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ACCOUNTABILITY OF ESDP OPERATIONS**

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Paper presented at the 3rd Expert Seminar on “The EU in conflict prevention and civil-military crisis management - the quest for effectiveness and legitimacy”, organized by IAI in cooperation with the Institut für Europäische Politik, within the framework of “The EU as a Global Player - Strengths and Weaknesses of the CFSP and ESDP as seen from an Italian-German Angle”, a three-year research programme funded by the Compagnia di San Paolo
Turin, 25-26 June 2009

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The ever growing expansion of the European Security and Defence Policy (ESDP) and particularly the launch of new civilian and military missions within have, since 2003, posed an additional challenge to the EU in terms of legitimacy and democratic accountability. The issue is of particular saliency because it involves two trends that interface with each other in ESDP: European integration on the one hand, and the increasing use of national armed forces for multilaterally mandated missions on the other, involving the progressive decision-making process at a supranational level. In other words, the democratic control of European security policy is located at the crossing of two areas, both being very problematic in terms of democratic legitimacy and democratic control: security policy and European integration (Peters, Wagner and Deitelhoff 2008).

The parliamentary control of the security and defence policy is already difficult at the national level, where the executives have traditionally tended to take independent or even secret decisions without consulting their respective parliaments. To some extent, this historical legacy continues in some States, where the decision to send national troops abroad is taken by the executive power without any involvement of parliament. Ensuring the democratic accountability of ESDP missions has become even trickier when the decision to send troops abroad involves both the national and EU level and the corresponding parliamentary control is problematic at both levels. In this regard, some scholars have argued about a “double democratic deficit” taking place at both these levels (Born and Hänggi 2004; Wagner 2006). Starting with an analysis of the concepts of legitimacy and democratic accountability, this paper investigates the current practices of parliamentary control of ESDP missions at both the EU level (European Parliament) and at national ones, focusing on the Italian and German cases and finally giving some policy recommendations to ensure a better democratic legitimacy and accountability of ESDP missions.

1. Legitimacy and Accountability of ESDP Missions: Why Bothering about Them?

Before investigating on the significance of democratic legitimacy and accountability of ESDP missions, it is necessary to provide a definition of these concepts and delimit the scope of our research. Legitimacy is the quality or state of being legitimate, that is, conform to recognised principles or accepted rules and standards.² Being democracy a

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² Legitimacy must not be confused with the legality, that is the quality or state of being conforming to or permitted by the law. Therefore, while legality basically refers to conformity with the law and is a legal concept, legitimacy refers to conformity with a number of socially-defined principles and values and is a concept from social sciences.

contested concept, democratic legitimacy necessarily refers to beliefs that are subjective and normative (Wagner 2005). Given the wide range of views on what is to be considered democratically legitimate, the debate on democracy in the EU has concentrated on designing a political system that can be considered democratically legitimate from different perspectives in different Member States. Wolfgang Wagner (Wagner 2005) has identified the following pillars of democratic legitimacy for ESDP: 1) legitimacy as ensured by effective governance (“government for the people” or “output legitimacy”); 2) legitimacy as ensured by participatory procedures (“government by the people” or “input legitimacy”);³ at its turn, input legitimacy may take place at national and/or European level; 3) compliance with international law.

Thus, the concept of legitimacy is very broad and in this paper we will focus only on input legitimacy for a number of reasons. First, while the support of EU citizens for EU policies is generally low, this is not so in CFSP and ESDP areas. For example, as many as 64% of Europeans think that in the area of “defence and foreign affairs” decisions should be made by the EU together with national States rather than by national States only (Eurobarometer 2008).⁴ Therefore, output legitimacy is less problematic for ESDP than for other policy areas. On the other hand, input legitimacy is problematic for ESDP because participatory procedures are insufficient, as we will see. In addition, input legitimacy is very much connected with the concept of accountability, that we will also take into consideration.

The concept of political accountability refers to the obligation to give an explanation or account on something to somebody, but scholars are not unanimous on its definition. For example, Mark Bovens (Bovens 2006) broadly defines accountability as a relationship between an actor and a forum, in which an actor has an obligation to explain or justify his conduct, the forum may pose questions and pass a judgement and the actor may face the consequences of this judgement. The theoretical debate identified various types of accountability mechanisms and differentiated between: internal and external accountability (depending on whether the control is exercised by the same body giving the account or by a different one), vertical and horizontal (depending on the existence of a hierarchy between the controller and the controlled), direct and indirect (depending on the existence of intermediary or delegated bodies), formal and informal accountability. Unlike in other EU policy fields, where new forms of accountability have developed (Majone 1997 and 1998),⁵ the control of the executive in the ESDP is still left in the hand of representative bodies. Consequently, in our paper we will take accountability to refer to the legislative control – both at EU and at a national level – over the decisions taken by the Council of the EU to launch an ESDP mission.

³ The concept of democratic legitimacy as having two dimensions (input and output) has been found by Frits W. Scharpf (Scharpf 1997 and 1999).

⁴ The sector of foreign, security and defence policy is the fourth area where citizens would like the EU to have a role, together with Member States. The policy field attracting more support is the fight against terrorism, for which also CFSP and ESDP have a competence, together with JHA.

⁵ For example Giandomenico Majone (1997 and 1998) highlights how European economic integration has transformed the instruments of democratic control of economic policies, leading to the creation of what he called a “regulatory state.” This transformation led to a diminished role of political accountability (performed by parliamentary assemblies and other political bodies) and to an enhanced role of experts and independent agencies.

Democratic legitimacy and accountability have usually been used in connection with nation-States, to which the traditional division of powers theorised by Montesquieu applies. As the EU gained new competencies, the debate has often assumed that a lack of institutional isomorphism with the constitutions of EU nation-States necessarily implies a lack of democratic (input) legitimacy (Scharpf 2003). In fact, while in most nation-States the executive power (government rules), and the legislative (parliament) controls the executive and decides legislation, the same dynamic is not reproduced at the EU level, where the European Parliament does not enjoy the same powers as its national counterparts. This is even more apparent in some policy areas – like CFSP and ESDP - characterised by an intergovernmental logic, where the role of the EP in approving legislation is practically nonexistent and limited to a consultative role. Yet, it should be considered that national representatives that vote in the Council of the EU are members of national governments and are therefore accountable to their respective parliaments. Therefore, as we will analyse in detail (cfr. *infra*), the role of the European Parliament in ESDP is very marginal and we have to take the national level into consideration as well.

Here, the situation is not much better, let alone the fact that the conception and practice of accountability widely differs from State to State. In fact, the area of foreign and security policy has been traditionally characterised by a considerable level of secrecy and by a stronger role for the executive and a corresponding minor role for parliaments; some EU countries still keep the tradition and do not currently have legal provisions that ensure the parliamentary control on the deployment of troops abroad. Also, a long tradition in political theory tends to apply different standards of democratic control to domestic policies on the one hand and foreign policy on the other, arguing that foreign and security policy belong to the exclusive remit of the executive and are excluded from the sphere of democratic control (Peters, Wagner and Deitelhoff 2008).⁶

With reference to this, scholars have talked of a “double democratic deficit” for ESDP (Born and Hänggi 2004; Wagner 2006): while, on the one hand, national parliaments are losing control of security decisions taken at the European level, on the other hand this has not been compensated by an increase in the powers of the European Parliament. However, it should be noted that the issue of democratic legitimacy and accountability does regard all the international (military and civilian) missions and not only those launched by the EU. In fact, the post-Cold War practice of multinational missions made up of troops coming from different Member States – of which ESDP is the most notable, but certainly not the only example – implies the problem of the democratic control over the decision to deploy troops and also the problem of the level (national, supranational or both) at which this democratic control should take place. Therefore, the issue of ESDP is located at the crossing of two areas, (post-Cold War) security policy and European integration, both of them problematic in terms of democratic control.

As for the first issue - the transformation of security policy following the Cold-War - the current developments in the international arena and in the use of force in international relations are challenging the existing balance between the executive and the legislative in the security field in many EU Member States. The diminished

⁶ The classics of this tradition mentioned by these authors are Locke and Toqueville.

concerns for territorial protection and the increase in the number of troops deployed abroad on the one hand, the use of military interventions for humanitarian purposes together with a diminished differentiation between military and civilian operations on the other are the main sources of this challenge. In many EU Member States the rules governing the use of the military, inherited by a different international situation and often drafted in the aftermath of the Second World War, are not adequate to regulate these new trends. Therefore, as argued by the literature on the democratic peace theory, (as recently recalled by Wagner, 2006) the democratic control of security policy and its democratic accountability cannot be overlooked and need to be constantly monitored as they are connected to the disposition of a country towards the use of violence in international relations.

In the case of ESDP operation, in addition, the transformations just mentioned are connected to the process of European integration, which leads to the further question of whether their control should lie at the European or national level. The main point to be recalled here is that the democratic principle presupposes that the political space in which decisions are made and the social space in which these decisions apply are congruent (Scharpf 1993; Wolf 2000). Following the emergence of globalization and denationalisation, a growing incongruence between political and social spaces has taken place (Zürn 2000; Peters, Wagner and Deitelhoff 2008): hence, the need to ensure democratic control at the international level. Someone may argue that the need for a democratic control should take place at a national level only, since the decisions taken at the level of the Council of the EU (the decision to launch a mission is usually taken by the Council through a joint action) are always taken by a unanimity vote by a representative of the government of each Member States, which are in their turn controlled by national parliaments. However, as it has been suggested by some scholars (Moravcsik 2002; Koenig-Archibugi 2002), national governments tend to exploit the tendency of intergovernmental governance to shift the power balance in favour of the executive to the detriment of the parliaments. In fact, while the former are represented at the supranational level, the latter are not. Secondly, it may appear contradictory that the EU, that is based on law and on the principles such as democracy (enshrined in art. 6 of the treaty on the EU) and that has among its foreign and security policy aims that of promoting democratic practices, including accountability, launches its civilian and military missions without a proper democratic accountability procedure.

2. The Role of the European Parliament in the Oversight of ESDP Missions

For all the Treaty revisions that have provided it with increasing power in a number of EU policy areas, the role of the European Parliament (EP) in security and defence policy is still marginal, as many studies suggest (Diedrichs 2004). ESDP is a predominantly intergovernmental policy, where all decisions are taken by the representatives of national governments by a unanimity vote, and therefore it is rather up to national parliaments to scrutinise their governments' performance in this EU policy area. Also, one of the primary concerns of the ESDP architects has been its efficiency (Barbé and Herranz Surrallés, 2008), while other aspects, such as democratic accountability, have been sidelined. The current Treaties grant information and

consulting powers to the EP in the Common Foreign and Security Policy (CFSP) field,⁷ but fail to mention ESDP. In fact, there is a legal ambiguity about the relationship between CFSP and ESDP in the Nice Treaty (Bono 2006): on the one hand, the European Council stated that the ESDP is an integral part of CFSP. On the other, the main bodies dealing with ESDP issues have been set up outside the institutional framework provided by the Treaties and so far only the role of the Political and Security Committee (PSC) has been integrated into the Nice Treaty. Therefore, from a strict legal point of view, the other ESDP institutions fall beyond the EP's jurisdiction.

However, we consider that ESDP is an integral part of CFSP, and that the former is not totally outside of parliamentary control (Diedrichs 2004). According to art. 21 TEU, the EP has the right to be consulted and informed on the main developments of CFSP, but these powers are both limited and vague. First, it is not specified what the "main aspects and basic choices of the CFSP" are. Furthermore, the requirement of consultation of the European Parliament by the Presidency does not specify whether this consultation should be ex-ante or ex-post (Barbé and Herranz Surrallés 2008). These limited powers will be enhanced by the Lisbon Treaty, that in its amended art. 21 of the EU Treaty explicitly extends the consultation to ESDP and provides that the new High Representative of the Union for Foreign Affairs and Security Policy "shall regularly consult" the European Parliament on CFSP/ESDP developments and shall "ensure that the views of the European Parliament are duly taken into consideration".

The Lisbon Treaty also raises the number of plenary sitting of the European Parliament on CFSP/ESDP from one to two every year. While the Treaty provisions on the democratic control of ESDP are extremely limited, some more powers can be drawn from the Interinstitutional Agreements (IIA) with the Council and the Commission. In particular, the IIA of 20 November 2002 provided for a (limited) access by the European Parliament to sensitive information of the Council in the field of security and defence policy. According to this agreement, the right of access to confidential documents – but not to all secret documents - was granted only to a Special Committee composed of five MEPs or to the EP President, which can consult them on the premises of the Council only.⁸

The passing of these documents to the EP is subject to many restrictions which, as it was underlined by some analysts (Tappert 2003; Diedrichs 2004) creates an unusual situation of discrimination among the members of the Parliament, resulting from the fact that only a limited number of MEPs have access to sensitive information. Furthermore, the access might be denied by Member States and third parties in case the confidential documents concern them. The provisions regulating the access of the EP to

⁷ Art. 21 of the consolidated version of the Treaty on the EU reads: "The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy. The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy."

⁸ The Special Committee is chaired by the Chairman of the Foreign Affairs Committee (AFET) of the European Parliament and composed of four members designated by the Conference of Presidents, including the Chairman of the Security and Defence Sub-Committee (SEDE).

the Council sensitive documents on ESDP may be revised in order to allow a broader right of access. This would meet some resistance from the Council, but given that it entails only a reform of the existing IIA, that is an agreement among the EU institutions and not a reform of the Treaties, it could be more easily realised.

Investigating the role of the EP in the oversight of ESDP missions, it is important to make a distinction between the ex ante and the ex-post oversight. The former refers to any form of parliamentary oversight from the identification of a crisis to the 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; the raising of questions; or the organisation of (public) hearings (Born et al. 2007). Ex-post oversight refers to any oversight that take place after the decision to take action has been taken and involves the phases of implementation, the eventual refocusing of EU action and termination of operations.

With specific reference to the decision-making procedure for launching an ESDP mission, the EP does not have any formal power of authorisation. In fact, the decision to launch a mission is taken unanimously by the Council in its General Affairs and External Relations formation through a Joint Action, with an important role played by the Political and Security Committee (PSC), that drafts opinions and may recommend that the Council adopt the Joint Action. Therefore, the EP's ex ante role in overseeing an ESDP mission is to a large extent based on access to information and dialogue with the EU's executive institutions (Born et al. 2007).⁹ For instance, EP can issue non-binding resolutions and recommendations before a Joint Action is taken or before an ESDP mission is launched. These resolutions are usually adopted following statements made by Council and Commission officials before the European Parliament (Born et al. 2007). Particularly active in the dialogue with the Council over ESDP missions, including future ones, has been the Security and Defence Sub-Committee (SEDE), set up in 2004 within the Foreign Affairs (AFET) Committee of the EP. SEDE has, for example, established the practice of inviting the Permanent Representative of the country holding the EU Presidency to brief it on its programme and developments in ESDP (Barbé and Herranz Surrallés 2008: 88). Interestingly, the discussions that SEDE has with Council officials tend to be increasingly focused on future ESDP missions; of course top-secret information is not given in these meetings.

An improvement of the right of the EP to be informed came with the 2006 Interinstitutional Agreement, that provided that each year the Council Presidency would consult the European Parliament on a forward-looking Council document to be transmitted by June 15 for the year in question. This document sets out the main aspects and basic choices of the CFSP, including the financial implications for the general budget of the European Union and an evaluation of the measures launched in the previous year. In addition, the Council Presidency keeps the European Parliament informed by holding joint consultation meetings at least five times a year, in the framework of the regular political dialogue on the CFSP. Participants in these meetings include the European Parliament (the bureaux of the two Committees concerned), the

⁹ The EP is associated to the decision-making process only if additional resources are required from the CFSP budget.

Council, represented by the Chairman of the Political and Security Committee and the Commission.

As far as ex-post accountability oversight is concerned, the powers of the EP are also limited. Differently from ex ante resolutions, no ex-post resolutions have yet been adopted by the EP on a ESDP mission. First, it has to be recalled that each year the European Parliament receives a report from the Council on CFSP and ESDP-related developments, on the basis of which the EP drafts at its turn its own report containing recommendations on the subject. The point is that the EP report does not have much impact on the Council's strategy.¹⁰ Similarly, the European Parliament may receive written reports from the European Union's Special Representatives (EUSR). However, EUSRs are not obliged to send these reports (Born et al. 2007), and the result is that only on some occasions have these reports been drafted and sent to the EP.

On the other hand, hearings and evaluations have been used more, especially by the SEDE Sub-Committee, its main responsibility being to monitor the ESDP civilian and military operations (Barbé and Herranz Surrallés 2008: 88). Individual MEPs may also address specific questions to the Council, which is obliged to provide an oral answer directly at the question time or a written one at a later date. In addition, members of AFET and SEDE have a right to pay a visit to the troops deployed for a mission, and the results of the visit are written up in a report by the Chair of the delegation.

While the European Parliament has limited powers – both ex ante and ex-post - in overseeing ESDP missions, let alone in authorising them, it has some leverage regarding the decision on the budget for ESDP civilian missions. The rules that define the financing of civilian missions were laid down in the 2001 Commission Communication “Financing of Civilian Crisis Management Operations”, that outlined three different 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 of operations are first pillar actions, implemented under the Community framework and charged to the European Communities budget, which means that the EP has scrutiny and co-decision power over them.

The second category of operations (i.e. executive police operations) is decided by a Council Joint Action under the second pillar and is normally charged to the CFSP budget. The EP has some power on the definition of this budget, in that it can set a top limit to it. Furthermore, the Council shall provide the European Parliament every three months with a detailed list of CFSP commitment appropriations that includes costs for civilian ESDP missions. Should the Council consider that CFSP budget appropriations for operations are not sufficient, it has to ask the EP for additional funds. The Council

¹⁰ According to the EP's report on the 2007 Council report on CFSP “the Council's report systematically refers to the resolutions adopted by the European Parliament; regrets, however, that the Council does not engage in a substantive dialogue on the views advanced by Parliament, nor does it refer to those resolutions in operational documents such as joint actions or common positions... Is of the opinion that, rather than content itself with providing an exhaustive catalogue of the activities carried out, the Council's annual report should provide the opportunity to establish a dialogue with the European Parliament aimed at developing a more strategic approach to the CFSP, based on the identification of the main challenges, and defining priorities and objectives for future action”.

must inform the EP every time CFSP expenditure is envisaged and in any case no later than five days after the adoption of a final CFSP decision. Finally, the Joint Consultation Meetings, formally introduced by the 2006 Interinstitutional Agreement (see *supra*) with the aim to keep the former abreast of financial planning and spending in CFSP, take place at least five times a year. However, it should be noted that the Council may decide that some of the costs are to be borne separately by Member States. These are normally the costs related to seconded national personnel and costs incurred during the preparatory phase of an operation, e.g. fact finding missions. As some scholars have argued (Barbé and Herranz Surrallés 2008: 92), the existence of these various amounts financed through the Member States clearly hinders the Parliament's supervisory tasks.

As far as the financing of ESDP military mission is concerned, the EP has no oversight powers, neither on the common costs, that are financed through the so called Athena Mechanism, a common fund for military missions, where the contributions of Member State are made in advance on the basis of a fixed gross national income (GNI) percentage, neither on the so called "operational costs", that must be borne by Member States on the basis of the "costs lie where they fall" principle, applied also by international organisations, such as NATO.

3. Other Supranational Actors in the Oversight of ESDP Missions? The WEU's Parliamentary Assembly

The European Parliament is for sure the most prominent supranational parliamentary body in the oversight of ESDP missions, but it is not the only one and has to "compete" (Wagner 2005: 22) with the so called Interim European Security and Defence Assembly, the former Parliamentary Assembly of the Western European Union (WEU) based in Paris. Although in 2000 the operational tasks of the WEU were transferred to the EU, the organisation was not completely disbanded and some of its bodies, including the WEU Parliamentary Assembly, were maintained. Differently from the EP, the Interim European Security and Defence Assembly is composed of parliamentarians that are not elected, but nominated from national parliaments. This parliamentary body has indeed gained a considerable expertise and experience in following ESDP developments, partly because it can count on a permanent secretariat and a specialised staff (Gavrilescu 2004). However, the very existence of a competing supranational parliamentary body in charge of overseeing ESDP is complicating the accountability system for ESDP missions, without providing a real value added. Enhancing the status and powers of the WEU Parliamentary Assembly, as it was suggested during the Convention on the Future of Europe, would further complicate things, to the detriment of a clear-cut division of competences between different bodies and create inevitable turf battles with the European Parliament that, in its turn, has been struggling to defend and possibly increase the limited competences that it has in supervising ESDP missions.

Finally, the functioning of the WEU Parliamentary Assembly, let alone its enhancement, would run counter to some important developments, such as the strengthening the powers of both the EP, that has taken place since the Maastricht Treaty and that of national ones, provided for by the Lisbon Treaty. Last but certainly

not least, being a WEU and not a EU body, the Interim European Security and Defence Assembly includes parliamentarians from non-EU Member States (i.e. Norway, Turkey etc.), which raises some doubts about the legitimacy of such a body to scrutinise ESDP. Alongside the Interim European Security and Defence Assembly, other forms of interparliamentary cooperation exist, that offer an additional stratum of oversight (Born et al. 2007: 13). These include the Conference of the Community and European Affairs Committees (COSAC), which brings together parliamentarians from the Community and European Affairs Committees of national parliaments as well as representatives of the EP;¹¹ the Conference of Foreign Affairs Committee Chairpersons (COFACC), which gathers the chairpersons of the Committees on Foreign Affairs of the various national parliaments and of the European Parliament and, on the same pattern, the Conference of the Defence Committee, which focuses on defence topics.¹²

The value of this form of interparliamentary exchange was recognized by the new Lisbon Treaty, which explicitly recommended the organisation of joint meetings to deal with CFSP/ESDP decisions. Obviously, this form of interparliamentary cooperation can only have a narrow scope and, given the limited number of meetings the two conferences cannot perform a systematic oversight of ESDP decisions and can only provide a limited exchange of information. Therefore, relying on interparliamentary cooperation is certainly not the way to tackle the issue of the democratic control of ESDP. Yet, interparliamentary meetings are important occasions for the exchange of good practices and provide a complement to the action currently carried out at the European and national level, without posing a challenge to the role of the European Parliament (they are not an institutionalized body, as the WEU PA).

4. The Role of National Parliaments

Besides the oversight performed at the European level, parliamentary control of EU security and defence policy is also carried out at the national level. Procedures adopted in every Member State vary depending on the relation between government and the legislative, the involvement of the legislative in foreign policy making, and on parliament's internal rules of procedures. The main terms of reference for the evaluation of the effectiveness of these systems regard the distinction between ex-ante and ex-post oversight,¹³ the scope of oversight, the difference between legislative and political instruments of control and between the procedures applying to civilian and military operations. Focusing on these main points, this section will illustrate the oversight system of the Italian and the German legislatures. Unlike in most other EU Member

¹¹ However, it should be noted that CFSP and ESDP issues are excluded from the agenda of COSAC meetings.

¹² These joint meetings are hosted by the national parliament of the country which holds the Presidency of the European Union and usually allow discussion with the Presidency (foreign minister and/or Prime Minister) and various experts in the field of foreign affairs and defence. A representative of the European Commission and the High Representative for Common Foreign and Security Policy are often invited to attend the meeting.

¹³ While ex-ante oversight refers to the intervention of national parliaments in the decision making process (formulation and approval of the joint actions establishing the missions, decision concerning the deployment and mandate of national forces), ex-post oversight occurs after the missions have been launched and relates to their implementation and revision. See previous paragraph.

States, in Germany and Italy decisions concerning the launch of military operation are not a prerogative of the government and require the approval of the legislative.¹⁴ On the basis of this tradition, parliaments of these two countries have inherited strong formal powers vis-à-vis the government also on decisions concerning ESDP operations abroad. Yet, currently, these procedures are coming under an increasing pressure. On the one hand, the multiplication of civilian missions, which are not covered by the rules regulating the deployment of military personnel, and the intergovernmental negotiations, which occur at the European level ahead of national decision, are undermining the effective powers of these parliaments. At the same time, the increasing number of operations (which often imply low scale commitments) and the necessity of fast decision making make parliamentary procedures redundant or, at times, inefficient. In both countries a debate is open on the opportunity and need for new instruments of control.

5. The Italian Parliament

The Italian Parliament is composed of two chambers – the Camera dei Deputati (Chamber of Deputies) and the Senato della Repubblica (Senate) – which have exactly the same functions. In Italy, both chambers of Parliament have adopted a “document-based” system of oversight of European affairs, which focuses more on examining draft legislative acts and other decisions emanating from the EU institutions than on the proceedings of individual Council meetings.¹⁵ For a long time, the incomplete implementation of provisions concerning the transmission of documents from the government and the scarce cooperation of the government led the Italian Parliament to play only a marginal role in the EU decision making process (Bindi and Grassi 2001; Furlong 1996). In 2005, an important reform tried to cope with these shortcomings reinforcing both the efficiency and the accountability of decision making.¹⁶ According to the new provisions, the government must send all EU related documents to both chambers - including CFSP confidential documents - giving Parliament access to information not available in many other EU Member States. Once the documents are transmitted to Parliament, yet, no institutionalised system guarantees that they will be examined, as this remains a discretionary choice of parliamentarians.¹⁷ According to the 2005 reform, in addition, Ministers cannot agree on any EU draft legislation in the

¹⁴ This differentiates Germany and Italy from most other EU Member States. For a comparison see COSAC 2008.

¹⁵ COSAC distinguishes between systems “document-based” which focuses on scrutiny of documents emanating from the EU institutions, and other systems which focus on scrutiny of the EU decision-making process, often concentrating on their government’s position in the Council. See COSAC 2007.

¹⁶ Italian Law 11/2005 of 4/2/2005, (here and elsewhere translated from the Italian) “General rules on the participation of Italy in the normative process of the European Union and procedures concerning the implementation of European law”. Accordingly, the transmission of documents is made by the Department for European Affairs which de facto acts as a connector between the Foreign Ministry and Parliament. Texts with an Italian version should be transmitted weekly, while texts in other languages should be made available through a database.

¹⁷ This is different from what happens, for example, in the UK, where the European Scrutiny Committee examine and clear every week all documents transmitted by the government.

Council until Parliament has completed scrutiny, and the cabinet must brief Parliament regularly on the meetings of the European Council and the EU Councils of Ministers.¹⁸

The adoption of the new provisions had a positive impact on the involvement of Parliament in EU decision making, but brought only a limited contribution to the scrutiny of Italy's missions abroad (including EDSP missions). The main reason for this is that the activity of the European Affairs Committees focus on broad horizontal issues and the oversight of CFSP/ESDP is mainstreamed in the parliamentary activity. *De facto*, this means that the oversight of decisions concerning this policy field is carried out together with that of national foreign policy, (mostly) by the foreign affairs and defence Committees. On the one hand, this procedure renders the scrutiny of EU decisions heavily dependent on the national foreign policy agenda; on the other hand, it partially compensates for the shortcomings of Parliament's document based system of oversight, which can hardly cope with the informal and fast decision making which is typical of this policy domain.

As for the deployment of military missions, as already mentioned the Italian Constitution gives Parliament strong formal powers vis-à-vis the government in the foreign policy domain. Parliament, indeed, has the right to vote on the declaration of war as this provision was drafted in the aftermath of the Second World War in order to prevent the repetition of the events which led to the involvement of the country into the conflict. This constitutional provision, nevertheless, does not mention the deployment of troops abroad and, in light of this legal void, in the last years Parliament has been consulted on ESDP operations only because it retains the power of purse. In particular, in order to guarantee its international commitments and cope with the new security challenges, the government has resorted to the adoption of decree laws financing its operations abroad every six months. As they are considered provisional instruments, in order to remain in force decree laws have to be converted into law by Parliament within a two-month delay. Currently, the legal doctrine and parliamentary groups do not agree on the constitutionality of this instrument which, *de facto* seems to compensate a legal void left by the Constitution.

As legal instruments for the approval of the deployment of troops abroad, decree laws have advantages and inconveniences. Decision-making through decree laws provides a good balance between certainty (the renewal of financial support for the missions abroad is not submitted to long and uncertain parliamentary procedures) and flexibility (the necessary amount of funds can be updated and adapted every six months); in addition, as compared to other European countries (where the legislative is excluded from decisions on the deployment of troops, see for example the United Kingdom), decree laws guarantee the consultation of parliament at least every six months. At the same time, nevertheless, if compared with other legislative instruments, decree laws pose important limits to parliamentary accountability. First, as the decree is an operative instrument adopted to ensure the continuation of missions, it only guarantees the intervention of Parliament after the mission has already been decided at the European

¹⁸ This provision has not been fully implemented yet and the cabinet refers with certain regularity only on the European Council agenda.

level.¹⁹ By relying on this form of control, thus, Parliament does not have the opportunity to be informed about the European decisions in advance; its decision making power is limited to a take or leave option and eroded by negotiations taking place at the intergovernmental level and often by the subsequent use of party discipline by the government. Second, a single decree usually covers all Italy's military missions abroad, disregarding what goals, multilateral organisation or third country they are linked with. In particular, decrees cover not only military missions but also humanitarian missions or any other activity which is associated with them; ESDP civilian missions which are associated with other military missions, and the deployment of armed forces for the purposes of police and civilian missions are also financed through the six-monthly decrees. Even though, at times, parliamentarians ask to vote separately on single missions (it occurred, for example, for Italy's mission in Iraq under the past centre-left government), the government tends to oppose this alternative.

Finally, as the main goal of the decrees is to cover the costs of missions, Parliament is consulted only because it retains the power of purse; the main consequence of this approach is that parliamentary debates focus on financial issues, such as the total amount of public spending, its sustainability and the different repartition among headings. These issues distract from the political implications of each mission, for both the national and European foreign policy.

Apart from the decree laws, parliamentarians make scarce use of other instruments at their disposal for the oversight of decisions concerning EU missions abroad. As already mentioned, there is no systematic shift of EU documents transmitted by the government and the European Affairs Committees devote more attention to EC rather than to EU decisions. As for the instruments of political control (oral and written questions, Committees' inquiries), in Italy they are less institutionalised than elsewhere (the frequency of hearings may vary and their content depends on the importance attached to single issues), and Italian MPs are often less prepared to exploit them than their colleagues of other EU countries.²⁰ Finally, unlike many of their colleagues in the EU, Italian MPs are entitled to give the government political directives in the foreign policy domain by approving motions or resolutions; although the latter are not legally-binding, the government is politically bound by them and never takes initiatives which are in open contradiction with Parliament. Due to the high domestic workload, nevertheless, rarely has this instrument been used in connection with operations abroad and, in any case, only with reference to the most controversial among them (for example the Gulf war of 1990-1991).

As for ex-post accountability, the Italian government must refer to both Chambers on the development of military missions abroad every six months; to this purpose, it sends

¹⁹ As shown by Bono (Bono 2005), this was the case for example of the ESDP Operation Concordia (deployed in the Former Yugoslav Republic of Macedonia), which was approved by the EU Council of Minister on 27 January 2003. The Government informed Parliament of this Operation on 5 February during a joint meeting of the Defence and Foreign Affairs Committees.

²⁰ On the use of these instruments for the oversight of ESDP missions Concordia (Former Yugoslav Republic of Macedonia) and Artemis (Democratic Republic of Congo), see Bono 2005.

a six-monthly written relation.²¹ No instrument guarantees the ex-post oversight of civilian missions. Apart from this six-monthly relation, Parliament has no other institutional tools that guarantee the discussion of missions abroad. Committees, for example, spend much of their time in the legislative activity and do not have time or resources available to perform more than few inquiries per legislature.²² As for the hearings on the Council's meetings, they are not very regular and cover mostly the European Council meetings.

In light of the weaknesses of the system, two proposals for reform are currently being discussed in the Chamber of Deputies.²³ The two proposals deal with a broad number of issues, (including for example the legal and economic treatment of personnel deployed); from the debates in Parliament, for the moment, no agreement has emerged on the possibility of an intervention on the executive-legislative relations a regard the approval of military deployments abroad.

6. The German Parliament

The German Parliament is composed of two chambers: the Bundesrat, where German Länder are represented, and the Bundestag, which is the low chamber. The system of oversight of EU decision making adopted by these chambers shares many similarities with that of the Italian Parliament. The German Basic Law obliges the federal government to provide Parliament with "comprehensive" information about the EU legislation process extensively, and as early as possible. Accordingly, all ministerial departments (under the coordination of the Federal Ministry of Finance) send to both chambers all EU documents for which they are responsible; documents related to the CFSP are transmitted by the Foreign Office. As in the Italian system, also in Germany no institutionalised procedure guarantees that, once the documents are transmitted, they will be examined. In the Bundestag, the European Affairs Committees is responsible for sending the documents to the relevant Committees which are in charge of their examination; yet, in every committee, only about 5 per cent of them enter the stage of deliberation (Sprungk 2007).

Besides this task, the European Affairs Committee launches debates on horizontal issues, holds regular hearings with the members of the government on the negotiation in the Council of Minister and the European Council, and formulates political recommendations for the government. Even though the German Parliament does not have a proper "scrutiny reserve" (which usually set a time limit for the chambers to discuss a proposal before the government can agree on it in the Council), the German

²¹ Art. 14, Law 231 approved on 11 August 2003. An exception occurred in the first semester of 2008 when the Foreign Minister was asked by Parliament to refer on this specific subject before the specialised committees of the Chamber and Senate (the hearing occurred on 11 June 2008).

²² Currently, an inquiry concerning Italy's military missions abroad is being conducted by the Foreign Affairs and Defence Committees of the Chamber of Deputies. The inquiry has been launched in view of the exam of two law proposals to reform the procedure of approval and parliamentary intervention of these missions.

²³ Law proposals C. 1213 Cirielli and C. 1820 Garofani on "Disposizioni per la partecipazione italiana a missioni internazionali."

Basic Law states that the government has to enable the Bundestag to vote on a resolution before a decision is taken in the Council.

As elsewhere, the activity of the European Affairs Committees brings only a limited contribution to the scrutiny of CFSP and ESDP decisions, as the latter is mainstreamed in the parliamentary activity and takes place together with the oversight of national foreign and defence policy. For historical reasons, as compared with many of its European counterparts, the German Parliament has strong power vis-à-vis the executive in this policy field. Traditionally, foreign policy making in Germany is not considered as a prerogative of the executive but a competence of the executive and the legislative.

As for security and defence issues, the German Bundestag has the power of determining a state of defence (of the country), terminating the state of defence as well as providing for the conclusion of peace. Until the end of the Cold War, yet, constitutional lawyers and politicians excluded that the Basic Law permitted the participation of the national army in military missions “out of area” (Wagner 2006). After the end of the Cold War, when the federal government came under increasing pressure to adopt a more proactive foreign and security policy, this legal doctrine was first challenged and then modified through the rulings of the Constitutional Court and the adoption of new laws, which provide also the framework for the adoption of any decision in this regard. In particular, the Parliamentary Participation Law approved in 2005²⁴ gives the Bundestag strong powers of ex-ante control: accordingly, any participation of armed forces personnel in missions abroad requires a prior parliamentary authorisation. Parliament must be informed about the following elements of a deployment: 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 (Born et al. 2007).

Under the same Law, the Bundestag has the power to withdraw German troops, to discontinue their missions or to 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 (Angel et al. 2008; Wagner 2006; Born et al. 2007). For Wagner (2006), these rules guarantee a strong involvement of the German Parliament in decision making concerning ESDP operation since, *de facto*, ever since German troops have participated in military missions, a prior approval of parliament has been requested. Yet, also in the German case important *caveat* apply to this conclusion. First, parliamentary approval is usually requested after the decision has already been taken at the European level; concerns, thus, have been raised about the pre-emption of parliamentary prerogatives by the previous inter-governmental negotiations (Noetzel and Schreer 2007). In addition, as parliament’s decisions tie the hands of the government, at times the latter has tried to extend its room for manoeuvre reducing parliamentary accountability: at the beginning of her mandate, for example, the Federal Chancellor Angela Merkel suggested that the Bundestag Defence Committee give her a free mandate to commit Germany to upcoming military ESDP missions during her

²⁴ Parlamentsbeteiligungsgesetz, in *Bundesgesetzblatt*, Jg. 2005, Teil 1, nr. 17, Bonn, 23 March 2005, available at <http://www.bundestag.de/ausschuesse/a03/ParlBetG.pdf>.

entire term; the proposal was refused (Born et al. 2007).²⁵ Finally, the general provisions mentioned above do not apply to preparatory measures and to humanitarian missions during which arms are carried for the purpose of self-defence only (Wagner, 2006); for missions of low intensity and importance, a simplified procedure is applied.²⁶

Besides the instruments of ex-ante oversight, the German Parliament disposes also of important tools of ex-post accountability. On a regular basis, the Defence Minister or its deputy, accompanied by high-ranking military personnel appear before the Bundestag Defence Committee to discuss all military operations in which Germany is taking part; usually meetings concerning the most sensitive issues take place behind closed doors. Furthermore, on a weekly basis, the members of the Committee receive a confidential report from the Defence Ministry on all military ESDP missions. These weekly reports contain information about each of the military deployments abroad, regarding: the political situation, the security situation, incidents, visits, and the performance of the military units concerned. As already mentioned, in addition, the Parliamentary Participation Act gives the Bundestag the power to withdraw German troops and to discontinue their mission. Finally, as for other policy fields, German MPS have at their disposal the traditional instruments of political control of the government such as questions, hearings, and inquiries. Yet, probably due to the high workload and the absence of a political conflict between majority and opposition on European issues, these instruments are not used very often to discuss EU related issues.

Despite its strong formal powers in the oversight of military missions, the main weakness of the German Parliament in the oversight of ESDP operation is due to the fact that it is excluded from the control of any civilian missions. As mentioned above, provisions concerning parliamentary approval do not apply to police missions or to humanitarian missions during which arms are carried for the purpose of self-defence. Consequently, no provision guarantees parliamentary involvement in decisions concerning ESDP civilian missions and the Bundestag has the only right to be informed about it (Born et al. 2007).²⁷ Some form of control exist only ex post, as the Bundestag has the power to end a deployment if it decides so; yet, the involvement of Members of the Bundestag is rendered difficult by the fact that, apart from the provisions regulating the transmission of EU documents, no formal agreement regulates the exchange of information between Parliament and the Interior Ministry. German MPs, therefore, have to rely on traditional instruments such as hearings and on oral and written questions to obtain updated information on the ongoing performance and outcome of an operation. As for the most sensitive military issues, also in this field transparency is undermined by the fact that the Interior Committee of the Bundestag (responsible for oversight of civilian ESDP missions) meets behind closed doors (Born et al. 2007).

²⁵ In the case of the Operation Enduring Freedom, by contrast, the government enhanced its room for manoeuvre by regularly applying (when asking the renewal of the mandate) for significantly larger troops contingents than it actually deployed (Noetzel and Schreer 2007).

²⁶ After the government has outlined why a given mission can be considered to be of low intensity or importance, a respective documented is circulated among the members of parliament. The mission is considered to be approved unless, within a period of seven days, one fraction or a minimum of five per cent of parliamentarians call for a formal procedure (Wagner 2006).

²⁷ A survey conducted by COSAC in 2006 on the scrutiny of six ESDP civilian operations reveals that the German Bundestag performed no formal scrutiny of any of these missions and that it was only informed about them by a letter of the government. See COSAC 2006.

In light of these elements, also in Germany there has been a debate on reforming the rules regulating parliamentary involvement in ESDP decision making. The main proposals for reform aim to ensure: an enhanced involvement in the decisions concerning ESDP civilian mission; better access to information about missions at an earlier stage in the planning process; the involvement of the public through the organisation of public parliamentary hearings; enhanced cooperation between national parliaments of EU Member States in the sharing of information and experiences (Born et al. 2007). It remains to be seen, yet, if the enhancement of information flows, transparency and public debating can really make up for the asymmetric access to information between the legislative and the government, and how it can cope with the need of secrecy typical of this policy field.

Conclusions

The debate about the so called “democratic deficit” in the EU has acquired a specific and peculiar dimension with reference to ESDP. While there is a strong popular support for ESDP (output legitimacy), problems remain in connection with its participatory procedures (input legitimacy), which are closely linked in its turn with the issue of democratic accountability. Parliamentary control is deemed to be still the best way to ensure democratic legitimacy and accountability to ESDP.

As we have seen, while traditionally the democratic control of EU security and defence policy has rested with the national level, the role of national parliaments in this field has come under an increasing pressure. On the one hand, the existing balance between the executive and the legislative at the national level is being challenged by the transformation of security policy following the Cold-War. Taking into consideration the case of Germany and Italy, for example, we have seen that while in the aftermath of the Second World War the two countries delegated parliaments strong powers in the field of defence and security, the provisions then drafted are not adequate to the current needs of ESDP operations abroad (see the use of decree law for financing military operations abroad in Italy and the lack of parliamentary control of ESDP civilian missions in Germany). In particular, while the use of traditional procedures established in the aftermath of the Second World War (mainly attributing a veto power to parliaments) render too long and complex the approval of the deployment of troops abroad (leading governments to look for alternative solutions), alternative (mainly political) instruments of oversight are still under development. On the other hand, as it has been suggested by some scholars, national governments tend to exploit the tendency of intergovernmental governance to shift the power balance in favour of the executive to the detriment of the parliaments. In fact, while the former are represented at the supranational level, the latter are not.

Yet, the importance of parliamentary control of ESDP operations cannot be disregarded and needs to be constantly monitored: actually, as argued by the democratic peace theory, democratic control is connected to the use of violence in international relations; in addition, democratic accountability of foreign policy is connected to the EU's international image, as it may appear contradictory that an organisation, such as the EU,

that is based on law and on the principles such as democracy (enshrined in art. 6 of the Treaty on the EU) and that has among its foreign and security policy aims that of promoting democratic practices, including accountability, launches its civilian and military missions without a proper democratic accountability procedure.

Having shown the limits of the control of ESDP at the national level, the point is to determine who should ensure this control. While the intensification of cooperation among national parliaments in this field can certainly be regarded as a positive step, it seems still too limited for the scope and goals of ESDP. Instead, we support the idea that it is the European Parliament which has the potential to fill the void left by national parliaments. In fact, not all national parliaments have the power to scrutinise ESDP missions and also not all the parliaments that have this power do use it, as we have seen in the case of the Italian Parliament. Also, in order to ensure a rapid and effective scrutiny of ESDP missions, national parliaments should be entrusted with more resources, including human resources. Currently, the EP does not have any formal prior power of authorisation over the decision to launch an ESDP mission, and also its post hoc powers are limited. However, it is trying to make the best out of these powers, in particular through the work of the Security and Defence Sub-Committee, that has been establishing itself as an important interlocutor for the Council. Also, it is using its budgetary powers in the financing of ESDP civilian missions. In view of the difficulty of further Treaty reforms, some rights of the EP could be enhanced by way of approving new Interinstitutional Agreements or revising the old ones. It would be particularly important to extend the access of the EP to sensitive Council documents on ESDP, which can be currently consulted by only a few selected MEPs. The extension of these powers could not only compensate the diminished role of national parliaments, but also guarantee the congruence between social and political space, which is at the basis of any democratic system. .

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