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# **The Contested 'Parliamentarisation' of EU Foreign and Security Policy**

The role of the European Parliament following the introduction of the Treaty of Lisbon

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## Summary

Recent incidents such as the unprecedented rejection of an international agreement – the EU-US SWIFT Agreement – by the European Parliament (EP) or the Parliament's assertiveness during the negotiations on the creation of the European External Action Service have contributed to raising awareness of the important position that the EP is acquiring in the Union's external action, especially since the entry into force of the Treaty of Lisbon. This increased involvement of the European Parliament in foreign and security affairs appears as a remarkable development since this area of EU activity has been among the most resistant to parliamentarisation so far. The present report reviews the first year and a half of the implementation of the Lisbon Treaty in order to assess the significance of the perceived changes in the Parliament's role in the area of foreign and security policy, and more broadly, to reflect on the dynamics of parliamentarisation in this policy domain.

Through an analysis of three interrelated domains – institutions and budget, international agreements, and security and defence policy – the report offers a mixed assessment of the EP's involvement in EU foreign and security policy. On the one hand, the report highlights how, despite the few new formal prerogatives which the Treaty of Lisbon confers upon the Parliament in this policy area, the EP has sometimes successfully brought its general powers (elective, budgetary and legislative) into play in order to take part in the EU foreign policy-making process. This study is less optimistic than some recent analyses when it comes to the actual achievements of the EP in influencing specific policy outcomes, but it also finds that, on a more procedural level, the Parliament has been effective in negotiating inter-institutional agreements and establishing practices which might, incrementally, take the EP's policy-shaping role further.

On the other hand, however, the report also conveys that the EP's involvement in foreign and security policy is still a much contested development and that the *sui generis* way in which it is evolving opens up new challenges for the democratic quality of the EU's external relations. In particular, the analysis draws attention to two challenges:

The first challenge is related to the tendency towards an 'informalisation' of the European Parliament's consultation rights and scrutiny functions. Whenever this process is a pragmatic solution to compensate for the EP's lack of formal powers, the proliferation of informal meetings behind closed doors and in small settings might also impair public accountability and debate. In this regard, the report recommends not losing sight of more formal mechanisms of parliamentary control which could enhance the responsiveness of EU institutions and the visibility of the European Parliament as a venue for debating and representing different policy options.

The second main challenge highlighted in this report is related to the growing uneasiness of national parliaments regarding the role that the European Parliament is acquiring in foreign and security affairs. The current stalemate in the negotiations on setting up a mechanism of inter-parliamentary cooperation in this policy area has

brought fundamental differences to the surface as regards the appropriate levels of representation within the EU. This report argues in favour of shifting the focus away from hierarchies and competences between different parliamentary levels and concentrating on reconstructing and reinforcing the links between national and European representatives.

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## 1. Introduction\*

Roughly one year after the entry into force of the Lisbon Treaty, Elmar Brok and Roberto Gualtieri, prominent Members of the European Parliament (MEPs), praised the situation that “the European Parliament has become a fully-fledged parliament (...) able to scrutinise and shape the EU’s foreign policy, thus ensuring the democratic legitimacy of the overall EU external action” (Brok and Gualtieri, 2010). Albeit in less confident terms, many analysts have shared the appreciation that, with the Lisbon Treaty, the European Parliament (EP) has acquired a substantially more relevant role in the Union’s external action (Missiroli, 2010; Monar, 2010; Comelli, 2010; Kietz/Von Ondarza, 2010). Highly visible episodes such as the unprecedented rejection by the Parliament of an EU international agreement (the so-called SWIFT Agreement between the EU and the US) or the Parliament’s assertiveness during the negotiations on the creation of the European External Action Service (EEAS) have contributed to this change in perception. This increased role of the EP in foreign and security affairs appears as a remarkable development since this area of EU activity has been among the most resistant to parliamentarisation so far and one that has received increasing attention for its moot democratic qualities (Bono, 2006; Wagner, 2006; Sjursen, 2007; Stie, 2008).

However, current institutional and political developments in the EU’s foreign and security policy suggest that one should regard this apparent upgrading of the role of the European Parliament with caution. Indeed, the intense process of inter-institutional negotiations to accommodate the changes of the newly established Treaty is by no means settled. Moreover, the implementation of the new foreign policy system instituted by the Treaty of Lisbon (ToL) has not been easy, nor has it been particularly ambitious from the point of view of triggering integrationist dynamics and the further involvement of the supranational institutions. For some reason, Member States were clear in including in the new treaty the caveat that “the provisions concerning the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament” (Declaration 14, ToL). More to the point, the post-Lisbon period has also brought to the surface the uneasiness of national parliaments with the role that the European Parliament is steadily acquiring in foreign and security affairs. Even if national parliaments acknowledge their ever lower capacity to scrutinize developments in the EU’s foreign and security policy, many of them remain hesitant, if not opposed, towards any stronger parliamentary scrutiny of this domain at a supranational level (WEU Assembly, 2010a, 2010c).

In this particularly intricate context, the present report reviews the first year and a half of the implementation of the Lisbon Treaty in order to assess to what extent the perceived advance in the parliamentarisation of EU foreign and security policy is as well-entrenched

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as some have suggested. The study examines the drivers of and obstacles to the EP's involvement in different areas of foreign and security policy and reflects on some normative issues surrounding the democratic quality of this policy domain. In particular, the report puts emphasis on the *sui generis* way in which the European Parliament is gaining a foothold in the EU's foreign and security policy and the inherent challenges this creates. The analysis is structured as follows. The first section pictures the general position of the European Parliament in foreign and security policy as of the moment of entry into force of the Lisbon Treaty. The following three sections focus on particular aspects of the EU's foreign and security policy: (i) institutions and budget, (ii) international agreements, and (iii) security and defence policy. In every section, the study examines the latest developments following the coming into effect of the Lisbon Treaty and the issues which remain open. The last section contains the conclusion and an appraisal of the challenges posed by the current dynamics of the parliamentarisation of the EU's foreign and security policy.

## 2. Position of the European Parliament in EU foreign and security policy

According to Born and Hänggi (2004), the degree to which parliaments can oversee foreign and security policy, an area which has traditionally been considered a domain of executive prerogative, depends on three dimensions: *Authority* (the formal powers to hold the government accountable); *Ability* (the resources, staff and expertise available for that task); and *Attitude* (the willingness to do so). This section briefly contextualises the evolution of the powers of the European Parliament according to these three dimensions. However, it also adds a fourth dimension, 'Atmosphere', to refer to the contextual elements which might also affect the Parliament's chances of further involvement in the EU's foreign and security policy.

### 2.1 Authority: limited powers on paper

An examination of the successive reforms of the EU Treaties clearly demonstrates that any strengthening of the role of the EP in foreign and security policy does not derive from a direct increase in its constitutionally granted powers. In fact, the Parliament's powers in the Common Foreign and Security Policy (CFSP) have remained remarkably constant since the Treaty of Maastricht, despite the fast-growing development of this area of EU activity. The Treaty of Lisbon has introduced some new prerogatives for the Parliament, but these are in no way commensurate to the relevant advances in the area of the EU's external action in general.

A synoptic overview of the new provisions of the ToL in the area of foreign and security policy bears witness to the important changes in this domain over the last decade. Firstly, in institutional terms, the Treaty has further blurred the former pillar structure, giving the EU a legal personality and creating the double-hatted figure of High Representative for Foreign and Security Policy/Vice-President of the Commission

(HR/VP) and establishing the European External Action Service (EEAS), uniting personnel from the Commission, the Council secretariat and national diplomatic services. Secondly, in terms of legal procedures, the Treaty of Lisbon introduced some limited scope for Qualified Majority Voting in the CFSP and new flexibility measures in the area of Common Security and Defence Policy (CSDP). In a normative dimension, the ToL implied a clarification of the values and objectives of the EU's external action and the obligation to abide by the EU Charter of Fundamental Rights. Finally, the Treaty also included a range of new activities in the area of foreign and security policy, which until now had lacked an appropriate legal basis, e.g. civil protection, security of energy supplies, fight against terrorism, space policy or protection of personal data, among others; as well as possible new spheres of action in the area of the CSDP, for example the solidarity clause or the obligation of mutual assistance resulting from the integration of the residual functions of the Western European Union (WEU) into the EU.

Conversely, the Treaty of Lisbon has not added substantially new prerogatives for the European Parliament in the specific domain of the CFSP/CSDP (see table 1). Rather, its powers have remained anchored in the soft rights of being informed and consulted about "the main aspects and basic choices" of the CFSP already set out in the Maastricht Treaty. In terms of *debating* and *information* rights, the main novelty is that the Parliament is not only considered competent for debating and receiving information on the CFSP but also on the CSDP, and that the responsibility for keeping the Parliament informed and duly taking the Parliament's views into account now lies with the HR/VP. Prior to the Lisbon Treaty, the High Representative did not have a formal obligation to engage in such a dialogue, a responsibility which fell on the Council. Arguably, this shift of responsibility from the Council to the HR/VP is not a mere nominal change, given that, under the new legal framework, the Parliament has strengthened its political authority over the High Representative via its *elective* powers. As Vice-President of the Commission, the HR/VP is made subject to Parliament's collective vote of consent, i.e. the EP has the power to approve the college of Commissioners, and to dismiss it *en bloc* via the censure procedure. However, the Treaty is ambiguous in respect to the possibility of dismissing the High Representative with the entire Commission, given that it specifies that, in this eventuality, the HR/VP would only abandon his/her duties as member of the Commission (Art. 17.8 TEU). Yet, given the integrated structure of the new External Service, it is difficult to imagine a situation where the High Representative would continue performing his/her functions if the Commission was forced to resign. Therefore, the newly gained possibility of bringing down the HR/VP with the whole college of Commissioners, although highly impracticable, can be seen as an important symbolic lever for the EP.

With regard to the powers of *consultation*, the Treaty of Lisbon continues to formulate in vague wording that the Parliament will be consulted on the main aspects and the basic choices of the CFSP (and now also CSDP). As a legislative procedure, consultation requires the Council to ask the Parliament for its opinion on proposed legislation before adopting it, although without any duty to observe the latter's response. However, when applied to the CFSP (a non-legislative domain), the Treaty continues without being clear about what form this consultation should take (especially whether it should be *ex-ante* or *ex-post*) and on what "main aspects and basic choices" the Parliament should be

consulted. The Treaty is more explicit when establishing consultation in another two matters which have legislative/budgetary character: in case of the need for rapid access to appropriations in the Union budget for CFSP activities; and in the establishment of the EEAS. In both cases, it is clear that the Parliament's opinion would have to be sought before taking any action.

**Table 1. The powers of the Parliament in foreign and security policy**

Prerogatives	Before the Treaty of Lisbon	After the Treaty of Lisbon (in force Dec. 2009)
Debate	- Debate once a year on the progress of the CFSP	- Debate <b>twice</b> a year on the progress of the CFSP and <b>CSDP</b> .
Information	- Regular information by the Presidency and the Commission on the CFSP.  - In case of application of the enhanced cooperation.	- Regular information by the <b>HR</b> on the CFSP and <b>CSDP</b> .  - Possibility of briefings by <b>Special Representatives</b> .  - In case of application of enhanced cooperation and the EU <b>solidarity clause</b> .
Consultation	- By the Presidency, on the main aspects and the basic choices of the CFSP.	- By the <b>HR/VP</b> , on the main aspects and the basic choices of the CFSP and <b>CSDP</b> .  - On the establishment of the <b>European External Action Service</b> .  - By the Council, in case of needing <b>rapid access to appropriations</b> in the Union budget for activities of the CFSP.
Consent	- Only in Association Agreements, Accession Agreements, and other agreements with third countries having financial implications	- In <b>International Agreements</b> on <b>all matters</b> internally agreed by the ordinary legislative procedure.
Election	- No role in the appointment of the HR	- The <b>HR/VP</b> subject to a collective vote of consent, as Vice-President of the Commission.

Source: own compilation

Last but not least, the most significant change in the EP's formal powers in the area of external action more generally is the new prerogative of *assent* in all international agreements covering matters which are subject to the ordinary legislative procedure. Given the notable increase in the subjects that have passed to co-decision, the EP has

gained a veto right on most international agreements by the EU. This includes the area of trade or the external dimension of internal policies, such as in matters of Justice and Home Affairs (JHA). Until the Lisbon Treaty, the Parliament was only a decisive actor in approving a limited type of international agreements with third countries with budgetary implications, such as Association Agreements or Partnership and Cooperation Agreements, which by their character are hard to reject in practice, given that they are normally the result of a long process of negotiations with the third country, sometimes implying the adoption of far-reaching internal reforms in the latter.

## **2.2 Attitude and Ability: powers in practice**

Despite the stagnation of the formal prerogatives of the Parliament, its involvement in the EU's foreign policy has gradually become stronger and more institutionalised. This has been achieved through the Parliament's persistent willingness to affirm its rights of scrutiny of the CFSP and through a gradual increase in its technical expertise and support staff. The Parliament's keenness to oversee the institutional developments and activities in the area of the CFSP can be traced back to the very launching of this policy in 1993. In its annual reports on "the main aspects and basic choices of the CFSP" in response to the Council's annual report with the same name, the Parliament has year after year manifested its disagreement with its lack of prerogatives to control the CFSP and denounced the Council's restrictive approach to the provisions laid down in the Treaties. The most recurrent concerns expressed in the annual reports have been the lack of information regarding expenditure on CFSP activities, the opacity of the CSDP budget administered by Member States, and last but not least, the Council's failure to properly consult the Parliament.

The EP has tried to pin down the vague obligations of information and consultation in the Treaties in the form of Inter-Institutional Agreements (IIAs), which have gradually detailed and institutionalised the Parliament's role (Monar, 1997; Maurer et al., 2005; Thym, 2006). The two most important IIAs in force containing provisions in the CFSP/CSDP domain are, first, the *IIA of 20 November 2002* concerning 'access by the Parliament to sensitive information of the Council in the field of security and defence policy'<sup>1</sup>. This IIA has on occasions been criticised by MEPs for its several restrictions (for example, it does not include the whole range of secret information, and the Member States and third parties have the right to deny access to documents that concern them); however, the IIA of 2002 symbolizes the acknowledgement of the EP's right to be seriously engaged in the political dialogue on foreign and security policies. The second crucial IIA, currently in the process of revision (see section 3.2 of this report), is the *IIA of 17 May 2006* on 'budgetary discipline and sound financial management', which includes some important provisions relating to the CFSP budget. For example, it established the procedure of the Joint Consultation Meetings (JCM), a regular framework (5 times per

1 For this purpose, the IIA 2002 established a *Special Committee*, consisting of five MEPs (supported by some members of the Secretariat) designated by the Conference of Presidents (See: Official Journal of the European Communities, C 298, 30.12.2002, p.1-3).

year) for political dialogue and information about CFSP activities and their associated expenditure<sup>2</sup>. The IIA of 2006 also included the compromise by the Council of sending estimates of the costs of the decisions taken in the CFSP domain to the Parliament immediately (within 5 days) and a procedure for financing urgent measures in case the annual CFSP budget proved to be insufficient.

Indeed, through its budgetary powers, the Parliament has been able to exert closer scrutiny over the activities of the CFSP, especially when the Council has needed further appropriations in other chapters of the EU budget, given that in this case the Parliament has to authorize the decision. Given the small CFSP budget and the growing demand for EU actions in this field, the Council has increasingly had to approach the Parliament to agree to further appropriations in the Union's budget, mainly for the financing of CSDP civilian operations. Also, the Parliament's powers to approve the annual CFSP budget have been a source of leverage, and sometimes a key bargaining chip when negotiating further involvement in foreign and security policy. For example, this 'budgetary weapon' was used in 2006 as a measure to pressurize the Council into including a proper compromise for consulting the Parliament on the CFSP in the IIA of 2006. In a *tour de force*, the EP even presented a budget proposal where the CFSP chapter was 50 per cent lower than the amount proposed by the Council, and only re-established the planned budget ceiling after the process of the Joint Consultation Meetings was included in the IIA of 2006 (Fernández, 2007: 144).

The Parliament's ability to hold the Council and Commission to account in the area of foreign and security policy has also experienced a notable evolution over time, especially since the last legislative period (2004-2009). The establishment in 2004 of a Subcommittee on Security and Defence (SEDE) within the Committee on Foreign Affairs (AFET) has contributed in particular to the specialisation of MEPs and increased personnel support in this area. AFET had already experimented with a structure of subcommittees during the fourth parliamentary term (1994-1999), creating one Subcommittee on Human Rights and one on Security and Disarmament. The experience, however, was short-lived and not particularly successful, given the low profile and lack of legislative work of these subcommittees. The reinstated structure of subcommittees in 2004 soon proved much more successful, coinciding with the effective implementation of the European Security and Defence Policy (ESDP), e.g. the deployment of numerous civilian and military operations, the development of capabilities, and the creation of the European Defence Agency. Therefore, the range of topics falling under the SEDE's remit increased markedly. The relevance of the subcommittee led to several proposals to upgrade it into a full Committee in the mid-term of the last legislature, although the idea was finally shelved for several practical and political reasons (Barbé/Herranz-Surrallés, 2008: 100-101).

Although, as a subcommittee, the SEDE cannot formally approve reports or opinions on its own, it contributes to the preparatory work on these documents by debating them before their approval in Committee, organising hearings with experts and seeking regular

2 The Joint Consultation Meetings are composed of the EU Presidency (represented by the Political and Security Committee) and the Parliament (represented by the bureaus of the Committees of Foreign Affairs and of Budgets). Official Journal of the European Communities, C 139, 14.06.2006, p. 1-17.

exchanges of information and views with the officials of the Council and the Commission attending the SEDE's sessions. This growing level of parliamentary activity in the area CFSP and CSDP has been accompanied by an increase in the size and specialization of the EP's support staff. Most notably, a Policy Department was created in 2004 within the Directorate-General for External Policies, which contributes to the strategic planning of the EP's activities and provides it with studies related to the matters discussed in AFET/SEDE. The number of studies commissioned on security and defence is an indication of this increasing attention and reinforced support for this policy field: from just a few studies per legislature before 2004, the number of studies had risen to around 40-50 per year in recent times.

However, the caveat must be added that the period of implementation of the Treaty of Lisbon has coincided with a change in the parliamentary term. The composition of the 7<sup>th</sup> Parliament is characterised by a notable increase in the seats of Eurosceptic political groups. On the other hand, both AFET and SEDE have experienced a high member turnover, which could possibly impact on the EP's ability and attitude. To be specific, the proportion of members of AFET and SEDE repeating membership of those committees was roughly one third in both cases. Also the leadership of AFET, which was under the chairmanship of Elmar Brok (MEP since 1980 and an acknowledged EU federalist) for an unusually long period of time (1999-2007), now rotates at the usual pace (every half legislative period).

### **2.3 'Atmosphere': external determinants of parliamentary oversight**

Apart from the actual powers of a parliament (measured in the "three As" of Authority, Ability and Attitude), the normative and institutional environments in which it operates are obviously also important factors which enable or limit its chances of stronger involvement. In the case of the European Parliament, there are several indications that the circumstances have become progressively more receptive to the parliamentary oversight of European foreign and security policy at a supranational level. However, there are also important contextual elements which speak against the closer association of the EP with this particular sphere of EU activity. These contradictory trends can be appreciated at different levels.

First, the global normative environment seems to have become more receptive to the parliamentary oversight of foreign and security policies in general. In this sense, the traditional idea that foreign policy should be treated as a special domain of governmental activity has increasingly been challenged (Ku/Jacobsen, 2002). The changes operating in the international system, such as the blurring between internal and external policies, the opening of spaces for global governance, or the multiplication of non-state actors involved in some kind of foreign activity have made it increasingly difficult for advanced democracies to sustain that foreign policy should be kept as a domain reserve of executives (Sjursen, 2007: 2). In fact, the principles of transparency and the parliamentary oversight of foreign and security policy have recently become part of the good practices package promoted by international organisations working in the area of Security Sector

Reform (SSR). Therefore, it is no wonder that the EU, as an actor committed to democracy promotion which conducts SSR activities in third countries, has also become more sensitive towards parliamentary involvement in its own foreign and security policy (Bátora, 2010: 3; Lord, 2008: 35). However, these traces of an incipient shift in norms at an international level do not by any means signify that there is a world-wide trend towards the parliamentarisation of security and defence policies (cf. Peters/Wagner, 2011). Actually, there are even some factors pushing in the reverse direction. Especially following the 11-S, the adoption of new counterterrorist measures by countries around the globe has frequently implied the reinforcement of the powers of executives at the expense of the legislature (cf. Owens/Pelizzo, 2009). Also in the EU context, the intensification of cooperation in the fight against terrorism and other internal security matters has been seen as contributing to the extension of governments' autonomy vis-à-vis other actors in policy-making (see e.g. Den Boer/Nölke, 2008; McGinley/Parkes, 2007).

Secondly, there are also contradictory pressures at play in the normative debates on the more specific question of whether there should be an increase in parliamentary oversight of European foreign and security policy at a supranational level. On the one hand, there seems to be widespread agreement among scholars and political representatives alike that national parliaments are increasingly ill-equipped to effectively control this burgeoning domain (Bono, 2005; Anghel et al. 2008; Zanon, 2010, WEU Assembly, 2010a). This is because despite the strong intergovernmental character of the design of the CFSP, its institutional architecture and coordination practices have become ever more centralised at EU level<sup>3</sup>, being therefore more elusive to the scrutiny of national parliaments. However, whenever there is some widespread consensus that parliamentary control at national level is becoming increasingly insufficient, there is no agreement on whether and to what degree national parliamentary control should be supplemented by stronger forms of parliamentary oversight at supranational and/or transnational levels (Peters et al. 2010). As it will be exposed in this report, the division of responsibilities and coordination mechanisms between each parliamentary level is still a much debated and contested development.

Finally, the institutional opportunities for the EP to increase its role in the field of foreign and security policy also present mixed features. On the one hand, major legal changes such as the one introduced by the ToL provide the institutions with a good window of opportunity to try maximising their powers. Indeed, the European Parliament has a good record of expanding its powers beyond the letter of the Treaties by exploiting the legal loopholes and informal practices (see e.g. Kietz/Maurer, 2006; Crum, 2006). Moreover, in the institutional rebalancing introduced by the Lisbon Treaty, the European Parliament has been one of the institutions that have witnessed a more substantial increase in their powers, especially in its role as co-legislator and budgetary authority and in its treaty-making powers. Consequently, in the new context, the Parliament's chances

3 The variety of concepts that have been coined to grasp the hybrid nature of the CFSP/CSDP, halfway between intergovernmental and supranational governance, speaks for itself: e.g. "Brusselisation" (Allen, 1998), "cross-pillarization" (Stetter, 2007) or "bureaucratisation" (Vanhoonacker et al. 2010; Dembinski, 2009).

of using its formal powers as bargaining chips for gaining further rights in other dimensions can be said to have increased. On the other hand, however, the particular context of the EU foreign and security policy at the time of implementation of the ToL is not particularly suited to the EP's claims to further powers in this domain. Even if the Lisbon Treaty pictures an EU foreign and security policy in full effervescence, there is a widespread perception that the CFSP/CSDP is gasping for breath. Member States have shown little willingness to use the prerogatives of the ToL, even those specifically designed to accommodate diversity (e.g. the possibility of entrusting the implementation of a crisis management operation to a group of Member States or permanent structured cooperation). Developments such as the difficult launching of the new External Action Service, the lack of an EU common response to the war in Libya, the effects of the financial crisis on Member States' defence spending, or developments such as the Franco-British agreement on security and defence signed in November 2010 outside the EU treaties are all taken as indications that EU foreign and security policy is going through a particularly critical period. Therefore, this rather gloomy situation might deter an institution like the Parliament, which has traditionally defended a stronger and more integrated EU foreign and security policy, from adopting positions that would add further elements of institutional infighting.

### **3. Institutions and budget: between self-affirmation and pragmatism**

In the first annual report on the CFSP of the 7<sup>th</sup> legislature, the reporter and chair of AFET, Gabriele Albertini, celebrated the new foreign policy system instituted by the Lisbon Treaty, with the caveat that this would only increase the democratic legitimacy of the CFSP "provided a continuous strategic dialogue is established *on an equal footing* between Parliament, the Council and the Commission *at all levels*" (European Parliament, 2010b: par. 8). This section examines two of the important institutional fronts where the Parliament sought to achieve this equal footing: the creation of the European External Action Service (EEAS) and the renegotiation of the IIA of 2006 as well as the scrutiny of the external assistance instruments. The role of the Parliament in these interlinked issues well illustrates the limits of the EP's efforts to gain further formal prerogatives and capacity to influence policy outcomes.

#### **3.1 At the negotiating table of the External Action Service**

Since the debates on the European Convention in 2003, the Parliament profiled as an advocate of the creation of an External Action Service. Early proposals by the Parliament in relation to the EEAS insisted on the need to ensure that this new structure would not undermine the Community method, but rather turn it into a stepping stone towards the further communitarisation of the EU's foreign and security policy (European Parliament, 2005). In 2009, even some weeks before the entry into force of the Treaty of Lisbon, the Parliament again showed its determination to be fully associated with the preparatory



work of the new service by issuing a resolution on the institutional aspects of the EEAS (European Parliament, 2009a). The bottom line of the EP's resolution was that the External Service had to be organically linked to the Commission and that there should be clear procedures for ensuring the political accountability of the EEAS before the Parliament. Likewise, the Resolution asserted the EP's will to become involved in the political agreement on the creation of the Service, even explicitly brandishing the possibility of delaying the process if the future HR/VP failed to adequately involve the Parliament in the negotiations at an early stage (Ibid.: par. 15).

To be sure, the prerogatives of the Parliament in the creation of the EEAS were only those of consultation, meaning that neither the HR/VP, the Commission nor the Council were obliged to take the Parliament's recommendations into consideration. However, the Parliament could claim to have two important means of influencing the process. First, it could delay the launch of the External Service by withholding its opinion on the HR/VP's proposal for the EEAS. In effect, any delay could cause political harm to the newly appointed HR/VP, Catherine Ashton, and also to the then Spanish Presidency of the Council, which had made the launch of the EEAS one of its key priorities. Secondly, as a budgetary authority at par with the Council, the Parliament could use its hard powers at a later stage, mainly during the approval of the new EU Financial and Staff Rules, without which the EEAS could not be put to work. However, the Parliament's leverage should not be exaggerated, given that keeping one of the signposts of the Lisbon Treaty hostage to its demands for too long would also imply political costs for the Parliament.

The negotiations on the creation of the EASS started in early 2010 in a formal dialogue, comprising Ashton's team, the Commission and the Council – the so-called High Level Group. During the negotiations, Parliament's reporters on the EEAS presented several non-papers and established informal contacts with Ashton<sup>4</sup>. However, by 25 April 2010, the European Council approved Ashton's proposal for the EEAS which happened to be at odds with some of the main points expressed by the European Parliament, mainly with regard to the Communitarian character of the Service and the mechanisms for ensuring its political and budgetary accountability. In consequence, the EP refused to give its opinion as a measure to compel Ashton to modify the EEAS proposal in line with the Parliament's resolutions and non-papers. In effect, negotiations had to be reopened, now in a quadrilogue also comprising the Parliament, and after two months of informal contacts and negotiations at different levels of responsibility, an agreement was reached in the final minutes of the semester of the Spanish Presidency in a meeting in Madrid on 21 June 2010<sup>5</sup>. The agreement was formalised with a pragmatic solution, consisting of the inclusion of two annexed declarations by the HR/VP in the Council's Decision on the EEAS, one on the institutional aspects and the other on the political accountability of the Service. Both were included in the *Official Journal* and

4 The non-papers were produced by Elmar Brok and Guy Verhofstadt, in different versions throughout March and April 2010.

5 The EP's delegation to this meeting was composed of the two reporters on EEAS for AFET (Elmar Brok and Guy Verhofstadt) and the reporter on the opinion on the External Service in the Committee of Budgets (Roberto Gualtieri).

served as a reassurance for the Parliament's delegation that the political agreement would translate into practice when all the details of the launch of the EEAS had been finalised.

However, this close association of the Parliament with the final agreement on the EEAS does not mean that its views were taken into account. The Parliament gained only very general concessions in its oversight rights regarding procedural aspects related to the mechanisms of the political and budgetary accountability of the External Service. The 'Declaration of the HR on political accountability of the EEAS' contained fairly vague commitments on the part of Ashton and is to be interpreted as a first step in the process of updating the IIAs of 2002 and 2006. In this sense, the declaration recognised that existing practices of information and consultation had to be "adjusted in light of Parliament's role of political control", but without specifying how. The declaration reaffirmed Ashton's commitment to continue her predecessor's practice of appearing in Plenary and/or Committee by herself (or in her place, the relevant Commissioners or the Presidency). This was an important aspect for the Parliament, as it did not want to see non-elected officials deputising for Ashton. But some key specific demands formulated in the EP's position documents, such as the possibility of conducting hearings with candidates for senior positions in the EEAS (Heads of Delegation and EU Special Representatives) before their appointment, were not granted. Instead, Ashton's declaration only expressed her good disposition towards Parliament's requests for the appearance of Heads of Delegation, but clearly specified that this was only for the "exchange of views" or "briefings" (not a formal hearing procedure). More concrete changes were introduced in order to reconfirm the Parliament's budgetary oversight powers. The EEAS operating expenditure was to remain part of the Commission's budget and therefore the Parliament would have full right of discharge of the External Service's annual budget. Also, the positions of the Chief Operating Officer (within the Corporate Board) and a Director General for Budget and Administration (See Annex 1) were introduced at the insistence of the Parliament.

With regard to the more substantive aspects related to the very architectural design of the EEAS, the Parliament did not manage to modify the structure of the External Service in any substantial way to bring it closer to its more 'communitarising' project. The External Service model envisaged in the EP's proposal consisted of a real merging of the Community and intergovernmental structures of the EU foreign policy under the aegis of the Commission. According to the latest versions of the Brok-Verhofstadt non-paper, the Parliament proposed to formally link the Commissioners responsible for external action areas (Development, Neighbourhood Policy and Humanitarian Aid) to the EASS as part of a "policy coordination body" together with the HR and her Deputies (Brok and Verhofstadt, 2010). Moreover, the proposal emphasised that commissioners should retain direct access to the services responsible for programming in their portfolio areas. This was deemed particularly important in the area of development policy in order to avoid this policy area from falling hostage to the EU's foreign policy and security policy aims. Another crucial aspect for the Parliament was the effective merging of the Commission's peace-building services and the Council's crisis management structures as a way to integrate the civil and military components of the EU's foreign policy. As seen in the EP's

proposed organisational structure (Annex 1), the idea was to group all these units under a common Crisis Management Directorate.

The final architecture of the EEAS fell short of these ambitions. Arguably, the structure of a Corporate Board consisting of four executive figures plus the HR/VP (see Annex 1) was inspired by the Parliament, which insisted that the concentration of power in a non-elected Secretary General had to be avoided. But the Parliament's idea to include the relevant Commissioners in a Policy Coordination Board of the EEAS together with the HR/VP amounted to a mere horizontal "Department" to deal with inter-institutional matters, together with the compromise by the HR/VP to ensure close coordination with other members of the Commission responsible for external action. As far as development policy is concerned, the Parliament was able to extract some small changes in wording to more clearly indicate that the programming of development aid would remain the "responsibility" of the Commissioner for Development Policy. Conversely, as far as the integration between crisis management and peace-building is concerned, the final organisational chart of the EEAS (Annex 1) shows that these structures have remained separate, therefore demarcating clear lines between the intergovernmental and communitarian parts of the EU activity in crisis response. Also, as would later become evident, Ashton did not comply with the spirit of her declaration before the plenary of the EP to transfer to the EEAS the "relevant units in the Commission dealing with crisis response and peace building" because part of the personnel which was formerly responsible for programming the Instrument for Stability within the Commission was left outside the EEAS<sup>6</sup>. This was interpreted by the Parliament as a move that could weaken the former Community peace-building structures vis-à-vis the intergovernmental crisis management units.

All in all, the inclusion of the Parliament in the negotiating process was quite remarkable; but its overall influence on procedural and substantive aspects of the EEAS was not. Aware of the vagueness of some of the HR/VP commitments, several MEPs even proposed postponing the voting on the legislative resolution until September 2010. The rationale of this proposal, presented by the German Christian-Democrat Ingeborg Grässle, was that it was advisable to study the agreement more carefully and be able to link the Parliament's opinion with the approval of the new Financial and Staff Rules. But finally, pragmatism and awareness of the costs that further delays would imply for the Parliament (which was criticised in some EU media circles for shadow-boxing and immature behaviour) prevailed, and the voting on the resolution took place on 8 July, being passed by 547 votes in favour, 78 against and 19 abstentions<sup>7</sup>.

6 The "Statement given by the High Representative in the EP plenary on the basic organisations of the EEAS" was reproduced entirely in the Parliament's legislative resolution on the EEAS (European Parliament, 2010a).

7 The political groups expressing their disagreement with the resolution most clearly were the European Conservatives and Reformists (ECR) and the European United Left-Nordic Green Left (GUE/NGL). MEPs from the first group claimed they would have wished to have a smaller and more intergovernmental diplomatic service; and MEPs from the latter argued against what they saw as the "militarisation" of the EEAS.

### **3.2 Consultation on the CFSP and scrutiny rights over financial instruments**

Soon after the agreement on the EEAS, the Parliament had the occasion to follow up on several of its demands on the political accountability of the HR/VP and the External Service: the revision of provisions on the CFSP of the IIA 2006 on budgetary procedures and financial management. This Inter-Institutional Agreement had to be updated in any case in order to reflect the new powers conferred to the Parliament as budgetary authority and the approaching negotiations on the new multi-annual financial period (2014-2020). The Commission presented its proposal for the new IIA in March 2010 and the Council presented its position in December 2010. The Parliament has not yet adopted its position but in October 2010 AFET already presented its opinion on the Commission's draft, proposing several far-reaching amendments to increase the EP's budgetary and political oversight of the CFSP and CSDP (European Parliament, 2010c).

On the budgetary level, AFET amendments go in the direction of introducing more transparency in CFSP spending (both operating and administrative), including CSDP missions. Most notably, the EP proposes identifying the expenditure of the major missions on specific items, in contrast with the current practice which only includes a general item called "crisis management". This amendment will most probably be accepted in the final IIA, given that the HR/VP already mentioned this possibility in her Declaration on the Political Accountability of the EEAS. Yet, the implications of this change would do no more than to introduce more transparency in the CFSP budget, given that the EP can only basically set a budget ceiling on the CFSP chapter within the annual budget, and not control the distribution of funding among specific items since the Commission can autonomously transfer appropriations between articles within the CFSP budget. In this regard, AFET's opinion also proposes that the IIA makes explicit the obligation of the Commission to inform the Parliament of its intentions to make any such transfer, duly explaining the rationale behind the respective decision.

On the political level, the issue of consultation will most probably be the sticking point of the inter-institutional negotiations. The AFET opinion again puts on the table the criticism that the Council has indeed never properly consulted the Parliament on the orientation of future policies, but only presented a cursory review of the activities conducted in the previous year. In another attempt to overcome this problem, AFET suggests introducing further requirements in the yearly procedure, whereby the HR consults the Parliament on a document on "the main aspects and basic choices of the CFSP". In specific terms, the Council's document should be "forward-looking" and "set out" the main aspects and basic choices of the CFSP, "including their consistency with the Parliament resolutions". AFET's opinion also proposes that the HR/VP submits a second annual report, namely "a forward-looking document outlining the Union's peacebuilding strategy", to the Parliament for consultation. This document should present the details of the policy goals pursued and diplomatic and financial means employed by the Union, including "detailed information about the staff and the administrative and operational expenditure earmarked for peacebuilding in the financial years n, n-1 and n+1". Last but not least, AFET also suggests upgrading the role of the Joint Consultation Meetings

through enlarging the number of participants<sup>8</sup> and introducing the possibility of meeting on an *ad hoc* basis beyond the 5 fixed meetings per year. But most crucially, AFET's opinion considerably expands on the role it would like the JCM to have in matters of the CSDP, even so far as to propose that it should be consulted on the launching and termination of CSDP missions (see also section 5.1).

This assertive position on the part of the Parliament is driven by the appreciation that, with the elimination of the pillars structure under the new legal framework, the procedure of "consultation" mentioned in relation to the CFSP/CSDP has to be understood in the same way as in other spheres of EU activity, that is, a formal and *ex-ante* procedure. However, the Treaty of Lisbon is very clear about the different character of the CFSP as an explicitly non-legislative domain and reiterates that it falls beyond the jurisdiction of the European Court of Justice (ECJ). Therefore, should some of these amendments be accepted by the Council and the HR, there is no guarantee that these consultation rights will be applied more stringently than under the current loose political and informal practice.

Another open front in the inter-institutional relations beyond the negotiation of the new IIA on budgetary procedures is the Parliament's demand for more scrutiny rights over EU financial instruments of external relations, in particular those where it claims to have a lack of control: the Development Cooperation Instrument (DCI), the Instrument for Stability (IfS), the Industrialised Countries Instrument (ICI) and the European Instrument for Democracy and Human Rights (EIDHR). Under the current practice, the EP can only *express views* on the proposals for the programming of these instruments and send them to the Management Committee (made up of representatives of Member States and presided over by the Commission). After the Management Committee adopts a position, the EP can only express its objections through a resolution within the period of one month and only if it considers that the decision is not fully in line with the legal basis of the instrument. In order to gain a stronger say in the programming of these instruments, the Parliament has claimed that the procedure of "delegated acts" foreseen in the treaties (Art. 290 TFEU) should be used in the external assistance financial instruments (i.e. for the approval of the strategy papers for geographic and thematic programmes, as well as multiannual indicative programmes). This would strengthen Parliament's powers of scrutiny over these instruments as it would be able to block the programming documents and require the Commission to present amended proposals.

However, the Council has plainly rejected this possibility, so the parties will end up in conciliation. In this topic, the MEPs themselves are divided over how far to put pressure on this issue. For some, the current procedure does already enable a regular exchange of views between the Commission and the Parliament (organised for this purpose in working groups within the Foreign Affairs and Development committees) and it is normally the case that the EP cannot always provide detailed feedback due to its

8 The enlargement of JCM would mean the participation of the enlarged bureaux of the AFET and BUDG as well as relevant rapporteurs; and on the part of the Council, the permanent Chair of the PSC (on behalf of the HR) and also senior officials of the EEAS and Heads of CSDP Mission and Operation, whenever relevant.

workload. For this reason, some MEPs were prone to accept a compromise solution proposed by the Commission to avoid further conflict over the issue of the delegated acts. The proposed solution consisted of the commitment by the Commission to appear in Committee for a hearing in case the Parliament did not agree with the final decision of the programming documents. This offer, however, was rejected by the EP in favour of the more formal procedure of the delegated acts. The issue seems to be a matter of principle for the European Parliament since parity with the Council in scrutinising the implementing activities of the Commission in general has been a long-winded demand put forward by the Parliament for decades.

#### **4. International agreements: from rubber-stamping to policy-shaping**

The EP's involvement in international agreements has been a controversial issue since the early days of European integration. Arguing reasons of efficiency, e.g. avoiding any further slowing down or politicisation of already difficult international negotiations, Member States have been widely reluctant to confer the Parliament with treaty-making powers. This section illustrates how the EP's new powers in this domain have impacted on the relations between institutions and examines the struggle of the Parliament to turn its powers of assent from a passive right to an active chance to influence the content of the EU's international treaties at an early stage.

##### **4.1 The EU-US SWIFT Agreement as the last straw**

On 11 February 2010, the European Parliament rejected for the first time an EU international agreement, specifically, the Agreement on 'the processing and transfer of financial messaging data from the EU to the US for the purposes of the Terrorist Finance Tracking Programme' (also known as the SWIFT Agreement). The EP's rejection was possible due to its newly-gained prerogative of the approval of international treaties on matters decided internally according to the ordinary legislative procedure. One particular security-related area where this is currently having a great deal of significance concerns international agreements in the area of JHA, another burgeoning area of EU activity and one where the EP has increasingly tried to profile itself as a relevant actor.

The Parliament's rejection of the EU-US SWIFT agreement certainly did not take place in a vacuum. Since the mid-2000s in particular, several aspects of the EU's activities in the area of counter-terrorism have become the object of severe criticism from MEPs for their questionable observance of certain principles of human rights and civil liberties. International cooperation in this field with the US had already aroused a tough inter-institutional back-and-forth, particularly the agreement on the processing and transfer of passenger name records (PNR) for the purpose of counterterrorism. Prior to the Lisbon Treaty, the Parliament did not have powers to block this kind of agreement, but arguing reasons of substance and form, it succeeded in having the Agreement cancelled by the ECJ in 2006. However, the story took another turn and at the time of negotiating a new

agreement in 2007 the Council decided to use the third pillar provisions, which were out of the Parliament's control and ECJ jurisdiction (Barbé/Herranz-Surrallés, 2008: 98-99). The entry into force of the Lisbon Treaty has put a limit on the Council's freedom to choose between playing in the first or third pillar and hence also between different degrees of parliamentary oversight. This is because the Treaty establishes that co-decision is the normal procedure in the area of Justice and Home Affairs, including the formerly excluded field of Police and Judicial Cooperation in Criminal Matters. All international agreements on these issues will therefore need the Parliament's assent.

The EP's rejection of the SWIFT agreement was as much a matter of substance as of procedure. In terms of substance, the agreement dealt with a highly sensitive domain, where once again reasonable doubts in terms of data protection and civil liberties were under discussion. The main problem for a majority of the political groups was that SWIFT data could only be transferred in bulk, and therefore it was difficult to ensure that data would only be used to track specific individuals and organisations acknowledged as terrorists. To many MEPs, bulk data transfer contravened the principles underpinning EU legislation and practice. Moreover, some MEPs argued that there was no clarity on the time of storage of the data, some arguing that it could even be as long as 90 years. Furthermore, the agreement was not reciprocal, given that the EU does not have a Terrorist Finance Tracking Programme. Therefore, in practice, the agreement would mean the externalisation of the EU's financial intelligence services to the US (or worse, could be a potential tool for financial and political espionage). Overall, MEPs acknowledged the importance of cooperation in the fight against terrorism with the US, but wary of the provisions of the agreement passed a resolution in September 2009 setting the minimum conditions acceptable to the EP, in particular in the area of data protection, judicial guarantees, and respect for the principles of necessity, proportionality and reciprocity (European Parliament, 2009b: par. 7).

However, the process of approval of the SWIFT agreement was seriously ill-fated and showed that the Commission and Council had still not gauged the implications of the entry into force of the Lisbon Treaty. To start with, the Council not only did not make any visible effort to take on board the suggestions expressed in the Parliament's resolution, but it even concluded the Agreement on the 30 of November 2009, one day before the entry into force of the Lisbon Treaty. However, in view of the sensitivity of the issue, the Council did concede that this agreement would only have a temporary duration of 9 months, after which it promised to negotiate a new agreement, this time with the involvement of the European Parliament. To make things more difficult, the text of the agreement was not sent to the Parliament until 25 January 2010, only 6 days before its entry into force, further reinforcing the malaise of the Parliament with an agreement which was presented as a *fait accompli*. Despite the scant margin of time available, the Parliament's Commission of Civil Liberties, Justice and Interior Affairs (LIBE) gave priority to the dossier and approved a proposal of recommendation on 5 February, to be voted on in the plenary session of 10-11 February. The proposal of recommendation was negative and demanded the termination of the provisional agreement. Despite strong lobbying by the Spanish rotating EU Presidency and the US administration, and all kind of reassurances that the new agreement would incorporate the Parliament's concerns (see

Monar, 2010), a majority of MEPs (mainly from the Socialists, Greens, Liberals and Left) rejected the agreement with 305 votes against, 290 in favour and 14 abstentions.

The involvement of the Parliament in negotiating the new agreement, which followed shortly afterwards, was radically different. The EU rotating presidency took care to keep the Parliament informed of all stages of the process, including a formal presentation of the draft negotiating mandate at the LIBE prior to its formal approval by the Council. The negotiations with the US began in May 2010, after the approval of a resolution by the Parliament expressing an opinion on the upcoming negotiations (European Parliament, 2010d). Later on, when the Commission had already reached an agreement on the new text with the US, the Council even acceded to the Parliament's demands to reopen the negotiations in order to include some further changes. According to the EP's rapporteur on the agreement, Alexander Alvaro, and to Commissioner Cecilia Malmström, the final agreement included some important changes that partly tackled the EP's concerns<sup>9</sup>. Still some MEPs continued to express worries about the agreement, especially the adequacy of entrusting Europol with the supervision of the SWIFT agreement since it is neither an independent judicial authority nor a data protection authority, but an agency which would itself benefit from the agreement. But finally, the three biggest groups in the Parliament (Conservatives, Socialists and Liberals) gave the agreement their positive vote and it was finally approved by the Parliament in July 2010.

Commissioner Malmström defined the process of the renegotiation of the SWIFT Agreement as a "new start" in terms of relations with the Parliament, and MEPs talked about a "new era in the sphere of EU law-making" (European Parliament, 2010e). However, the procedures and cooperation between institutions that developed during the negotiations on the second SWIFT agreement were only a first and rather exceptional case, helped in particular by a very cooperative rotating Council presidency. In this sense, the Spanish presidency was under great political pressure to avoid a second failure of the SWIFT agreement during its semester, which had already begun with a first-order fiasco in transatlantic relations: Obama's cancellation of the EU-US summit. Indeed, the Parliament's attempt to formalise its role in the process of international negotiations following the entry into force of the ToL has proven much more difficult, as the following section expounds.

## **4.2 The battle for full involvement in international negotiations**

The Treaty of Lisbon did not only make the procedure of consent for international treaties the rule rather than the exception, but also included a specific provision requiring that the Parliament be "immediately and fully informed at all stages of the procedure" (Art. 218.10 TFEU). Accordingly, the Parliament soon manifested its willingness to

<sup>9</sup> In particular, three aspects were emphasized: (i) the empowerment of a European public authority (Europol) to verify that each request is tailored as narrowly as possible; (ii) the commitment that the EU would start developing a mechanism allowing for extraction of data on European soil and for a more targeted transfer of data; and (iii) the Commission would appoint a person charged with monitoring the day-to-day extraction of data from the TFTP database who would be empowered to query and even block searches (European Parliament, 2010e).



update the Inter-Institutional Agreements in place in order to give substantive definition to its involvement in the process of negotiating and concluding international agreements (European Parliament, 2010f: par. 8). An appropriate context to lay down the new procedures was the update of the bilateral IIA with the new Commission taking office in February 2010 (the so-called Framework Agreement on relations between the European Parliament and the Commission)<sup>10</sup>. The first round of negotiations on the new Framework Agreement (FA) already began in early 2010, in the last months of the mandate of the Barroso I Commission. Considering that Jose Manuel Barroso was expecting to be re-elected as President of the Commission, the Parliament could therefore count on an additional source of leverage. There are three aspects of the new Framework Agreement which might reinforce the position of the Parliament in the EU's external action, although all of them have been the object of strong reservations from the Council.

The first aspect is the commitment by the Commission to “immediately and fully” inform the Parliament “at all stages of the negotiation and conclusion of international agreements, including the definition of negotiating directives” (Art. 23 of the FA). As described in detail in Annex 3 of the FA, the Commission “shall take due account of Parliament’s comments throughout the negotiations” and even “explain whether and how Parliament’s comments were incorporated in the texts under negotiation and if not why”. Therefore, this would mean granting the Parliament the possibility to influence the substance of the negotiations at any stage of the process. Also crucial and controversial has been the procedure established in Annex 2 of the FA, whereby the Commission is required to ensure that Parliament is given access to the full range of confidential information related to the negotiations (‘EU top secret’, ‘secret UE’, ‘*confidentiel* UE’ and ‘*restreint* UE’). The FA establishes who in the Parliament can request the information and establishes some basic procedures for its handling (security clearance, use of secure reading rooms, in camera meetings, etc.). In its decision on the FA, the EP specified that it understands that the provision of access to confidential information “applies also to confidential documents from Member States or third countries, subject to the originator’s consent” (European Parliament, 2010f: par. 10).

Secondly, the FA introduced the possibility that a delegation of MEPs may participate as observers in the EU delegation at international conferences. The degree of obligation on the part of the Commission to allow for this possibility is a matter for discussion. In fact, article 25 of the FA establishes that the Commission has the chance to refuse the Parliament’s request (albeit having the duty to communicate the reasons for this to the Parliament). However, the EP established in its decision on the FA that it interprets that “only in exceptional cases, on the basis of a lack of legal, technical or diplomatic possibilities, may the Commission refuse the grant of observer status to Members of Parliament” (European Parliament, 2010f: par. 6). Similarly, the Commission should also facilitate the participation of MEPs in all relevant meetings organised under its responsibility before and after negotiation sessions.

10 The Framework Agreement, first established in 2000 (although a Code of Conduct had already existed since 1990), defines the political responsibilities and the rules for the flow of information of each institution to the other and is updated every five years.

Finally and more generally, the FA also included some provisions which might increase the mechanisms of the political accountability of the Commission vis-à-vis the Parliament. For example, the current Question Hour procedure with the President of the Commission would be extended to other Commissioners, including the HR/VP. But more importantly, the FA established that “if Parliament asks the President of the Commission to withdraw confidence in an individual Member of the Commission, he/she will seriously consider whether to request that Member to resign” (art. 5). In that case, the President of the Commission would have to either request the resignation of that Commissioner or explain his refusal to do so before Parliament. This right of the EP to ask for the resignation of individual Commissioners, which is not foreseen in the Treaties, was already introduced in the Framework Agreement of 2000, but in the new legal framework, this could now be said to further reinforce the Parliament’s political authority over the HR/VP.

The Council reacted negatively to this Framework Agreement, criticising in particular the provisions that enhanced the involvement of the EP in the process of negotiating international agreements. The Council formally issued a statement positing that the FA has “the effect of modifying the institutional balance set out in the Treaties in force, according the European Parliament prerogatives that are not provided for in the Treaties and limiting the autonomy of the Commission” (Official Journal of the European Union, 2010). In particular, in relation to access to classified information, the legal services of the Council established that some of the provisions “are not in accordance with the texts applicable and are likely to undermine confidence in the system of management of classified information that has been agreed at Union level” (European Council, 2010: 5). The opinion of the legal service also objected to the provisions of Annex 3 of the FA whereby the Commission should take into account the Parliament’s views and provide this institution with a whole range of documents relating to the international negotiations; and finally, it also questioned the obligation of the Commission to facilitate the participation of MEPs in the meetings under its responsibility, as this would undermine the Council’s prerogatives (Ibid.: 5-6). In view of all these concerns, the Council established in its statement that it would submit to the Court of Justice any act in application of the FA that it deemed contrary to the interests of the Council.

Amidst this inter-institutional imbroglio, the extent to which the Parliament will be able to make use of the provisions of the Framework Agreement with regard to international agreements is uncertain. International agreements related to the fight against terrorism, especially the PNR agreement, might continue to be one of the main sources of friction. Also complaints of lack of cooperation and information on the part of the Council are commonly referred to in parliamentary documents. For example, regarding hot issues of the EU’s foreign policy, such as the approval of the EU-Libya Framework Agreement in January 2011, the Parliament publicly complained that the Council had only agreed to allow a selected group of MEPs to read the mandate of the negotiations reluctantly and at a very late date. In view of this experience, the degree of the Parliament’s involvement in international negotiations beyond its passive rights of assent will largely remain at the Council’s discretion.

## 5. Security and defence: more legitimate, more questioned

Of all the external activities carried out by the EU, the CSDP is the area with potentially the most far-reaching implications for the lives of EU citizens, while at the same time being one of the most elusive to parliamentary control, both at EU level and in some national parliaments. The Treaty of Lisbon has triggered a paradoxical effect in this policy area. On the one hand, it has acknowledged explicitly, for the first time, that the European Parliament's rights of information, consultation and budgetary scrutiny also apply to the area of the CSDP. But on the other hand, the dissolution of the WEU Assembly, as a side-effect of the ToL, has also brought to the surface the resistance of national parliaments to see their role in the scrutiny of EU foreign policy undermined, to the advantage of the EP. This section reviews this double process, describing, first, the increasing albeit singular role that the European Parliament is acquiring in the CSDP; and secondly, the complex relations between the EP and national parliaments in the organisation of inter-parliamentary cooperation.

### 5.1 The Parliament's way into the CSDP, but behind closed doors?

The European Parliament has claimed its right to political oversight of the CSDP missions ever since the first missions were launched. Even if this is an intergovernmental policy, the Parliament claimed that it was constitutionally mandated to oversee the CFSP budget, and therefore also had to be associated politically with the activities within this policy through close information and consultation (European Parliament, 2003). The Parliament has become more assertive on this, given that the growing deployment of civilian CSDP missions has been one of the main drivers of the rise of CFSP spending, and has therefore meant that the Council has had to request more frequently the Parliament's authorisation to increase the CFSP budget. According to the EP, spending on CSDP civilian missions rose from about 35 million euros prior to 2004 to approximately 280 million in 2010 (Quille, 2010: 5). Therefore, the Parliament has been claiming that if it has to take budgetary decisions on activities which have profound political implications and which can directly affect citizens' lives (with reference to the personnel deployed in CSDP civil operations), it should also be informed about them fully and in good time.

In recent years, the Parliament has certainly acquired the capacity to obtain and process lots of detailed and technical information about security and defence matters. Practices such as the regular appearance of senior officials in charge of CSDP activities, the possibility of holding committee debates "in camera", access to sensitive information related to security and defence via the EP's Special Committee, the Joint Consultation Meetings and the sending of *ad hoc* delegations of SEDE to CSDP missions' headquarters and battle groups provide the Parliament with more information on the CSDP than most national parliaments. Conversely, unlike national parliaments, the EP has little powers of political or budgetary oversight of CSDP missions (almost none when the missions have a military character). In practical terms, the ToL's extension of the former debating and consultation rights of the EP in the field of the CFSP to the CSDP certainly does not seem

like a quantum leap from the perspective of the Parliament, as it already exercised these rights long before their formalisation in the treaties. However, the Parliament has interpreted this explicit mention of its competence to debate and be consulted on the CSDP as an additional source of legitimacy for its claim of being closely associated with the decisions of the EU's security and defence policy.

Not short of ambition, the Parliament reiterated in the first annual report on the "main aspects and basic choices of the CFSP" approved in the current legislature that "in order to enhance the democratic legitimacy of the CFSP, Parliament's competent bodies should be *consulted* on the launch of CSDP missions and that decisions should where appropriate take into account, and contain references to, the positions adopted by Parliament" (European Parliament, 2010b: par. 5). The amendments proposed by AFET to the future IIA on budgetary procedures avoids the term consultation, setting out that "the European Parliament may *provide political guidance* for decisions leading to the launch of CSDP missions, the revision of their mandate and their termination" (European Parliament, 2010c). However, it proposes improving the work of the Joint Consultation Meetings, specifying that the Parliament should receive in advance the agendas of all meetings of the Political and Security Committee (PSC), as well as written summaries of the main items discussed. AFET's opinion and the Parliament's last annual report on CFSP also put more emphasis than in previous years on the willingness of the Parliament to use the Joint Consultation Meetings to develop a more strategic approach to CSDP operations, by assessing the lessons learned from previous operations and developing a forward-looking approach to future needs (including finances, implementation and administrative organisation).

However, despite the fact that the Parliament continues to push for the highly controversial issue of its consultation in CSDP missions, in practice, it actually seems to be becoming more pragmatic. This means that the Parliament is now focusing on exploring the mechanism of the JCM and the Special Committee, rather than seeking to obtain more formal and politically visible rights in the CSDP, as it did in previous years. For example, in 2003 the EP claimed that crisis management operations needed previous parliamentary consultation and *approval by absolute majority* of the Parliament (European Parliament, 2003). It then demanded that it should be competent for approving the mandate and objectives of any crisis management operation under the ESDP as well as for the costs incurred by the EU joint actions (Ibid.). Also the EP's highly symbolic practice of issuing resolutions "approving" CSDP missions has not continued with the same impetus of the last legislature. In the previous parliamentary term, the Chairman of SEDE, the German Christian-Democrat Karl von Wogau, set out the objective of adopting a resolution or recommendation before each ESDP mission or operation, considering it "as a matter of principle" in order to develop parliamentary control over ESDP<sup>11</sup>. The most celebrated example of this practice was the Parliament's resolution on the ESDP operation in Chad and the Central African Republic (CAR) in

11 See minutes of the SEDE meeting of 21.02.06. Two examples are the Althea resolution of 10.11.2004 or the resolution on the criteria for EU peace-keeping operations in the Democratic Republic of Congo of 23.03.06.

September 2007, as the Parliament managed to approve it before the Council's adoption of the Joint Action (Barbé/Herranz-Surrallés, 2008: 71).

This more pragmatic focus on improving the flow of information and consultation through informal channels and reduced settings might partially be influenced by the priorities of the new leadership of SEDE. Its Chairman, the French conservative Arnaud Danjean, comes politically from a more intergovernmental tradition (the Sarkozy-led UMP) than the former Chairman von Wogau, and professionally has had a good schooling in informal mechanisms (he was a member of the French foreign intelligence agency, not an MP). Beyond the leadership factor, however, the need for more flexible channels of information on CSDP missions is deemed crucial for the EP, as otherwise it is very difficult for it to react in a short time frame. The Joint Consultation Meetings, the Special Committee, or other procedures<sup>12</sup> could allow for this early association of the EP, and possibly begin the practice of referencing Parliament's recommendations in the decisions launching CSDP operations, in the same way as the UN resolutions are mentioned as the source of legitimacy for the EU's proposed action. On the other hand, current practical limitations of SEDE as a subcommittee are also in need of revision in order to allow for a timely reaction in the form of a resolution<sup>13</sup>.

Finally, on the budgetary level, the EP's powers over CSDP spending following the Treaty of Lisbon are basically business-as-usual, meaning that it supervises the spending of the civilian component of the CSDP, but has no control over the operational costs of activities with a military character. However, the new provision of the start-up fund for the financing of the common costs of military operations financed by the Member States' budgets is considered as progress from the EP's point of view. The fact that this appears in the Treaty is interpreted by the Parliament as giving it the right to be consulted on its management (European Parliament, 2010b: par. 11). However, it is still not clear how Member States are going to use the start-up fund and how this will be taken into account in the revision of the Athena mechanism<sup>14</sup> expected to be undertaken during the Polish EU Presidency. Also the procedures have not yet been defined for the use of the new provision in the Union's budget of rapid access appropriations for the urgent financing of initiatives in the area of the CFSP. In this eventuality, the Parliament would merely be consulted; therefore, depending on its application, this flexibility procedure could even mean a loss of control by the EP.

12 For example, from the Parliament's Secretariat. Nickel/Quille (2007: 22-23) suggested that the procedure could be to send a delegation of the EP to the Political and Security Committee, which would then prepare an opinion to be adopted by the responsible committee (AFET or SEDE). According to the authors, this could be completed within 5 days.

13 For example, under the current procedures, the Subcommittee cannot work on more than one own-initiative report in parallel (meaning around 3 or 4 reports per year).

14 The Athena mechanism consists of a common fund made up of contributions from the Member States (except Denmark) and third states participating in the operations to finance the common costs of the military missions, such as infrastructure, transportation, administration or communication costs (See Council Decision 2004/197/CFSP of 23 February 2004, Official Journal of the European Communities, L 63, 28.2.2004, p. 68).

## **5.2 Inter-parliamentary cooperation after the dissolution of the WEU Assembly**

With the entry into force of the Treaty of Lisbon, it was already a matter of fact that the Western European Union (WEU) would be dissolved shortly afterwards, given that most of its residual functions had been transferred to the EU. The decision to terminate the WEU Treaty was taken in March 2010 to come into effect by June 2011. Consequently, the parliamentary assembly of the WEU would also be dissolved by that date. Instituted by the modified Brussels Treaty of 1954, the WEU Assembly had served as a permanent structure where national parliamentarians of the WEU member and observer countries could debate, be informed and put questions and recommendations to the Council of the WEU on matters of security and defence. The Lisbon Treaty did not provide for a direct alternative to the WEU Assembly, but mentioned the possibility of establishing mechanisms of inter-parliamentary cooperation in the area of foreign and security policy (Protocol No. 1, Arts. 9 and 10). However, at the moment of writing this report, the process to put this mechanism of inter-parliamentary cooperation in place has stalled due to seemingly incompatible views among national and European deputies on whether and to what extent the EP is entitled to scrutinise matters of security and defence policy.

As far as the WEU Assembly was concerned, the majority of its members had defended the creation of a new inter-parliamentary mechanism, basically reproducing its very same functions, although provably with a more light weight structure. From the Assembly's point of view, a conference model *à la* COSAC would not be a satisfactory alternative because it would only allow for exchanges of views between parliamentarians and not for the scrutiny of EU actors and actions (WEU Assembly, 2010a: 11). Some of the delegates taking part in the debates at the WEU Assembly were even of the opinion that the termination of the WEU had to be used as an opportunity to set up another assembly with upgraded powers. In any case, most delegates claimed that the dissolution of the WEU Assembly could not result in national parliaments losing out to the benefit of the European Parliament. According to its President, Rob Walter: "It is essential that we avoid any weakening of national parliaments' powers of scrutiny over the CSDP. It is urgent that we take steps to implement Protocol 1, making sure that national parliaments continue to be *the main pillar*" (Ibid.: 2). Put bluntly, another reporter on inter-parliamentary cooperation, Henrik Daems, affirmed the following: "I am getting pretty fed up with what I call the European Parliament's hunger for expansionism and political imperialism (...) I am going to make sure that my party works to put an end to the European Parliament's belief that it should decide everything. The matters that we deal with are *100% within the competence of national parliaments*" (Ibid.: 12-13).

Various proposals were issued by national parliaments along the same lines. All of them started from the premise that the dissolution of the WEU Assembly would create a parliamentary gap, as it would exacerbate the difficulties experienced by national parliaments in scrutinising an intergovernmental area of EU activity. The content of the proposals varied greatly (see Annex 2), from a loose COSAC model put forward by the French Senate, to an ambitious *CFSP Assembly* proposed by German liberals, or a halfway mechanism between conference and assembly proposed by the House of Commons.

Yet, most proposals coincided in granting the national parliaments the main initiative in the new mechanism with only a limited role for the European Parliament (note that the size of the EP delegation was limited to 6 members in most proposals, the same as the delegations of national parliaments). There was also widespread coincidence as regards the functions of the new conference, namely, that they should extend beyond a mere exchange of views and involve dialogue with responsible authorities in the CFSP and CSDP.

The European Parliament, whose relations with the WEU Assembly had never been smooth, adopted the opposite position and insisted that the Treaties did not provide room for the creation of a new autonomous inter-parliamentary body for the scrutiny of the CFSP and CSDP, and that any form of inter-parliamentary cooperation in this field had to be *jointly determined* by the European Parliament and the national parliaments (as established in Art. 9 of Protocol 1)<sup>15</sup>. The position of the EP in this domain was defined by the MEPs Elmar Brok and Roberto Gualtieri, and later endorsed by the AFET Enlarged Bureau and the Conference of Presidents of the EP. In stark contrast to the emphasis by some national parliaments on their exclusive competence over the EU's security and defence policy, the EP's proposal was based on the idea that the competences of the Parliament and the national parliaments in the oversight of the CFSP and CSDP were equally important and complementary<sup>16</sup>. The Brok/Gualtieri proposal established that the new conference should be organised under the joint leadership of the EP (through AFET) and the parliament of the Member State holding the EU rotating presidency, and that the European Parliament could provide logistical support for the meetings. The draft decision did not specify the composition of the future setting for cooperation but through other channels the EP made clear its unease with the marginalisation of the Parliament in some of the proposals by national parliaments and that proposals to assign it only 6 delegates had "no chance whatsoever of being agreed by the European Parliament" (Duff, 2011).

In this complex setting, the Belgian Presidency attempted to broker an agreement on the organisation of the inter-parliamentary scrutiny of the CFSP and CSDP, distributing a proposal to the EP and national parliaments on the basis of which it expected to reach an agreement at the EU Speakers Conference in April 2011. The proposal was very close to the European Parliament's approach in the sense that it gave it a strong representation (one third of a total of 162 members, i.e. 4 members for each of the 27 parliamentary delegations plus 54 MEPs). Also in line with the EP's theses, it established that the

15 This specification of the legal basis for inter-parliamentary cooperation is relevant given that the EP and National Parliaments referred to different articles of the Protocol 1: the EP to article 9, setting out that "The *European Parliament and national Parliaments* shall *together determine* the organisation and promotion of effective and regular inter-parliamentary cooperation within the Union"; and the national parliaments to article 10, establishing that: "A *conference of Parliamentary Committees for Union Affairs* may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference (...) may also organise inter-parliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy". Therefore, article 9 gives a more central role to the EP than article 10, which leaves the initiative to national parliaments.

16 The EP's draft decision issued by Brok and Gualtieri even included an annex where the exact competences of the EP and the Member States were made explicit (Brok/Gualtieri, 2010).

Secretariat of the Conference should be provided by the European Parliament and that the meetings were to be presided over *jointly* by the national Parliament of the Member State holding the rotating Council Presidency and the European Parliament (Conference of the Speakers of the Parliaments of the EU, 2011a).

However, the matter was so contentious during the Speakers Conference in April 2011 that no agreement could be reached. The conclusions of that meeting only mentioned that the parties were willing to set up an "Inter-parliamentary Conference for the CFSP and the CSDP", but with no agreement on form or timing (cf. Conference of the Speakers of the Parliaments of the EU, 2011b). Apparently, the major issue impeding the progress of the talks was the size of the delegations of the EP and national parliaments in the future conference. Whereas the EP initially aspired to even increase its representation from the one third proposed by the Belgian Presidency to 40 per cent of the seats, some national parliaments were completely reluctant to accept a representation of the EP which was any higher than the delegations of the respective national parliaments (i.e. 4 or 6 members). The European Parliament finally showed a willingness to reduce its representation from the proposed 54 seats to 27 seats, and accepted a secondary role in the organisation of the meetings, but still no compromise could be reached. To make things worse, the Conference could not even come to an agreement on how to follow up the negotiations.

Since then, debates on how to move forward in the establishment of an inter-parliamentary conference for the CFSP and CSDP have continued at European and national levels, but still without a clear roadmap for future negotiations. However, the tendency seems to be leaning towards the views of those national parliaments which are less inclined to allow the close involvement of the EP. For example, on 9 June 2011, even the German parliament approved a motion presented by the CDU/CSU and FDP whereby the size of the delegations to the future inter-parliamentary conference should be similar to those of the Council of Europe (CoE) Parliamentary Assembly and with an EP representation equal to the largest national delegation (meaning no more than 18 members). Moreover, the proposal did not envisage any role of the EP in the functioning of the conference<sup>17</sup>. The motion was passed only with the votes of the parties of the coalition government, the alternative motions proposed by the SPD and the Greens being considerably more in line with the model of conference proposed by the EP and the former Belgian Presidency. In contrast to the CDU/CSU and FDP, the opposition parties denounced the tendency in some national parliaments to perform "a kind of 'prophylactic containment' against the stronger involvement of the European Parliament in the parliamentary control of the CFSP/CSDP" and criticised the coalition parties' motion as being "a step backwards in the badly needed Europeanisation of the foreign and security policy"<sup>18</sup>. Therefore, prospects for strengthening current mechanisms of inter-parliamentary

17 According to the motion, the presidency functions would fall on the national parliaments of the Member States forming the troika of the EU Presidency, assisted by an autonomous secretariat made up of the staff of national parliaments of the troika countries working permanently in Brussels (see Deutscher Bundestag, 2011: 2)

18 See speeches by MP Dietmar Nietan (SPD) and MP Kerstin Müller (Bündnis 90/Die Grünen) respectively in the Bundestag's Plenary Debate of 9 June 2011 (pp. 13194 and 13196).



cooperation in the field of security and defence are highly uncertain in view of this evidence of the growing politicisation of the issue of parliamentary control of the CFSP/CSDP.

## **6. Conclusions and outlook**

The aim of this report was to assess the role of the European Parliament in the EU's foreign and security policy following the entry into force of the Lisbon Treaty and, more broadly, reflect on the dynamics of parliamentarisation in this policy domain. With several caveats, the report has argued that the post-Lisbon period has generally reinforced the position of the European Parliament in the EU's external relations, including the area of the CFSP/CSDP. Despite the little new formal prerogatives conferred upon the Parliament in this policy area, the EP has tried to bring its general powers (elective, budgetary and legislative) into play in order to shape institutional and policy developments in the EU's external action. The actual success of the EP in influencing policy outcomes has been rather mixed, as the cases of the External Action Service or the EU-US SWIFT agreement have illustrated. Yet, on a more procedural level, the Parliament has been quite effective in negotiating inter-institutional agreements and establishing practices which might, incrementally, extend the EP's policy-shaping role. This being said, however, the report has also pointed out that the particular way in which the EU is increasing its involvement in foreign and security policy opens up new challenges for the democratic quality of the EU's external relations. The following sections conclude this report, highlighting two of these main challenges.

### **6.1 The challenge of accountability: the side-effects of 'informalising' scrutiny**

One of the challenges highlighted in this report is related to the current tendency to reinforce the informal mechanisms of parliamentary consultation and scrutiny in the area of the CFSP/CSDP. In view of its lack of strong treaty powers in these domains, the Parliament itself seems to be adopting a more pragmatic stance. Despite "grand bargains" such as the one involving the establishment of the EEAS, the Parliament's demands for greater scrutiny have focused rather on reinforcing the mechanisms for regular information and consultation in small settings. Certainly, full and timely information is crucial for the Parliament's oversight functions and budgetary decisions, such as the authorisation of appropriations in the Union's budget for CSDP operations, and also for developing the necessary expertise and knowledge to be able to contribute own policy ideas. However, the lack of formal prerogatives to influence the policy-making process or possibilities to sanction the responsible authorities means that regular consultation meetings are only a poor substitute for public accountability. As Bovens reminds us, "the possibility of sanctions – not the actual imposition of sanctions – makes the difference between non-committal provision of information and being held to account" (Bovens, 2007: 451). The Parliament is facing a permanent dilemma between the more effective use of informal scrutiny rights and the more principled approach which is focused on gaining

formal powers. This is exemplified by the rather arcane demands of the EP of using the delegated acts procedure for programming external assistance instruments, even when it is not clear whether the Parliament would be willing or able to exercise its veto powers in such cases.

The informalisation of the Parliament's scrutiny functions might be an especially problematic development in lack of powers, but some question marks arise even when the EP does have important formal prerogatives. As illustrated by the case of international agreements, the Parliament is struggling to become involved in the early stages of the policy process. From its point of view, as representatives of the EU citizens, MEPs should be able to influence the content of international agreements, and not merely rubber-stamp them at the very end. Albeit reluctantly, the Commission (and to a much lesser extent the Council) have accepted further new rights for the Parliament in this area. In a way, the early and continuous involvement of the Parliament in the EU's international negotiations may minimize the risk of the subsequent parliamentary rejection of the international agreements concluded. This process of informalisation and early agreements among institutions is certainly a generalised tendency in other EU policy domains. In particular, in matters of co-decision there has been a dramatic increase in the legislation adopted at the very first reading (De Clerck-Sachsse/Kaczyński, 2009), which implies that there is ever more "a flood of informal meetings in which legislative decisions are taken behind closed doors with no scope for public supervision" (Maurer, 2008). These dynamics have obvious benefits in terms of speeding up the policy dossiers and increasing the EU's policy output, but they also risk diminishing input legitimacy, as it makes it ever more difficult for the Parliament to act as a venue for public political debate. This trade-off may be especially problematic in foreign and security policy, where the proliferation of informal meetings behind closed doors and in small settings might recreate the idea that the very nature of foreign and security policy requires secrecy and insulation from domestic constituencies.

Arguably, politicisation and public debate do not square well with foreign and security policy, an area which is prone to consensual politics, given that projecting unity and coherence is normally seen as an asset in international politics. However, foreign and security policy is also an area where public debate is of utmost importance, given the profound political and personal implications of measures such as the deployment of troops or civilian personnel to areas in conflict or the imposition of coercive measures on third actors. In this regard, automatic consultation (in the restrictive meaning of the term, namely a formal and *ex-ante* demand for the Parliament's opinion) before the launching of CSDP operations or the imposition/lifting of sanctions against third actors would be a measure enhancing the legitimacy of the most severe measures of EU foreign policy and would contribute to increasing the responsiveness and visibility of the EP's political groups before EU citizens. In the words of the SEDE Chairman in his statement about the mission of the Subcommittee, this should be "to ensure that security and defence issues do not remain the exclusive preserve of experts, but also respond to the concerns

expressed by the citizens of Europe”<sup>19</sup>. Therefore it would be important not to limit consultation to informal and restricted settings, but to find flexible ways to be able to carry out these consultation processes in plenary (or in full Committee).

On the other hand, even in those areas where the EP has formal powers and the possibility to carry out visible debates and decisive voting sessions, the political character of these activities is sometimes blurred due to communicative flaws. The Parliament’s communication services and MEPs themselves sometimes have the tendency to present the EP as a unitary actor, an institutional counterbalance to the Council, the Commission or now the HR/VP. But the projection of an image of the EP as a power-limiting institution might not be particularly effective for engaging people in EU politics. For example, most press articles (and also press releases by the EP) on the highly publicised SWIFT agreement episode reported the events by referring to “the Parliament” as a whole, obscuring the fact that the initial rejection as well as the later approval were possible due to different majorities. In this regard, communication should focus on the relevant choices, alternatives and political majorities, and less on corporate reporting on interinstitutional conflicts.

## **6.2 The challenge of representation levels: towards a ‘parliamentary field’ or battlefield?**

A second key challenge which must be seriously taken into account when discussing measures to increase the European Parliament’s involvement in foreign and security affairs is the reaction by elected representatives at other levels of the EU polity. In this sense, this report has sought to highlight the fact that the resistance to parliamentary control at a supranational level does not only come from Member States’ executives or other EU institutions, but increasingly also from national parliaments (although with varying degrees of emphasis). This development is certainly not new, but the entry into force of the ToL and, with it, the dissolution of the WEU have brought to the fore the seriousness of this cleavage, to the point of impeding an agreement on the new mechanism of inter-parliamentary cooperation in the field of foreign and security policy that was to be set up in compliance with the new Treaty.

The discussions on how to implement Protocol 1 of the Lisbon Treaty reflect the fact that the problems of inter-parliamentary cooperation are not technical or driven by institutional rivalries, but stem from more underlying differences about the idea of national sovereignty and the appropriate level of representation within the EU. As expounded in this report, an important group of national parliaments does not acknowledge the role of the EP in the scrutiny of the CFSP/CSDP on the grounds that this is a purely intergovernmental domain. Hence, according to this view, the European Parliament should only perform, at best, some sort of audit function; that is, help national parliaments to be better informed in order to take decisions as well as scrutinise their respective governments. Conversely, the official position of the EP has assumed a

<sup>19</sup> Website of SEDE: [www.europarl.europa.eu/activities/committees/presCom.do?language=EN&body=SEDE](http://www.europarl.europa.eu/activities/committees/presCom.do?language=EN&body=SEDE) (5.5.2011).

federalist-like idea that there is a neat division of competences between national parliaments and the EP: the former scrutinise *only* their respective governments' decisions in EU affairs; whereas the latter scrutinises the EU executive.

Yet, both positions seem ill-defined for the particular context of the foreign and security policy, where the mixture of intergovernmental decision-making procedures and community practices makes it difficult to trace clear lines of accountability. Therefore, the view of those less keen to acknowledge the role of the European Parliament in the CFSP/CSDP ignores the Europeanisation and integration dynamics that have been underway in this area especially in last three decades, and favours the rather illusory idea that national parliaments alone or in cooperation with one another can effectively control the collective decisions, budget or "Brusselised" bureaucracies of the CFSP/CSDP. In turn, the idea defended by the European Parliament that there is a clear-cut division of competences between the EP and national parliaments conveys an idea of hierarchy among levels of parliamentary representation that is likely to trigger more resistance from those who consider national parliaments as the stronghold of democracy in the EU. Also, this concept of the division of competences, which confines national parliaments to a mere national thinking about EU foreign and security affairs, bears the risk of further alienating national deputies from EU politics and reinforcing the divide between EU and national spheres of representation. Situations such as the one described in Germany, where the CDU/CSU political group in the Bundestag has not backed the EP's proposal for inter-parliamentary cooperation sponsored by a party fellow, the Christian-Democrat Elmar Brok, are an indication of the significance of this disconnection between parliamentary levels.

In view of this situation and the particular character of the CFSP/CSDP domain, it seems advisable to seriously take into account the notion of a *multilevel parliamentary field*, or a space of close interaction between parliaments at different levels, without fixed hierarchies and overlapping constituencies (Fossum/Crum, 2008). The concept of the parliamentary field has indeed been used to refer to this idea that in the area of the CFSP/CSDP "there is no clear-cut privileged channel for parliamentary involvement" (Peters et al. 2010: 18). In such a setting, increased parliamentary control at European level should not be seen as a challenge to the established prerogatives of national parliaments, but as another layer of scrutiny and representation, maximising the chances for the political debate, transparency and accountability of EU foreign and security policy. In order to turn the current battlefield into a parliamentary field, both the EP and national parliaments need to agree on the idea that their scrutiny functions are not exclusive and not merely complementary, but shared and largely overlapping.

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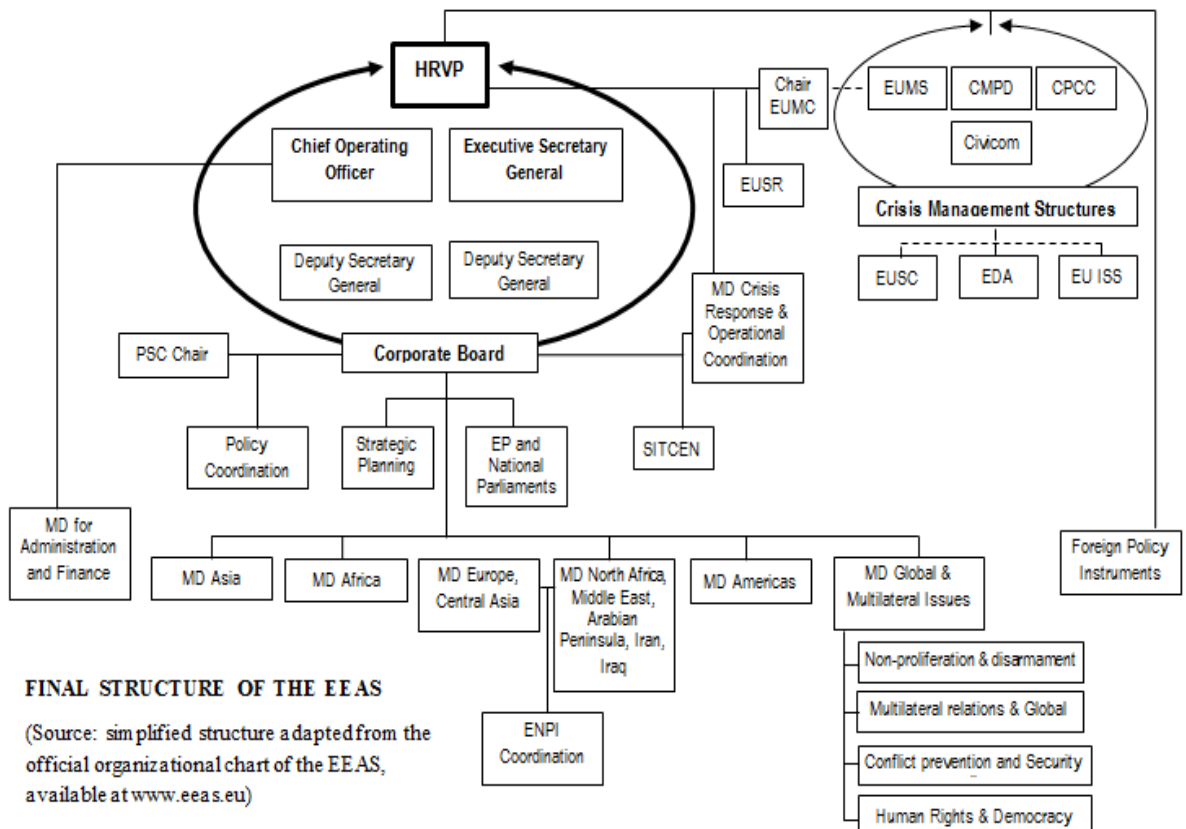
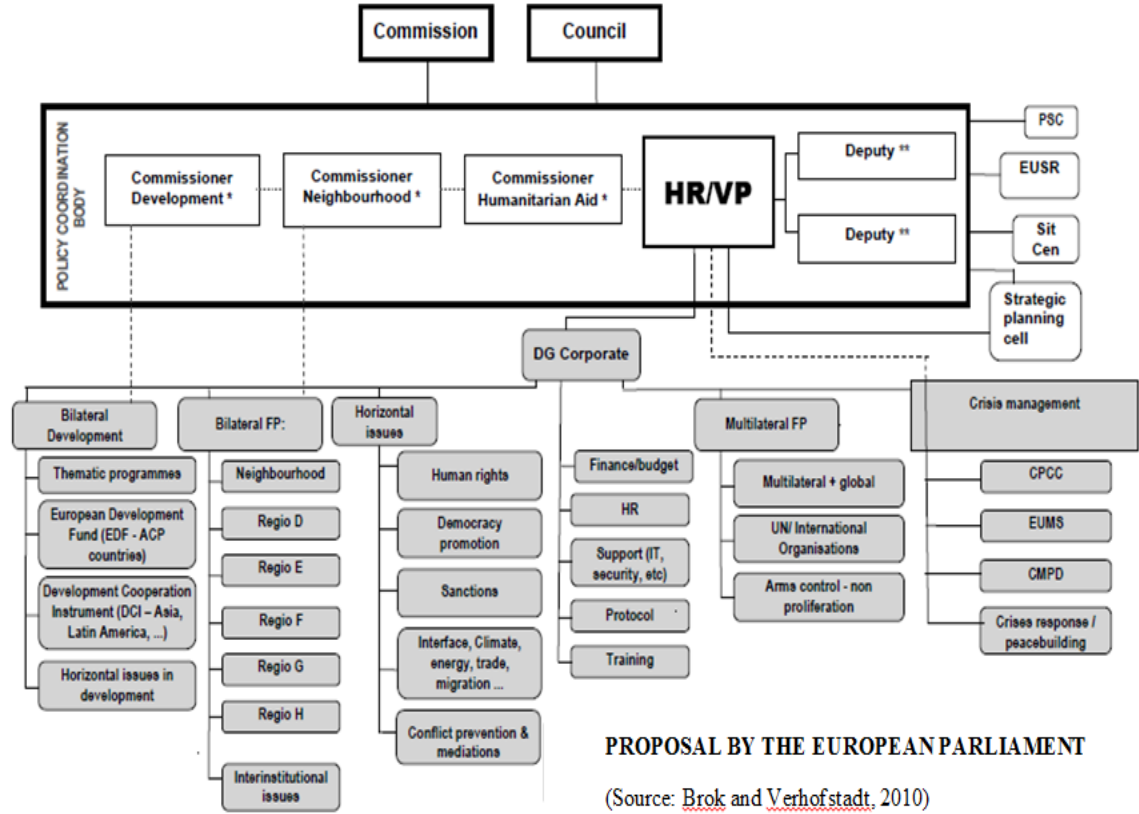
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## **Acronyms**

AFET	Committee on Foreign Affairs
ALSJ	Area of Liberty, Security and Justice
BUDG	Committee on Budgetary Control
CFSP	Common Foreign and Security Policy
COMPD	Crisis Management and Planning Directorate
CoE	Council of Europe
COSAC	Conference of Parliamentary Committees for Union Affairs
CPCC	Civilian Planning and Conduct Capability
CSDP	Common Security and Defence Policy
DCI	Development Cooperation Instrument
DG	Directorate General
EDA	European Defence Agency
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EJC	European Court of Justice
EP	European Parliament
ESDP	European Security and Defence Policy
EUISS	EU Institute for Strategic Studies
EUMC	EU Military Committee
EUMS	EU Military Staff
EUSR	EU Special Representatives
FA	Framework Agreement
HR/VP	High Representative for the Foreign and Security Policy/Vice-President of the Commission

ICI	Industrialised Countries Instrument
IfS	Instrument for Stability
IIA	Inter-Institutional Agreement
JCM	Joint Consultation Meeting
LIBE	Committee on Civil Liberties, Justice and Home Affairs
MEP	Member of the European Parliament
MD	Managing Directorate
MP	Member of Parliament
PNR	Passenger Name Record
PSC	Political and Security Committee
SEDE	Subcommittee on Security and Defence
SSR	Security Sector Reform
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
ToL	Treaty of Lisbon
WEU	Western European Union

**ANNEX 1: Comparison between the organisational chart of the EEAS proposed by the European Parliament and its final structure**



**ANNEX 2. Summary of the proposals for inter-parliamentary cooperation presented by the WEU Assembly, national Parliaments (a selection) and the European Parliament before the EU Speakers Conference of 4-5 April 2011**

	<b>Form/Name</b>	<b>Composition/Size</b>	<b>Secretariat/Meeting Place</b>	<b>Functioning</b>
<b>WEU ASSEMBLY</b> (December 2010)	Standing Inter-parliamentary Conference on CFSP and CSDP	- MPs of 27 Member States and MEPs. - Size of delegations proportional: 2 to 8 members per delegation. - Number & status of MEPs to be determined.	- Yes: partly permanent & partly rotating secretariat. - Head Quarters in Brussels but meetings in the country of the Presidency.	- Meetings every 6 months. - Receive & reply to an annual report. - Organise meetings with PSC twice/year. - Have 2 committees (Foreign Affairs and Defence)
<b>FRANCE</b> (Adopted by Senate on 7 April 2010)	Structure based on COSAC	- MPs of relevant committees from interested MS. - 6 MPs per delegation & 6 MEPs.	- No: the organisation would be provided by National Parliaments on sixth-monthly rotating basis.	- Meetings every 6 months.
<b>ITALY</b> (Adopted by the Chamber of Deputies on 15 September 2010)	Inter-parliamentary Conference for Foreign, Security and Defence Policy	- MPs from 27 Member States, MEPs, candidate countries, non-EU NATO members and possibly other interested parliaments. - "Small" delegations, they should include both majority and opposition parties.	- No: the meetings in Brussels in logistical and operational cooperation with the EP. - The conference would be co-chaired by the Chairman of AFET and the Chairman of the Foreign Affairs Committee of the country holding the Presidency.	- Meetings every 6 months; but extraordinary meetings possible. - Participation of the HR twice a year to report in person on "the main lines and strategies of foreign and defence policy".
<b>GERMANY</b> (Memorandum by Joachim Spatz, FDP; November 2010)	CFSP Parliamentary Assembly	- Membership similar to the WEU Assembly. - Size of delegations following CoE model: 209 delegates from full member countries.	- Yes: located in Brussels and should establish logistical ties with the EP, but maintaining autonomy.	- Participate in establishing a fundamental strategy and defining medium to long-term goals.
<b>UNITED KINGDOM</b> (Position of the House of Lords EU Select Committee, July 2010)	Conference on Foreign Affairs, Defence and Security (COFADS)	- MPs of 27 Member States and MEPs. - 6 MPs per delegation (among them, the chairs of relevant committees) & 6 MEPs.	- No: organisation by the parliaments of the EU troika in coordination with representatives of National Parliaments in Brussels. - Meetings in Brussels but not at the EP (e.g. in the Council). - Could count on specialist support from the EUJSS.	- Meetings every 6 months - Hear, debate and respond to ministers, HR, EUSR, EEAS staff, Commission, Council, PSC, etc. - May adopt conclusions. - Would imply the suppression of the COFACC meetings.
<b>EUROPEAN PARLIAMENT</b> (November 2010)	---	- MEPs from AFET and MPs from specialised committees. - 40% representation of the EP; 60% National Parliaments.	- No: organisation by EP and parliament of the Member State holding the EU Presidency. - The EP would provide technical support.	- Meetings 2/3 times per year and ad hoc if necessary. - Share information and possibly reach conclusions.

Source: own elaboration, from the translated texts of the Parliamentary initiatives compiled in WEU Assembly (2010c) and for the European Parliament: Brok and Gualtieri (2010) and Albertini (2011)