confirms that the budgetary procedure of the EC shall apply to the cases where the Community budget is used and this offers the EP the opportunity to exercise its control.

In addition to these legal attributions within the provisions on CFSP, a number of further elements have to be taken into account. The EP is entitled to cast a vote of approval for the newly nominated Commission (Art. 214 TEC) and a motion of censure against the whole College (Art. 201 TEC), thus exercising a certain degree of parliamentary influence and control over this institution which is "fully associated" with the work carried out in CFSP. It also enjoys particularly high levels of competence with regard to important international agreements, in particular association agreements (Art. 300 TEC).<sup>6</sup> As those agreements usually contain provisions on political dialogue, there is a link between the different pillars of the EU. Finally, EC financial aid to third countries as part of the general budget offers considerable influence to the EP, since it has the last say on non-compulsory expenditure (Art. 272 TEC).

The exercise of these rights and competencies by the EP should not lead us to assume that the EP is unrestricted in carrying out classical parliamentary functions of legislation, control, budgetary power or communication. The EP cannot be regarded as a full-fledged parliament comparable to national legislatures. However, it has by different means and methods tried to expand its role and functions in CFSP.

### Parliamentary consultation, information and debate in CFSP

Pursuant to Art. 21 TEU and the Interinstitutional Agreement of 6 May 1999, the Council presents the Parliament with an annual report on the main aspects and basic choices of CFSP, including financial implications. The Council report is passed on to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET), which in

<sup>6</sup> See S. Di Paola, "International Treaty-making in the EU: What Role for the European Parliament?", *The International Spectator*, vol. 38, no. 2, 2003.

turn drafts its report. After a debate held on the basis of the Committee report, the Plenary adopts a resolution. This procedure serves as a reference point for the EP's relations with the Commission and the Council concerning CFSP. The Commissioner on External Relations and the Presidency usually make statements before the EP on the report, highlighting the priorities and the focus on particular issues of the Union's foreign and security policy.

Yet, Parliament is still largely dissatisfied with the Council report on CFSP, which is considered insufficiently political and analytical in nature. In 2003, the EP's resolution described it as "totally unsuited to serving as a basis for a foreign policy dialogue between Council and Parliament", and as a "book-keeping exercise listing actions taken by the Council without the least political assessment or conceptual setting of priorities and lacking sufficient focus with regard to financial implications".<sup>7</sup> So far, the Council has tried to fulfil a formal obligation (for information) rather than engage in a more comprehensive dialogue with the EP on CFSP. The Council's minimalist position thus contrasts with the EP's more ambitious aspirations. The European Parliament has claimed "that future annual reports should provide a genuine assessment of the Union's foreign and security policy activities, and be expanded to include a written report by the High Representative or European Foreign Minister on progress in implementing a specifically European approach to security".<sup>8</sup>

The annual report by the Council is not the EP's only source of information on CFSP. The interaction between the EP and the High Representative as well as the Commission is generally continuous and assessed positively.<sup>9</sup> Javier Solana, the High Representative on CFSP, appears before the EP several times a year to make statements on key issues of CFSP such as the Balkans, the Middle East, or the EU Security Strategy, to a minor degree on questions of principle or general overviews. He also

<sup>7</sup> See the last EP Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities - 2002, Rapporteur: Elmar Brok, A5-0348/2003 Final, 8 October 2003, p. 7.

<sup>8</sup> *Ibid.*, p. 7.

<sup>9</sup> According to a member of the EP, the activities of the HR and the Commissioner are quite satisfactory: "As far as the European Parliament's right to be informed and consulted is concerned, ... Mr Solana and Mr Patten account to the European Parliament and/or the Foreign Affairs Committee much more often and more detailed than many of the national foreign and defence ministers actually do." Laschet, "Parliamentarisation of the European Security and Defence Policy".

has regular contacts with members of the EP at different levels. In addition, he appears before the AFET several times each year; in September 2003 he presented the draft EU security strategy to members of AFET and the national foreign affairs and defence policy committees.<sup>10</sup> He also has official and unofficial meetings with the EP president and representatives of the EP political party groups.<sup>11</sup>

Chris Patten, the Commissioner for External Relations, regularly appears before the EP. He attends EP plenary meetings much more often than the HR, making the Commission appear more "available" and thus "closer" to Parliament when it comes to discussing CFSP issues. As a rule, representatives from the Commission attend plenary or committee sessions, so that a familiarity has developed over time. Additionally, the Commissioner for External Relations and the civil servants from his Directorate General cultivate regular contacts in particular with the AFET committee.

The Council Presidency is also showing regular commitment to parliamentary debates. At the beginning of each semester, the President of the European Council presents his/her programme, including priorities in CFSP, and at the end of the term draws a balance of the half-year's activities. The foreign ministers normally appear to discuss more specific and current CFSP issues. Representatives from other institutions such as the Chairman of the Military Committee have also attended sessions of the AFET committee in the past.

These trends are quite encouraging for the EP and reflect a tendency towards treating the EP as a serious actor and interlocutor in CFSP. CFSP issues are on the agenda of most EP sessions, depending on the international political situation. With the events in Iraq for example, deputies have frequently and intensively debated on CFSP; the same was true in the past with the war in ex-Yugoslavia or the events of 11 September.

In order to voice its position on CFSP issues, the EP is able to adopt own-initiative reports, for which AFET usually takes the lead. Of the 133 reports adopted by AFET between July 1999 and March 2004, around 30 percent were related more or less directly to CFSP subjects – although it is sometimes difficult to draw the line. As AFET's main activity so far has been to accompany the enlargement process, CFSP will probably absorb more of the committee's daily activities after the accession of the ten new member countries.

<sup>10</sup> Agence Europe, 11 September 2003.

<sup>11</sup> Official agenda of the High Representative <<http://ue.eu.int/solana/archAgenda.asp>>.

Hearings have not been used frequently by the European Parliament to deal with CFSP topics. Between 1999 and 2003, only eight hearings were organised by AFET, most of them on human rights issues.<sup>12</sup>

By means of these activities, the European Parliament seeks not only to obtain information from the Council or the Commission, but also to provide a forum for debate on CFSP and to offer opportunities for discussing political alternatives and options. This function has not been fully exploited so far, as public attention is still mostly centred on national parliaments, but the situation could change if the EU acquires more visibility as an actor in international affairs.

### Appointments: formal and informal participation by the EP

The EP has a say in the appointment of the European Commission: according to Art. 214 TEC, it must approve the choice for the Commission President and subsequently the entire College before they can take office. Although not foreseen in the Treaty, Parliament holds hearings with the single candidates before passing the vote in order to check their individual capacity. However, the fact that only the College as a whole can be approved makes it impossible to reject a single nominee for Commissioner. If Parliament is dissatisfied with some members – as has happened in the past – it will probably not block the entire Commission. Furthermore, the EP has the right to pass a motion of censure against the Commission according to Art. 201 TEC. Given the Commission's limited role in CFSP to start with, it seems improbable that the EP can have much influence on the course of foreign and security policy by exerting pressure on this institution.

Interestingly, the EP has also tried to gain a say in the appointment of the High Representative although there is no legal basis in the Treaties. In its rules of procedure, the EP has introduced a provision to that effect. Before the appointment is made, the Presidency of the Council and the President of the Commission are asked to make a statement to Parliament. After appointment, but before officially taking office, the High Representative is invited to make a statement to the relevant committee and answer questions. Afterwards, the European Parliament may make a recommendation.<sup>13</sup>

A similar procedure is envisaged for the appointment by the Council of a

<sup>12</sup> EP website <[www.europarl.eu.int/hearings/default\\_en.htm](http://www.europarl.eu.int/hearings/default_en.htm)>

<sup>13</sup> Rules of Procedure of the European Parliament, 15th edition, October 2003, Chapter XI, Rule 99 and Rule 49.

special representative.<sup>14</sup> Here, special attention is paid to the mandate given by the Council. Thus, the special representatives, according to the EP's rules of procedures, are invited to keep the EP "fully and regularly informed as to the practical implementation of his mandate".<sup>15</sup> It is worth mentioning that the EP receives regular bi-annual reports from the EU special representative for Bosnia and Herzegovina on the implementation of his mission. Although this practice is not based upon a legally binding commitment, it is part of the EP's effort to enhance its role and position in CFSP by establishing links and responsibilities even where the Treaties do not explicitly foresee them.

### Influence through the backdoor: the European Parliament and the financing of CFSP and ESDP

Actually the "hardest" competencies of the EP in CFSP are in the budgetary field. The operational expenditure for CFSP is covered by sub-section B8 of the EC budget, while administrative expenditure is covered by the Council's budget and not subject to interference by the EP, according to the so-called Gentlemen's Agreement between the institutions.

In addition to the Treaty, the 1999 Interinstitutional Agreement between the EP, the Council and the Commission contains particular provisions on financing CFSP.<sup>16</sup> It states that the three institutions shall engage in a conciliation procedure through a triad in which they attempt to arrive at a common understanding on CFSP expenditure. Agreement must be reached on both the overall amount to be spent on CFSP activities and its distribution between the different articles of the CFSP chapter. Should an agreement not be reached, the budgetary amounts of the preceding year or the ones proposed in the preliminary draft budget will be entered, whichever is lower. The Commission is also authorised to transfer

<sup>14</sup> Rules of Procedure of the European Parliament, Rule 100. Before appointment, the Council may be asked by the President of the EP, upon request from the committee responsible, to make a statement and answer questions concerning the mandate, objectives and other relevant matters relating to the tasks and role of the special representative. After appointment and prior to taking office, the appointee may be invited to make a statement to the committee and answer questions. Within three months of the hearing, the committee may submit a proposal for a recommendation by the EP relating directly to the statement and answers provided.

<sup>15</sup> Ibid. paragraph 4.

<sup>16</sup> Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, OJ C 172, 18.06.1999, Part II, Point H, paragraphs 39-40 and Annex III.



appropriations autonomously between different articles within one chapter, assuring the necessary flexibility in implementing the budget.

Two important cases set down in the Interinstitutional Agreement deserve special attention. Should the CFSP budget prove insufficient during a given financial year, the EP and the Council are called upon to seek a solution on the basis of a Commission proposal. This means that no further financial appropriations are allowed without the EP's approval. Second, the Council has to send the EP a financial statement for any decision it takes entailing expenditure, including a specific cost estimate. Once a year, the report on the main aspects and basic choices of CFSP sent by the Council to the EP shall contain the financial implications for the EC budget. Furthermore, the Commission must send the Council and the EP a quarterly report on the implementation of CFSP actions and the financial forecast for the remainder of the year.<sup>17</sup>

The Interinstitutional Agreement did not, however, put an end to disputes between the Council and the EP. In 2002, conflict emerged over the CFSP operational budget, which the Council wished to increase, and which the EP threatened to reduce unless the Council agreed to inform the Parliament in a timely fashion before taking CFSP actions. The sources of financing for civilian crisis management were also disputed with the EP intending to finance measures for the EU Police Mission in Bosnia through the Community Assistance for Reconstruction Development and Stabilisation (CARDS) programme, over which it would have had better financial control, while the Council insisted on using the CFSP chapter.<sup>18</sup>

As a result, the provisions of the 1999 Interinstitutional Agreement were clarified and amended by a Joint Declaration of the EP, the Council and the Commission on 25 November 2002,<sup>19</sup> which strengthened the EP in particular by introducing concrete dates and procedures for the budgetary coordination process. The Council's CFSP report has to be presented to the EP before 15 June of the year in question. For CFSP decisions entailing expenditure, the Council has to inform the EP no later than five working days after taking a decision. Furthermore, in the context of a regular "political dialogue", an "early warning" from the Council to the EP is foreseen whenever a joint action can have important financial implications.

<sup>17</sup> Interinstitutional Agreement of 6 May 1999, paragraph 40.

<sup>18</sup> Agence Europe, 23 November 2002.

<sup>19</sup> Declaration of the European Parliament, Council and Commission on the financing of the common foreign and security policy in accordance with the Interinstitutional Agreement of 6 May 1999, published in the minutes of the 2466<sup>th</sup> Council meeting, Economic and Financial Affairs (Budget), Brussels, 25 November 2002, 14610/02 (Presse 365), pp. 8-9.

From the EP's point of view, these arrangements still do not seem to work in a satisfactory manner. The European Parliament complains that the Council report does not contain an adequate focus on the financial implications of CFSP and insists that these should be laid down in a separate document.<sup>20</sup> Also, information by the Council is still considered incomplete and delivery not timely enough.

Consequently, further efforts will have to be undertaken to make the budgetary arrangements in CFSP work smoothly. The EP has tried to use its comparatively strong position in this field to enhance its rights to receiving information – as timely and complete as possible – on important actions and decisions and to promote its role as the Council's regular political interlocutor. The latter seems to resist these efforts, but if it wishes to run CFSP operations efficiently, it will probably have to become more responsive to the European Parliament's demands.

### The European Security and Defence Policy, a new challenge to parliamentary participation

#### The EP in civilian crisis management

The European Security and Defence Policy (ESDP) has created a new challenge for parliamentary participation.<sup>21</sup> ESDP is structured in a strictly intergovernmental way, leaving no room for majority voting on matters having military or defence implications (Art. 23.2 TEU). Financing of decisions with military or defence implications will not be covered by the EC budget, but will stay under national control. In particular, the deployment of military forces remains under the authority of member states, in the assumption that national parliaments exert the necessary functions of control and oversight.

However, while national parliamentary bodies are regarded as politically more powerful in shaping security and defence policy than the EP, the degree to which the individual national parliaments are informed about the

<sup>20</sup> See opinion of the Committee on Budgets, included in the Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities, pp. 22-4, especially p. 23.

<sup>21</sup> See Stavridis, "CFSP/ESDP, Parliamentary Accountability"; C. Gourlay and M. Tappert, "Revising the European Parliament's scrutiny of Foreign Affairs and Defence", *Dossier El Parlamento Europeo en la Política Exterior*, no. 6, (Bellaterra-Barcelona: Observatorio de Política Exterior Europea, 2004).

European arena differs widely and is regarded as basically insufficient.<sup>22</sup> Under these circumstances, the EP has started a dialogue with national parliaments on CFSP and ESDP (the AFET committee meets twice a year with the chairs of the national foreign affairs committees) and is also engaged in a dialogue with the NATO Parliamentary Assembly.

Closer relations with national parliaments appear to be a viable option for the European Parliament in ESDP, but they are being sought cautiously. The EP is trying to prevent a new institutional structure from arising as a result of these activities.

In that context, the Assembly of the Western European Union (WEU) recently proposed either to append the modified Brussels Treaty (that founded it) in a protocol to the European Constitution (thus linking the WEU Assembly to ESDP) or, alternatively, to establish a "forum" made up of the Conference of European Affairs committees (COSAC) and the WEU Assembly for parliamentary oversight of security and defence policy.<sup>23</sup> The Parliament regards the proposal as a provocation and troublemaking exercise as it puts its role as the primary source of democratic legitimacy and accountability within the EU into question. However, it cannot be denied that the WEU Assembly has raised some important points with regard to linking the national and European levels of parliamentary oversight, which the EP cannot simply ignore.

Despite existing limitations, ESDP is not totally outside parliamentary control; the provisions of Art. 21 TEU are in place. Therefore, since ESDP is a part of CFSP, the EP has to be consulted and informed about the main developments in ESDP as well – and it uses this right to ask the Council and the Commission questions.

Furthermore, it should not be forgotten that ESDP includes elements of civilian crisis management which offer broader opportunities for parliamentary participation in decision-making than the military sphere does. It would therefore be narrow-minded to say that ESDP as such is detached from parliamentary control. The combination of the Union's

<sup>22</sup> See C. Gourlay, "Parliamentary Oversight of ESDP: The Role of the European Parliament and National Parliaments", paper presented at the 4<sup>th</sup> workshop on "Strengthening Parliamentary Oversight of International Military Cooperation and Institutions", Brussels, 12-14 July 2002, Geneva Centre for the Democratic Control of Armed Forces Conference Paper, pp. 6-9.

<sup>23</sup> Assembly of the WEU – Interparliamentary European Security and Defence Assembly, Resolution No. 117 on prospects for the European security and defence policy – Contribution to the intergovernmental conference, 22 October 2003. The WEU, the European defence and security organisation, is composed of ten EU countries member and 18 other countries associated in various ways.

civilian and military instruments requires the use of resources financed by the Community budget. In reality, different elements of EU external policy are difficult to separate, as the Stabilisation and Association Process (SAP) in South East Europe demonstrates (it includes stabilisation and association agreements, a regular political dialogue, tariff liberalisation schemes and substantial external aid provided by the CARDS programme).<sup>24</sup>

### Limited access to sensitive information on ESDP

An Interinstitutional Agreement between the European Parliament and the Council of 20 November 2002 established special arrangements regarding access by the European Parliament to sensitive information in security and defence policy.<sup>25</sup> The agreement distinguishes between different categories of documents according to their classification and origin and, if access is allowed, sets out Byzantine procedures to be followed.

The EP President and the AFET chairman are entitled to ask the Council Presidency or the HR for information on ESDP, including sensitive parts. The EP President and a special committee chaired by the AFET chairman shall be informed by the Presidency or the HR of sensitive information "where it is required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement".<sup>26</sup> Documents can be consulted by the EP President or the special committee on the premises of the Council. This cautious and restrictive formula leaves open a range of interpretations regarding the extent to which the EP will in fact have access to certain information. When it comes to passing documents to the EP the

<sup>24</sup> Civil and military crisis management operations have been launched in Bosnia and Macedonia to contribute to stabilising the region. The EU Police Mission in Bosnia, adopted in February 2002 as a civilian crisis management operation, was endowed with an annual budget of 38 million euro, of which 20 million come from the EC. The financial arrangements for the mission required separate consultations with the European Parliament, taking account of the EC budgetary procedure. See Annex IV, EU Police Mission in BiH: Financial Aspects, General Affairs Council meeting, 18 and 19 February 2002, 6247/02. In the case of the EU Police Mission in Macedonia (Proxima), adopted in September 2003, the respective Joint Action stresses that the EU activities shall be supported by the CARDS programme. Council Joint Action 2003/681/CFSP of 29 September 2003, on the European Union Police Mission in Macedonia (EUPOL 'Proxima'), OJ L 249, 1.10.2003.

<sup>25</sup> Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy, OJ C 298, 30 November 2002.

<sup>26</sup> *Ibid.*, p. 5.

wording is even more restrictive. Here, the Interinstitutional Agreement states that "where this is appropriate and possible in the light of the nature and content of the information or documents concerned", they will be made available only to the President of the European Parliament who shall have a number of options for passing them to other EP bodies. This does not apply to documents classified as "top secret".

Not only have the rather vague definitions of the conditions for passing on information and the veto options been criticised, but the provisions create an unusual situation of discrimination among the members of Parliament in that only a few persons have access to sensitive information.<sup>27</sup> In the end, the extent to which information is transmitted will depend on the amount of trust and mutual confidence between the two institutions and the persons involved, and upon the EP's skill in dealing with this kind of sources.

In sum, there is a split balance for the European Parliament as concerns ESDP: while it has no influence in matters related to military decisions and is offered only restricted rights of access to information, it can play a role in the area of civilian aspects of crisis management, mostly via its budgetary competencies. It will be important in the future to bring both threads together more closely for the purpose of a coherent EU security and defence policy.

### The Constitutional Treaty: modest powers and possible problems

Before reaching conclusions on the powers of the European Parliament in CFSP, it is worth making some remarks about the draft Constitutional Treaty adopted by the Convention on the future of Europe which will – if adopted by the governments within the IGC – define the legal framework for some time to come.<sup>28</sup> Basically, it remains in the trend of the Treaty evolution since Maastricht. The draft Constitutional Treaty has not substantially enhanced the EP's role and position in CFSP,<sup>29</sup> although the Convention's Working Groups on External Action and on Defence had the issue of parliamentary scrutiny on their agenda. Many proposals which the EP submitted to the Convention were not taken up and in the end what the

<sup>27</sup> See M. Tappert, "European Parliament resigned to limited oversight of ESDP?", *European Security Review*, no. 16, February 2003.

<sup>28</sup> See E. Regelsberger, "Gemeinsame Außen- und Sicherheitspolitik", *Jahrbuch der Europäischen Integration 2002/2003* (Bonn: Europa Union Verlag, 2003) p. 252-3.

<sup>29</sup> W. Wessels, "Institutionelle Architektur für eine globale (Zivil-)Macht? Die Gemeinsame Außen- und Sicherheitspolitik im 'Verfassungsvertrag'", *Zeitschrift für Staats- und Europawissenschaften*, no. 3, 2003, p. 417.

Constitutional Treaty presents is a modified *status quo*.<sup>30</sup>

Art. I-39 paragraph 6 and Art. I-40 paragraph 8 of the draft Constitutional Treaty state that the EP "shall be regularly consulted on the main aspects and basic choices" of CFSP and ESDP and "shall be kept informed of how it evolves". More specifically, Art. III-205 provides for more detailed provisions; it is mainly based on the wording of Art. 21 TEU, but has added some modifications: the future Foreign Minister will be charged with consulting and informing the European Parliament on the main aspects and basic choices of CFSP, including the common security and defence policy. The explicit mention of ESDP corresponds to the fact that it is declared an "integral part" of CFSP (Art. I-40 paragraph 1), and that no separate policy area has been created which could exclude the EP from using its legal rights of consultation and information. The Constitutional Treaty furthermore states that "special representatives may be involved in briefing the Parliament" (Art. III-205 paragraph 1). The EP may ask the Council and the Foreign Minister questions and make recommendations to them. It will hold a debate on the progress in implementing CFSP, including ESDP, twice (rather than once as before) a year (Art. III-205 paragraph 2). All these provisions – with slight modifications – resemble those of the existing Treaty.

Where the EP will face a new situation is in dealing with the future Minister for Foreign Affairs. The EP is formally not involved in the selection of the Foreign Minister according to Art. I-27 paragraph 1 of the draft Constitutional Treaty. The appointment shall be made by the European Council, acting by qualified majority, in agreement with the Commission President. At the same time, the appointment procedure for the Commission according to Art. I-26 paragraph 2 stipulates that the Foreign Minister, together with the entire Commission, shall be subject to a vote of approval by Parliament. So the EP has the right to approve the Foreign Minister indirectly when it votes on the whole College. Yet, if the EP denies its approval to the College, the Foreign Minister, although appointed by the European Council, would not be able to exert his/her functions as a member of the Commission; therefore without the approval of the European Parliament the appointment of the Foreign Minister remains "incomplete". It is in the interest of the EP to underline that the Commission's accountability to the European Parliament (Art. I-25 paragraph 5) unconditionally applies to the Foreign Minister in his/her function as Vice President of the Commission.

<sup>30</sup> Draft Treaty establishing a Constitution for Europe, adopted by the European Convention on 13 June and 10 July 2003, submitted to the President of the European Council in Rome, 18 July 2003.

A field where the EP might face problems in the future lies in the financing of CFSP and ESDP. Art. III-215 paragraph 3 of the draft Constitutional Treaty provides that the Council is entitled to adopt specific procedures for rapid access to appropriations from the Union budget for urgent financing of initiatives in CFSP, in particular those in preparation of the Petersberg tasks. In this case the EP shall be consulted, which means that it does not enjoy any right of blocking the Council's decision and could be by-passed. Preparatory activities for crisis management tasks not charged to the Union can be covered by a start-up fund financed by the member states. With decisions taken by the Council and the implementation of the fund relying on the Foreign Minister (Art. III-215 paragraph 3), this provision creates a mechanism separate from EU procedures that could lead to parallel budgetary structures outside parliamentary control.

Regarding cooperation with national parliaments, the Protocol on the Role of National Parliaments in the European Union annexed to the Constitutional Treaty provides that the Conference of European Affairs committees (COSAC) will be entitled to submit contributions to the EP, Council or the Commission; it is also called upon to intensify its actions to promote exchanges of information between national parliaments and their committees and the European Parliament and may organise inter-parliamentary conferences in particular on CFSP and ESDP.<sup>31</sup> In practice, such meetings have already been organised and will probably be intensified in the future. For the EP, it is important to find new ways to pursue interparliamentary dialogue.

It is much too early to predict the EP's specific role and influence in CFSP after the coming into force of the Constitutional Treaty. The modified status quo burdened by a number of problems that have already emerged could make it harder for the EP to influence the mechanisms and outcomes of the common foreign and security policy.

### Conclusions: the EP, a marginal player with potential for growth

The powers of the EP in CFSP result from a mix of formal and informal influence. Although there has been no major progress with regard to the legal situation since Maastricht, the European Parliament has over the years developed a practice of intensive interinstitutional contacts and interactions resulting in a growing capacity to obtain information on current issues of CFSP. The Council's annual report on CFSP remains a point of controversy,

<sup>31</sup> See Protocol on the Role of National Parliaments in the European Union, II. Interparliamentary Cooperation, number 10.

however, in that the EP feels that it too closely resembles a bureaucratic exercise reduced to a minimum and does not provide adequate and timely information on CFSP decisions bearing financial implications. Since the Treaty provisions have failed to upgrade the EP's role, it will probably continue to seek lateral ways to influence CFSP.

In general, the EP actively seeks information instead of waiting for its delivery and this corresponds to its pro-active strategy of fully exploiting the legal provisions of CFSP. Its existing budgetary powers are an important tool for enhancing its influence and have been used by the EP to obtain greater access to information and increase its role as an effective political interlocutor to the Council. The link between civilian and military elements of crisis management and the need to further combine cross-pillar resources for effective external action might strengthen the EP's role in the future and contribute to making it more than a marginal player in ESDP.

In the coming years, the new institutional setting envisaged by the Constitutional Treaty will represent a major challenge to the EP. Relations with national parliaments might grow in importance, leading to increasing interparliamentary contacts and perhaps to new coalitions for enhancing the legitimacy and accountability of CFSP.

In particular, the EP will have to define its relationship with the Foreign Minister, trying to prevent him/her from becoming too intergovernmental in nature, primarily oriented towards the Council and the member states. It could start by holding a hearing on the appointment of the Foreign Minister (as for any EU special representative), and continue with regular hearings and debates afterwards. Although not legally binding, this practice would enhance the EP's influence by creating a public arena for discussion of foreign and security issues. In general, the EP should try to intensify its efforts to offer a space for debate and to provide European citizens with an opportunity to identify basic choices and policy options in European foreign and security policy.