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THE POWERS OF THE EUROPEAN PARLIAMENT IN THE FIELD OF FOREIGN AND SECURITY POLICY

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

The European Parliament (EP) has traditionally been playing a rather marginal role in the Common Foreign and Security Policy (CFSP) of the European Union. Unlike the first pillar of the Union, CFSP does not reveal the features of a policy field particularly responsive to parliamentary participation.¹ Accordingly, it comes as no surprise that the EP's role in CFSP has not been a major field of academic research.

Foreign and security policy are still regarded as sensitive fields of sovereignty where the nation-states are not willing to concede competencies to supranational bodies.² 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 belong to the executive sphere of action where governments enjoy a comparatively high degree of autonomy and discretion.³

However, for different reasons, growing pressure has become visible in recent years for reviewing 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 participation at the European level 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 reforms in CFSP more imminent for the European Parliament, which otherwise might risk to get '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 refreshed demands for improving parliamentary participation as a contribution to better controlling and overseeing this area.

The demands for increased parliamentary participation have so far not been satisfied within the legal framework of the EU Treaty, but the European Parliament has developed over the years a number of activities intended to strengthen its role and

¹ See in general Francis Jacobs, Richard Corbett and Michael Shackleton, *The European Parliament*, 5th ed., London 2003;

² Stelios Stavridis, *The CFSP/ESDP, Parliamentary Accountability, and the 'Future of Europe' Convention debate*, Dossier *El Parlamento Europeo en la Política Exterior*, n°1, 2003, Observatorio de Política Exterior Europea.

³ See Thomas Grunert, *The Association of the European Parliament: No Longer the Underdog in EPC?*, in: Elfriede Regelsberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels: *Foreign Policy of the European Union, From EPC to CFSP and Beyond*, Boulder/London 1997, pp. 109-131.

position in CFSP. It is a mixture between formal competencies and political practice which provides a more comprehensive picture of the EP's powers in this area.

II. 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.⁴ This is in a striking contrast to other policy areas, in particular 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' in cooperation with the Council.⁵ From a legal perspective, it is still mainly situated at a 'Maastricht level' of formal influence in CFSP.

When assessing the role of the EP, it is useful to hint at 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 guiding lines 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 a considerable room for manoeuvre open to the Council.⁶ 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; it may ask questions of the Council and make recommendations to it. An annual debate on the progress in implementing CFSP is also foreseen.

Another field where the EP enjoys explicit rights of information concerns enhanced cooperation, newly introduced into CFSP by the Treaty of Nice. Based upon Art. 27c, the EP is forwarded a request by a number of member states that wish to establish

⁴ See Thomas Grunert, *The Association of the European Parliament: No Longer the Underdog in EPC?*, op. cit.

⁵ See Andreas Maurer, *The Legislative Powers and Impact of the European Parliament*, in: *Journal of Common Market Studies*, Vol. 41, Nr. 2, pp. 227-247.

⁶ Florika Fink-Hooijer, *The Common Foreign and Security Policy of the European Union*, in: *European Journal of International Law*, Nr. 2, 1994, pp. 173-198.

enhanced cooperation according to Articles 29a -27e TEU. Pursuant to Art. 27d TEU, the European Parliament is kept fully informed on the implementation of enhanced cooperation by the High Representative of CFSP.

These provisions seem to hint at rather ‘soft’ rights of consultation, information, questioning, recommendation and debate. There is no binding commitment on 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.⁷ Art. 28 paragraph 2 TEU stipulates that all administrative expenditure for CFSP will be covered by the budget of the Communities, and according to paragraph 3 also the operating expenditure will be charged to the EC budget except in case of operations having military and defence implications and where the Council decides so by unanimity. This does not mean by definition that all matters falling under ESDP are excluded from parliamentary influence. When it comes to civil crisis management, there are indeed possibilities for coverage through the EC budget and thus for parliamentary participation in decision-making. In Art. 28 paragraph 4 it is explicitly confirmed that the budgetary procedure of the EC will apply to the cases where the Community budget is used

In addition to these legal attributions within CFSP, a number of further elements has to be taken into account.⁸ The EP is entitled to cast a vote of approval on the newly nominated Commission (Art. 214 TEC) and is able to pass a motion of censure against the whole College (Art. 201 TEC), thus exercises 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). As those agreements usually contain provisions on political dialogue, there is a link between different pillars of the EU. Finally, EC financial aid to third countries as part of the general budget offers considerable influence to Parliament, having the last say on non-compulsory expenditure (Art. 272 TEC).

The exercise of these rights and competencies by the EP cannot not lead us to assume that classical parliamentary functions of legislation, election, control, budgetary power, or communication can be applied without restrictions. It is impossible to regard the EP as a full-fledged parliament comparable to national legislatures. However, it has tried to expand its role and functions in CFSP by using different methods and instruments.

III. Parliamentary Consultation, Information and Debate in Foreign and Security Policy

The Council forwards to the Parliament an annual report on the main aspects and basic choices of the CFSP, including financial implications, pursuant to Art. 21 TEU and to

⁷ See Armin Laschet, *Parliamentarisation of the European Security and Defence Policy*, op. cit., p. 5-6.

⁸ See also Thomas Grunert, *The Association of the European Parliament: No Longer the Underdog in EPC?*, op. cit., p. 121.

the Interinstitutional Agreement from 6 May 1999; the Council report is passed to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET), which drafts a report. On the basis of the Committee report, the Plenary adopts a resolution, after having held a debate.⁹ This procedure serves as a reference point for the EP's relations with the Commission and the Council. 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.

However, Parliament is still largely dissatisfied with the CFSP report by the Council, being regarded as insufficiently political and analytical in nature. In 2003, the EP's resolution even 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".¹⁰ So far, the Council tries to fulfil a formal obligation (for information) rather than engage in a more comprehensive dialogue with Parliament on CFSP. The minimalist position by the Council thus stands in contrast to the EP's more ambitious approach. Parliament therefore demands "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."¹¹

The annual report by the Council is by far not the only way for Parliament to be informed on CFSP. A positive assessment can be made of the interaction between the EP and the High Representative as well as the Commission. Javier Solana is regularly having contacts with members of the EP at different levels.¹²

Several times a year the High Representative appears at the EP to make statements. These mainly contain specific information on current key issues of CFSP like the Balkans, the Middle East, or the EU Security Strategy, less questions of principle or general overviews on CFSP. Also the Commissioner for External Relations regularly keeps in contact with the EP. According to a member of the European Parliament, the activities by the HR and the Commissioner are regarded as 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."¹³

⁹ See the last 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.

¹⁰ See *ibid.*, p. 7.

¹¹ See *ibid.* p. 7.

¹² See the Agenda of the High Representative for the Common Foreign and Security Policy 2000-2004.

¹³ Armin Laschet, *Parliamentarisation of the European Security and Defence Policy*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper Series, No. 82, August 2002.

The following table provides an overview of the appearance by the High Representative, the Commissioner responsible for external relations and the Presidency at the European Parliament.

Appearance at EP plenary debates on CFSP by the High Representative, the Commission and the Council Presidency¹⁴

	2000	2001	2002	2003
Javier Solana	2	2	4	3
Christopher Patten	26	16	12	15
Council Presidency¹⁵	15	17	9	15

Source: Website of the European Parliament, available: [http://www3.europarl.eu.int/omk/omnsapir.so/searchdeb? ORATEUR=yes&LANGUE=EN](http://www3.europarl.eu.int/omk/omnsapir.so/searchdeb?ORATEUR=yes&LANGUE=EN)

Javier Solana has additionally appeared before the AFET twice in 2000, three times in 2001, and once each in 2002 and 2003. He is trying to keep regular contacts with the committee; thus in September 2003 he presented his draft security strategy to members of AFET and of national foreign affairs and defence policy committees.¹⁶

He has also had officially reported meetings with the EP president once in 2001, three times in 2002 and twice in 2003. He met with representatives of the political party groups in the EP (mostly members of the group of European socialists) four times in 2001, and three times in 2002.¹⁷ It can be assumed that in addition to these official activities, there is still a number of further contacts at various occasions with members of the EP.

The Commissioner for External Relations much more often attends EP plenary meetings 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 practice of familiarity has

¹⁴ The calculation is based upon the number of plenary sittings in which interventions were made.

¹⁵ Under this category, interventions on CFSP by the President of the European Council and the President of the General Affairs Council (as a rule the Foreign Minister, in case of France also the Minister for European Affairs) have been included.

¹⁶ Agence Europe, 11 September 2003.

¹⁷ These figures have been taken from the official agenda of the High Representative as published at the website available under: <http://ue.eu.int/solana/archAgenda.asp>.

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 Presidency is showing regular commitment to parliamentary debates. Traditionally, 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 – he/she draws a balance of last half-year's activities. The Foreign ministers normally appear to discuss more specific and current CFSP issues. Also representatives from other institutions like the Chairman of the Military Committee have attended sessions of the AFET committee in the past.

These trends are quite encouraging for the EP and reflect a tendency towards treating Parliament as a serious actor and an interlocutor in CFSP. In particular the Commissioner and the Presidency not only make statements to the plenary, they are also available for question times, and regularly attend meetings of AFET or other EP committees.

CFSP issues belong to the topics for debate on the agenda of most of EP sessions, with variations depending upon the international political situation. During the Iraq crisis in particular, there have been frequent and intensive debates on CFSP by the deputies; 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 CFSP issues, Parliament is able to adopt (own-initiative) reports, for which AFET usually takes the lead. From all 133 reports adopted by AFET between July 1999 and March 2004, around 30% have been related more or less directly to CFSP subjects – although it is sometimes difficult to exactly draw the line.¹⁸ As a major activity of AFET so far has consisted in accompanying the enlargement process; CFSP will probably cover a more important share of the committee's daily activities after the accession of the new member countries.

Hearings have not been frequently used for dealing with CFSP topics by the Parliament. Between 1999 and 2003, there have only been 8 hearings organised by AFET, most of them dealing with human rights issues.¹⁹

With these activities, the European Parliament does not only seek information by the Council or the Commission, it also provides a forum for debate on CFSP and offers opportunities for discussing political alternatives and options. This function is not fully exploited so far, as public attention is still mostly centred on national parliaments, but the situation could change if the EU continues to acquire more visibility as an actor in international affairs.

¹⁸ These figures have been taken from information on the EP's website: www.europarl.eu.int.

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IV. **Appointments: Formal and Informal Participation by the EP**

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

Interestingly, the EP also intends to participate in the appointment of the High Representative although there is no legally binding provision in the Treaties. In its rules of procedure, Parliament has introduced a respective provision. Before the appointment is made, the Presidency of the Council and the President of the Commission will be asked to make a statement to Parliament.²⁰ After appointment, but before officially taking up his/her duties, the High Representative will be asked to make a statement to the responsible committee and answer questions. Afterwards, the European Parliament may make a recommendation.²¹

A similar procedure is defined for the appointment of a special representative by the Council.²² Here, special attention is paid to the mandate given by the Council. Thus, the special representative, according to the EP's rules of procedures, shall be invited to keep the EP "fully and regularly informed as to the practical implementation of his mandate".²³ 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.²⁴ Although this practice is not based upon a legally binding commitment, it corresponds to the objectives of the EP to enhance its role and position in CFSP by establishing links and responsibilities even where the Treaties do not explicitly foresee them.

²⁰ Rules of Procedure of the European Parliament, 15th edition, October 2003, Chapter XI, Rule 99.

²¹ Rules of Procedure of the European Parliament, op. cit., Rule 99 and Rule 49.

²² Rules of Procedure of the European Parliament, op. cit. Rule 100. Before appointment, the Council may be asked by the President of the EP, upon request of 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 and answer questions to the committee. 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.

²³ Rules of Procedure of the European Parliament, op. cit. Rule 100, paragraph 4.

²⁴ Report to the European Parliament by the OHR and special representative for BiH, January - June 2002, 23 June 2003.

V. Influence through the Backdoor: The European Parliament and the Financing of CFSP

Actually the 'hardest' competencies of the EP in CFSP are to be found in the budgetary field. The EC budget contains under sub-section B 8 the operational expenditure for CFSP, while the administrative expenditure is covered within the Council's budget line and not subject to interference by the EP, according to a gentlemen's agreement between the institutions.

In addition to the Treaty, it is the Interinstitutional Agreement of 6 May 1999 between the EP, the Council and the Commission that contains particular provisions on financing CFSP.²⁵ It states that the three institutions will engage in a conciliation procedure through a dialogue, in which they try to arrive at a common understanding on CFSP expenditure.

Agreement must be reached on the overall amount as well as on the distribution between the different articles of the CFSP chapter. It is also confirmed that the Commission is authorised to transfer appropriations autonomously between different articles within one chapter, so that the necessary flexibility in implementing the budget is considered to be assured.²⁶

Two important cases deserve attention. Should the amount of the CFSP budget prove to be insufficient during the financial year, The EP and the Council are called to search for a solution on the grounds of a Commission proposal. This means that without the EP's approval, no further financial appropriations will be allowed.

Second, the Council has to send to the EP a financial statement for any decision it takes entailing expenditure, including a specific cost estimate. Once a year, when the Council passes to the Parliament its report on the main aspects and basic choices of CFSP, it shall contain the financial implications for the EC budget. The Commission furthermore is committed to inform Council and EP in a quarterly report about the implementation of CFSP actions and on the financial forecast for the remaining year.²⁷

However, disputes between Council and Parliament did not come to an end. In 2002, conflict emerged over the amount of the operational CFSP budget, which the Council wished to increase, while the EP threatened to reduce the line unless the Council adopted a commitment to inform the Parliament timely before taking CFSP actions. Also, the sources of financing civilian crisis management were heavily discussed; while the EP intended to finance measures for EUPM in Bosnia by resorting to the CARDS programme, the Council insisted on using the CFSP chapter.²⁸

²⁵ 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, Point H, paragraphs 39-40 and Annex III.

²⁶ Interinstitutional Agreement, op. cit., paragraph 39.

²⁷ Interinstitutional Agreement, op. cit., paragraph 40.

²⁸ Agence Europe, 23. November 2002.

As a result, the provisions of the 1999 Interinstitutional Agreement were specified by a Joint Declaration of the Parliament, the Council and the Commission from 25 November 2002, which strengthens the EP in particular by introducing concrete dates and procedures for the budgetary coordination process. The Council report on the main aspects and basic choices of CFSP shall arrive at the Parliament before 15th June for the year in question. As to CFSP decisions entailing financial expenditure, the Council commits itself to inform the EP no later five working days after taking the decision. Furthermore, an ‘early warning’ by the Council to the EP is foreseen in the context of a regular ‘political dialogue’ whenever a joint action might have important financial implications.

In practice, these arrangements still do not seem to work in a satisfactory manner from the EP’s point of view. The EP 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.²⁹ Also, information by the Council is regarded as still incomplete and delivery as not timely enough.

So, further efforts will have to be undertaken to make the budgetary arrangements in CFSP work smoothly. The EP tries to use its comparatively strong position in this field for enhancing its rights of getting information - as timely and as complete as possible – on important actions and decisions, and for growing into the role of a regular political interlocutor to the Council. 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 Parliament’s demands.

VI. The European Security and Defence Policy as a New Challenge to Parliamentary Participation

The establishment of the European Security and Defence Policy (ESDP) has created a new challenge for parliamentary participation.³⁰ ESDP is structured in a strictly intergovernmental way, leaving no room for majority voting on matters having military or defence implications (Art. 23 paragraph 2 TEU). Financing of decisions with military or defence implications will not be allowed by the EC budget, but stay under national control. In particular the deployment of military forces remains under the member states’ authority, where national parliaments are assumed to exert the necessary functions of control and oversight.³¹

²⁹ 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, op. cit., p. 22-24, p. 23.

³⁰ See Stelios Stavridis, *The CFSP/ESDP, Parliamentary Accountability, and the Future of Europe*’ Convention debate, op. cit.; Catriona Gourlay and Malin Tappert, *Revising the European Parliament’s scrutiny of Foreign Affairs and Defence*, in: *Dossier El Parlamento Europeo en la Política Exterior*, n° 6, 2004, Observatorio de Política Exterior Europea.

³¹ See for a comprehensive view on military decision-making in Europe Georg Nolte (ed.), *European Military Law Systems*, Berlin: De Gruyter Recht 2003.

However, while national parliamentary bodies are regarded as politically more powerful in shaping security and defence policy than the EP, the degree of information about the European arena differs widely and is regarded as basically insufficient.³² Under these circumstances, the EP has started a dialogue with national parliaments on CFSP and ESDP. The AFET committee is meeting twice a year with the chairs of the national foreign affairs committees. Furthermore, the EP is also engaged in a dialogue with the NATO Parliamentary Assembly.³³

Closer relations with national parliaments appear as a viable option for the European Parliament in ESDP, but they are handled with care. The EP tries to prevent the creation of new institutional structures that could result from these activities. The proposal by the WEU Assembly of either appending the modified Brussels Treaty in a protocol to the European Constitution (and thus linking the WEU Assembly to ESDP), or alternatively the establishment of a 'forum' formed by COSAC and the WEU Assembly for the parliamentary oversight of security and defence policy,³⁴ is regarded as a provocation and a troublemaking exercise by the EP. It puts into question its role as the primary source of democratic legitimacy and accountability within the EU. For most members of the European Parliament, the WEU Assembly "has lost its 'raison d'être'"³⁵ and could be easily abolished.

Despite existing limitations, ESDP is not totally out of (parliamentary) control; the provisions as defined in Art. 21 TEU are in place, although special arrangements have been established regarding the access to sensitive information in security and defence policy, based upon an Interinstitutional Agreement between the European Parliament and the Council from 20 November 2002.³⁶ The agreement distinguishes between different categories of documents according to their classification and to their origin. If access is allowed, 'byzantinist' procedures have to be followed.³⁷

The President of the EP or the Chairman of AFET are entitled to request from the Presidency of the Council or from the HR to pass information on ESDP, including sensitive components. The EP President and a special committee chaired by the AFET chairman³⁸ shall be informed by the Presidency or the HR of the content of sensitive information "where it is required for the exercise of the powers conferred on the

³² See Catriona Gourlay, *Parliamentary Oversight of ESDP: The Role of the European Parliament and National Parliaments*, op. cit. pp. 6-9.

³³ See Catriona Gourlay, *Parliamentary Oversight of ESDP*

³⁴ See 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.

³⁵ Armin Laschet, *Parliamentarisation of the European Security and Defence policy*, op. cit. p. 5.

³⁶ See 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.

³⁷ Access to information by the EP depends upon specific conditions, see *ibid.*

³⁸ The special committee shall be chaired by the AFET chairman and be composed of four members selected by the EP Conference of Presidents.

European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement”.³⁹ The respective documents can be consulted on the premises of the Council by the EP President or the special committee. This cautious and restrictive formula leaves a range of interpretation open regarding the extent to which the EP in fact will gain access to certain pieces of information. Even more restrictive is the wording when it comes to making information available to the EP. Here, it is stated 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.⁴⁰

These provisions create an unusual situation for the European Parliament and have led to criticism about the rather vague definitions of the conditions for passing information, the veto options and a perceived discrimination among the members of Parliament by too strictly reducing the number of persons having access to sensitive information.⁴¹ In the end the extent to which information is handed over will depend on the amount of trust and mutual confidence between the two institutions and the persons involved, and also upon the degree of ‘professionalisation’ within Parliament in dealing with this kind of sources.

Apart from such sensitive issues related to military and defence questions, ESDP includes elements of civilian crisis management, which offer broader opportunities for parliamentary participation in decision-making.⁴² The combination of civil and military instruments of the Union makes the use of resources necessary which are financed by the Community budget. In reality, different elements of EU external policy are difficult to separate, as e.g. the example of the Stabilisation and Association Process (SAP) in South East Europe demonstrates. It includes the conclusion of the stabilisation and association agreements, a regular political dialogue, tariff liberalisation schemes and substantial shares of external aid provided by the CARDS programme. In 2003, civil and military crisis management operations in Bosnia and Macedonia have been launched which shall contribute to stability in the region. The EU Police Mission in Bosnia as a civilian crisis management operation has been endowed with an annual budget 38 million euro, of which 20 million are coming from the EC.⁴³ The financial arrangements for the mission required separate consultations with the European Parliament, taking account of the EC budgetary procedure. In case of the EU Police

³⁹ Ibid. p. 5.

⁴⁰ These options do not apply to information classified as ‘top secret’; see *ibid.*, p. 5-6.

⁴¹ See Malin Tappert, European Parliament resigned to limited oversight of ESDP?, in: *European Security Review*, Number 16, February 2003.

⁴² See Catriona Gourlay, Parliamentary Oversight of ESDP: The Role of the European Parliament and National Parliaments, paper presented at the 4th 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, p. 5.

⁴³ See Annex IV, EU Police Mission in BiH: Financial Aspects, General Affairs Council meeting, 18 and 19 February 2002, 6247/02 (Presse 30).

Mission in Macedonia (Proxima), adopted in September 2003, the respective Joint Action stresses that the EU activities shall be supported by the CARDS programme.⁴⁴

ESDP thus reveals a split balance for the European Parliament: while the matters related to military decisions are widely kept out its influence and offer only restricted rights of access to information, in the area of civilian aspects of crisis management Parliament can play a role, mostly via its budgetary competencies. It will be important in the future to bring both strings more closely together for the purpose of a coherent EU security and defence policy.

VII. The Convention, the IGC and the Constitutional Treaty: Modest Powers and Possible Problems

Before reaching conclusions on the powers of the European Parliament in CFSP, it is worth to drop 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 status quo for the time to come.⁴⁵ 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,⁴⁶ although the working groups in the Convention on external action and on defence had the issue of parliamentary scrutiny on their agenda.⁴⁷ Many proposals which the EP had submitted to the Convention have not been taken up, and in the end a modified status quo was to be found in the Constitutional Treaty.⁴⁸

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 upon 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 mentioning of ESDP corresponds to the fact that it is an "integral part" of CFSP (Art. I-40 paragraph 1), and that no separate policy area has been created which could exclude Parliament from using its legal rights of consultation and information. The

⁴⁴ 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.

⁴⁵ See Elfriede Regelsberger, *Gemeinsame Außen- und Sicherheitspolitik*, in: Werner Weidenfeld and Wolfgang Wessels (eds.), *Jahrbuch der Europäischen Integration 2002/2003*, Bonn 2003, pp. 251-260, p. 252-253.

⁴⁶ See Wolfgang Wessels, *Institutionelle Architektur für eine globale (Zivil-)Macht? Die Gemeinsame Außen- und Sicherheitspolitik im „Verfassungsvertrag“*, in: *Zeitschrift für Staats- und Europawissenschaften*, No. 3, 2003, pp. 400-429, p. 417.

⁴⁷ See Stelios Stavridis, *The CFSP/ESDP, Parliamentary Accountability, and the 'Future of Europe' Convention debate*, op. cit. p. 5.

⁴⁸ See 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.

Constitutional Treaty furthermore states that “special representatives may be involved in briefing the Parliament” (Art. III-205 paragraph 1).

The EP may ask questions of the Council and of the Foreign Minister and make recommendations to them. It will hold a debate on the progress in implementing CFSP, including ESDP, *twice* a year (Art. III-205 paragraph 2). All these provisions – with slight modifications – resemble the existing Treaty language.

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 European Council, acting by qualified majority, with agreement by the Commission President, shall make the appointment.

On the other hand, the appointment procedure for the Commission according to Art. I-26 paragraph 2 stipulates that the Foreign Minister shall be submitted, together with the whole Commission, to a vote of approval by Parliament. So the EP has a right to approve the Foreign Minister indirectly as a member of the whole College, not as an individual person. However, 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 member of the Commission; *de facto* Parliament has a ‘soft’ right of approval, without which the appointment of the Foreign Minister remains ‘incomplete’.

Uncertainties exist in case of a motion of censure against the Commission. According to Art. I-25 paragraph 5 of the Draft Constitutional Treaty, if a motion of censure is successfully passed, the European Commissioners and Commissioners must all resign. The Foreign Minister, not being mentioned as belonging to one of these two categories in Art. I-25 paragraph 3, seems to be excluded from this provision. In Art. III-243, however, it is stated that “the Commission shall resign” if a motion of censure is passed by the EP; here the Foreign Minister, as member of the Commission (Art. I-25 paragraph 3) is apparently affected. These inconsistencies reflect a basic lack of transparency and clarity concerning the legal and political accountability of the Foreign Minister. It is in the interest of the EP to underline that the responsibility of the Commission 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.

Another field where the EP might face future problems 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 which guarantee the rapid access to appropriations in the Union budget for the purpose of urgent financing of initiatives in CFSP, in particular those in preparation of Petersberg tasks.⁴⁹ In this case the EP shall

⁴⁹ See Mathias Jopp and Sammi Sandawi, Europäische Sicherheits- und Verteidigungspolitik, in: Werner Weidenfeld and Wolfgang Wessels (eds.), *Jahrbuch der Europäischen Integration 2002/2003*, Bonn 2003, pp. 241-250, pp. 247ff.

be consulted, which means that it does not enjoy any right of blocking the Council's decision and could be by-passed.⁵⁰

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 to intensify exchanges of information between national parliaments and the European Parliament, including their committees; it may organise interparliamentary conferences in particular on CFSP and ESDP.⁵¹ In practice, such meetings have already been organised and will probably be intensified in the future. For the EP, it is important to confirm its role as the main parliamentary interlocutor at the European level for national parliaments, leaving the WEU Assembly at the margins.

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

VIII. Conclusions: The European Parliament as a Marginal Player with Growing Potential

To sum up, the powers of the EP in CFSP result from a mix of formal and informal influence.⁵² Although no major progress with regard to the legal situation has been observed since Maastricht, Parliament has developed over the years a practice of intensive interinstitutional contacts and interactions resulting in a considerable degree of information on current issues of CFSP. Main points of controversy however are to be found in the annual report on CFSP by the Council, which too much resembles a compulsory exercise reduced to a minimum, and in the adequate and timely information on CFSP decisions bearing financial implications.

The EP is in general actively seeking information instead of waiting for delivery, and this corresponds to its offensive strategy of exploiting the legal provisions of CFSP as far as possible. An important tool for enhancing its influence can be identified in the existing budgetary powers, which Parliament uses in particular for improving access to information and for growing into the role of a political interlocutor to the Council. The link between civilian and military elements of crisis management and the need of

⁵⁰ See Wolfgang Wessels, *Institutionelle Architektur für eine globale (Zivil-)Macht? Die Gemeinsame Außen- und Sicherheitspolitik im „Verfassungsvertrag“*, in: *Zeitschrift für Staats- und Europawissenschaften*, op. cit., p. 413.

⁵¹ See Protocol on the Role of National Parliaments in the European Union, II. Interparliamentary Cooperation, number 10.

⁵² See Francis Jacobs, *Development of the European Parliament Powers: An Incomplete Agenda?*, in: *European Union Studies Association, 8th Biannual Conference 2003, March 27-29, Nashville, Tennessee*, available under http://aei.pitt.edu/archive/00000441/01/Development_of_the_EP_powers.pdf

further combining cross-pillar resources for effective external action, might strengthen the EP's role in the future, and it could save it from becoming a marginal player in ESDP. As the Treaty provisions have so far not provided for a continuous upgrading of the EP, it will probably continue to seek 'sideways' in influencing CFSP.

In the coming years, the new institutional situation created by the Constitutional Treaty will represent a major challenge to the EP. It 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. Relations with national parliaments will probably grow in importance, leading to increasing interparliamentary contacts and perhaps to new coalitions for enhancing the legitimacy and accountability of CFSP. To this end, the EP should try to intensify its efforts in offering a space for public debate and controversial discussion on foreign and security policy, and provide an opportunity to the citizens for identifying basic choices and alternatives in European foreign and security policy.