

# The Untapped Role of the European Parliament in Common Security and Defence Policy

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The authors would like to express their gratitude to Lukas Schaupp, Lukas Martin, Effi Spiegel, and Laurids Hempel for their research support, empirical input, and editorial assistance in the context of this article. Many thanks also to the anonymous peer reviewers for their constructive feedback.

## Abstract

In recent years, security and defence have emerged as prominent fields of European Union (EU) integration, notably after the Russian aggression against Ukraine. However, the formal role of the European Parliament (EP) has not adapted to this evolving landscape. The intergovernmental structure of the Common Security and Defence Policy (CSDP) persists unchanged, restricting the EP's formal role on many defence dossiers. As CSDP activities grow amidst current geopolitical dynamics, questions arise about the alignment of limited parliamentary prerogatives with the EU principles of democracy, sincere cooperation, and institutional balance. This article contends that, rooted in the EU's democratic foundation, the EP holds an *ex ante* and *ex post* scrutiny role in CSDP that goes beyond what is generally realised in practice and assumed in the literature. Crucial in this context is the institution's entitlement to the timely provision of comprehensive information in relation to security and defence matters, which is indispensable for effective democratic scrutiny in this policy area.

## Keywords

EU law – CSDP – European Parliament – democratic scrutiny – general principles of EU law – Right to information

## I. Introduction

In April 2024, the European Parliament (EP) refused to discharge the 2022 budget of the Council of the EU with the aim of urging Member States to supply additional Patriot anti-missile air defence systems to Ukraine.<sup>1</sup> Admittedly, the move of postponing the vote for a month until the next plenary session was primarily symbolic in nature. A few weeks before the European elections, in which security and defence were central topics, it underlined the EP's resolve to stand by Kyiv – which is in line with voters' preferences: The majority of EU citizens support the delivery of (lethal) weapon systems to Ukraine, albeit with a decreasing tendency.<sup>2</sup>

<sup>1</sup> European Parliament, *Discharge: MEPs Sign off EU Budget for 2022* (European Parliament 11 April 2024), <<https://www.europarl.europa.eu/news/en/press-room/20240408IPR20315/discharge-mepps-sign-off-eu-budget-for-2022>>, last access 15 October 2024.

<sup>2</sup> European Commission, *Standard Eurobarometer 98 (Winter 2022-2023)* (European Commission February 2023), <<https://eropa.eu/eurobarometer/surveys/detail/2872>> (last access

Hence, the EP's stance on the matter offered a faithful democratic representation at the Union level, consistent with Treaty stipulations (Art. 10 of the Treaty on the EU, TEU). Beyond electoral tactics, however, this parliamentary manoeuvre runs up against a significant barrier: According to Art. 24 TEU, the EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) are firmly in the hands of national executive actors and, thus, *prima facie* beyond the EP's reach.

This limited parliamentary involvement in CSDP, a subject of previous criticism from both the EP and academics for its lack of accountability,<sup>3</sup> assumes greater importance in today's geopolitical context. In fact, most security and defence measures adopted in response to the Russian aggression against Ukraine did *not* involve the EP. Notably, the allocation of EUR 11.1 billion in financial support to Kyiv through the European Peace Facility (EPF) evaded parliamentary scrutiny at the EU level. Similarly, the military assistance mission to Ukraine (EUMAM), initiated by the Council in autumn 2022<sup>4</sup> to train tens of thousands of Ukrainian soldiers on EU soil in handling the equipment provided by Member States and funded by the EPF, operates in a realm largely untouched by parliamentary oversight.

Already prior to the war in Ukraine, CSDP had witnessed a remarkable integration thrust, notably through the launch of Permanent Structured Co-operation (PESCO) in 2017,<sup>5</sup> yet another initiative exempt from democratic scrutiny by the EP. The Ukraine war compelled the EU and CSDP to undergo a *realpolitik* makeover, and hence accelerates the EU's transition from a predominantly 'civilian power'<sup>6</sup> or 'normative power'<sup>7</sup> to a harder power-

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15 October 2024); European Commission, *Standard Eurobarometer 101 (Spring 2024)* (European Commission May 2024), <<https://europa.eu/eurobarometer/surveys/detail/3216>>, last access 15 October 2024; see also Chendi Wang and Alexandru Moise, 'A Unified Autonomous Europe? Public Opinion of the EU's Foreign and Security Policy', *Journal of European Public Policy* 30 (2023), 1679-1698.

<sup>3</sup> See in particular European Parliament Resolution of 16 March 2017 on constitutional, legal and institutional implications of a common security and defence policy: possibilities offered by the Lisbon Treaty, 2015/2343(INI); Piet Eeckhout, *EU External Relations Law* (2nd edn, Oxford University Press 2011), 500.

<sup>4</sup> Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine), OJ 2022 L 88/45.

<sup>5</sup> Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States, OJ 2017 L 331/57.

<sup>6</sup> François Duchêne, 'Europe's Role in World Peace' in: Richard Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead* (Fontana 1972), 32-47.

<sup>7</sup> Ian Manners, 'Normative Power Europe: A Contradiction in Terms?', *JCMS* 40 (2002), 235-258 (235).

oriented polity, which had already started some years ago.<sup>8</sup> In light of the significant increase of CSDP initiatives and taxpayers' money being channelled through the EU to cover military expenditures, questions arise regarding the compatibility of current laws and practices with general principles of EU law.

Against this backdrop, we pursue a two-fold objective in this article. First, we aim to delineate the precise extent of the EP's democratic oversight concerning CSDP – an account that is so far missing in the scholarly literature. Second, we assess whether the way in which formal arrangements are put into practice align with the principles enshrined in primary law, notably those of democracy and institutional balance.

Importantly, our analysis does not stop at black letter law, but also studies practice. That is because, on the one hand, the EP actively tried to expand its competence reach through indirect and informal means in the past as the institution was by no means satisfied with its subordinate role in CFSP/CSDP affairs.<sup>9</sup> On the other hand, there is relatively little law in CSDP but a high degree of informality, which increases the chances of discrepancies between Treaty stipulations and realities. To understand fully the EP's role in CFSP and CSDP, we therefore analyse not only formal legal arrangements but also different facets of parliamentary practice.<sup>10</sup> Our approach therefore incorporates insights from ten semi-structured interviews conducted between March and April 2022 and in March 2023 with respondents affiliated with the EP, the European Commission (Commission), the Council of the EU (Council), and the European External Action Service (EEAS). This triangulation of findings from legal analysis and empirical research provides a comprehensive understanding of the topic.

Our core finding is that the EP holds an *ex ante* and *ex post* scrutiny role in the CSDP that goes beyond what is generally realised in practice and assumed in the literature. Crucial in this context is the institution's entitlement to the timely provision of comprehensive information, which is a

<sup>8</sup> For a more detailed account of this development, see Carolyn Moser, 'Hard Power Europe?', *HJIL* 80 (2020), 1-12.

<sup>9</sup> Guri Rosén and Kolja Raabe, 'Influence beyond Formal Powers: The Parliamentarisation of European Union Security Policy', *The British Journal of Politics and International Relations* 20 (2018), 69-83; Marianne Riddervold and Guri Rosén, 'Trick and Treat: How the Commission and the European Parliament Exert Influence in EU Foreign and Security Policies', *Journal of European Integration* 38 (2016), 687-702; Carolyn Moser, *Accountability in EU Security and Defence. The Law and Practice of Peacebuilding* (Oxford University Press 2020), 149-172.

<sup>10</sup> In the same vein, Elena Lazarou, 'The European Parliament in Security and Defence: The Parliamentary Contribution to the European Defence Union' in: Olivier Costa (ed.), *The European Parliament in Times of EU Crisis. Dynamics and Transformations* (Palgrave Macmillan 2019), 439-455 (446).

prerequisite for (a minimum of) effective democratic scrutiny. This limited democratic scrutiny, in turn, is required in view of the foundational values of the EU – also in relation to security and defence matters.

Our analysis unfolds in three sections. Section II contextualises CSDP within its broader EU governance and policy framework. Section III examines the functions the EP fulfils in the CSDP realm, both in law and in practice, encompassing a supervisory, deliberative, advisory, law-making, law-shaping, and budgetary competences next to its right to information. Section IV extends the analysis to relevant legal principles and jurisprudential developments, facilitating a contextual and teleological interpretation of existing legal arrangements. Finally, Section V offers concluding reflections on the evolving role of the EP in EU security and defence.

## II. EU Security and Defence in a Nutshell

### 1. Distinctive Integration Pattern and Governance Scheme

In the EU's constitutional and institutional framework, security and defence issues have a particular status. Despite the Treaty of Lisbon abolishing the pillar structure, the CSDP remains – on paper – fundamentally intergovernmental in terms of actors, procedures, competences, and instruments.<sup>11</sup> Art. 24 para. 1 TEU encapsulates this intergovernmental governance scheme, where the European Council, the Council, and the High Representative for Foreign Affairs and Security Policy (HR) serve as central decision-makers and implementers in CSDP. Concurrently, the Commission and the Parliament each have a 'special role', while the jurisdiction of the Court of Justice of the EU (ECJ) over CFSP and CSDP matters remains in principle significantly limited.<sup>12</sup>

These governance particularities originate from the distinctive integration trajectory of security and defence at the EU level. As Member States showed little enthusiasm to integrate security and defence after an initial failed attempt in the 1950s (the European Defence Community), they proceeded incrementally and cautiously, following an intergovernmental path and

<sup>11</sup> Panos Koutrakos, *The EU Common Security and Defence Policy* (Oxford University Press 2013), 23-55; Marise Cremona, 'The Two (or Three) Treaty Solution: The New Treaty Structure of the EU' in: Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds), *EU Law After Lisbon* (Oxford University Press 2012), 40-61 (49-51).

<sup>12</sup> See, on this issue, the most recent (and controversial) decisions by the ECJ on the matter: ECJ, *KS & KD v. Council and others*, judgment of 10 September 2024, case no. Joined Cases C-29/22 P and C-44/22 P, ECCLI:EU:C:2024:725.

mainly by reacting to external events.<sup>13</sup> Thus, security and defence is an integration and codification latecomer. Indeed, the Common Security and Defence Policy (initially called the European Security and Defence Policy) was launched only in 1999. Under the pressure of the Kosovo crisis, Heads of State and Governments at the Cologne European Council decided to add a security and defence dimension to the CFSP,<sup>14</sup> which itself had only been introduced some years earlier with the Treaty of Maastricht. The Treaty of Nice ultimately codified the CSDP in EU primary law,<sup>15</sup> after national executives had already created a nucleus of Brussels-based CSDP bureaucracies, set out strategic targets, and launched the first operational activities in Bosnia and Herzegovina.<sup>16</sup>

Remarkably, almost two decades after its inception, the CFSP was for the first time formally defined as a ‘competence’ of the EU in the Treaty of Lisbon (Art. 24 para. 1 TEU and Art. 2 para. 4 TFEU, Treaty on the Functioning of the European Union). According to Art. 24 para. 1 TEU, the scope of the CFSP is potentially very wide, as it may cover ‘all questions relating to the Union’s security’. This can be explained by the nature of security and defence policy, which is often influenced by unpredictable international developments.<sup>17</sup> The CSDP is legally anchored within the TEU, forming an integral part of the CFSP (Art. 42 para. 1 TEU). Consequently, it constitutes an EU policy distinct from the national foreign policies of Member States.<sup>18</sup> This interpretation, which dispels the earlier understanding prevalent in academic literature that the CSDP is merely an intergovernmental process among Member States,<sup>19</sup> is confirmed by the Member States’ obligation of loyal cooperation and solidarity, which must ‘support the

<sup>13</sup> For a thorough study of CSDP integration dynamics, including the Member States’ institutional and operational preference for intergovernmental governance solutions in EU security and defence, see Hylke Dijkstra, *Policy-Making in EU Security and Defence: An Institutional Perspective* (Palgrave Macmillan 2013).

<sup>14</sup> European Council, *Presidency Conclusions of the Cologne European Council (2-4 June 1999)*, Annex III: *Presidency Report on Strengthening of the common European policy on security and defence*.

<sup>15</sup> Most importantly, the Political and Security Committee (PSC) was codified in primary law through Art. 25 TEU (Nice).

<sup>16</sup> Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission, OJ 2002 L 70/1.

<sup>17</sup> See Art. 28 para. 1 TEU: ‘Where the international situation requires operational action by the Union’.

<sup>18</sup> Stephan Marquardt, ‘The Institutional Framework, Legal Instruments and Decision-Making Procedures’ in: Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU’s Common Foreign and Security Policy* (Edward Elgar 2018), 22-43.

<sup>19</sup> Eg. Eeckhout (n. 3), 166-168; Daniel Thym, ‘The Intergovernmental Constitution of the EU’s Foreign, Security & Defence Executive’, *Eu Const. L. Rev.* 7 (2011), 453-480 (466).

Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity' (Art. 24 para. 3 TEU). In line with Art. 42 para. 7 TEU, there is even a duty of mutual assistance in the event of an armed attack, which was activated once by France in the aftermath of the terrorist attacks of 2015.<sup>20</sup> Finally – and importantly – the Treaty stipulates that the common security and defence policy 'shall include the progressive framing of a common Union defence policy' (Art. 42 para. 2 TEU), which the Council can kick off with a unanimous decision (and which Member States can adopt in line with their respective constitutional requirements).

That said, the CSDP continues to operate on an intergovernmental blueprint. Primarily to protect this policy field from 'supranational infection',<sup>21</sup> security and defence were shielded from the so-called Community method. Hence, CSDP decision-making is based on unanimity (Art. 42 para. 4 TEU). Qualified majority voting in the Council has never been used in this domain due to the inapplicability of the *passerelle* clause on CFSP decision-making to decisions with military or defence implications (Art. 31 para. 4 TEU).<sup>22</sup> Furthermore, major strategic decisions in CSDP are adopted at the level of the Heads of State and Government by the European Council, which acts by unanimity on CFSP matters (Art. 31 para. 1 TEU).

## 2. The Changing Geopolitical and Institutional Context

Profound geopolitical transformations have put this intergovernmental governance scheme under pressure for the past years.<sup>23</sup> The combined impact of security threats from within and outside the Union – most notably Russia's annexation of Crimea in 2014, fraying relations with the United States of America (US), Brexit, and the ongoing Russian invasion of Ukraine

<sup>20</sup> Carolyn Moser, 'Awakening Dormant Law – or the Invocation of the European Mutual Assistance Clause after the Paris Attacks', *Verfassungsblog*, 18 November 2022, doi: 10.17176/20170426-133850.

<sup>21</sup> Eeckhout (n. 3), 467.

<sup>22</sup> This said, some decisions regarding PESCO can be taken via qualified majority voting, such as the inception of PESCO or the decision of joining or leaving PESCO (Art. 46(2)-(5) TEU). There is also a debate amongst scholars and practitioners as to the appropriateness of this scheme. See, for instance, Belén Becerril Atienza, and others, 'How to Get Rid of Vetoes in EU Foreign and Security Policy?', *European Foreign Affairs Review* 29 (2024), 227-230.

<sup>23</sup> See, for instance, Simon Duke, 'Capabilities and CSDP: Resourcing Political Will or Paper Armies' in: Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018), 154-181. The different challenges and threats are also carefully outlined in European Parliament Resolution of 17 February 2022 on the implementation of the Common Security and Defence Policy – annual report 2021, 2021/2183(INI).

– have led the EU to adopt a whole raft of defence-related measures, many of which do not follow intergovernmental patterns.

Indeed, next to developments under the CSDP umbrella – such as the launch of PESCO in 2017<sup>24</sup> or the creation of the EPF in 2021<sup>25</sup> – several key initiatives have emerged outside the traditional intergovernmental security and defence realm, particularly concerning defence industry aspects. The creation of a new Commission Directorate General for Defence Industry and Space (DG DEFIS) in 2019 and the subsequent establishment of the European Defence Fund (EDF) in 2021<sup>26</sup> exemplify this dynamic, alongside the nomination of the EU's first ever Commissioner for Defence and Space on 17 September 2024.<sup>27</sup> Two recent legislative acts further underscore this trend, namely on joint defence procurement (EDIRPA, European Defence Industry Reinforcement through Common procurement Act)<sup>28</sup> and in respect of supporting ammunition production (ASAP, Act in Support of Ammunition Production).<sup>29</sup> Another legislative act is in the pipeline, the European Defence Industry Programme (EDIP),<sup>30</sup> which would add another Europeanisation layer to defence broadly speaking.

This supranational dimension of the incipient European Defence Union marks a pivotal shift in the integration dynamics of European security and defence.<sup>31</sup> Importantly, it introduces elements of the Community method, according to which the EP and the Council act as co-legislators on a proposal submitted by the Commission, subtly applied through EU industrial policy (Art. 173 TFEU), and more recently, the harmonisation of national laws

<sup>24</sup> Council Decision (CFSP) 2017/2315.

<sup>25</sup> Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528, OJ 2021 L102/14.

<sup>26</sup> Regulation 2021/697/EU of 29 April 2021 establishing the European Defence Fund and repealing Regulation 2018/1092/EU, OJ 2021 L 170/149.

<sup>27</sup> Ursula von der Leyen, *Mission Letter to Andrius Kubilius, Commissioner-Desigante for Defence and Space* (European Commission 17 September 2024), <[https://commission.europa.eu/document/download/1f8ec030-d018-41a2-9759-c694d4d56d6c\\_en?filename=Mission%20letter%20-%20KUBILIUS.pdf](https://commission.europa.eu/document/download/1f8ec030-d018-41a2-9759-c694d4d56d6c_en?filename=Mission%20letter%20-%20KUBILIUS.pdf)>, last access 15 October 2024.

<sup>28</sup> Regulation 2023/2418/EU of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA), OJ 2023 L 1/16.

<sup>29</sup> Regulation 2023/1525/EU of 20 July 2023 on supporting ammunition production (ASAP), OJ 2023 L 185/7.

<sup>30</sup> Proposal for a Regulation of the European Parliament and the Council establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products (EDIP), COM(2024) 150 final.

<sup>31</sup> Steven Blockmans, 'The EU's Modular Approach to Defence Integration: An Inclusive, Ambitious and Legally Binding PESCO?', *CML Rev.* 55 (2018), 1785-1826; Pierre Haroche, 'Supranationalism Strikes Back: A Neofunctionalist Account of the European Defence Fund', *Journal of European Public Policy* 27 (2020), 853-872.

(Art. 114 TFEU).<sup>32</sup> Recent industrial initiatives considerably amplify the Commission's role – a genuinely supranational actor – in EU defence, also beyond legislative dossiers,<sup>33</sup> which places the institution in the very centre of EU defence policy-making, right next to the Council and the Member States.

However, the same cannot be said about the EP.<sup>34</sup> While Parliament has begun to act as a co-legislator on defence industrial aspects (notably regarding the EDF, EDIRPA, ASAP and currently EDIP), its formal role in the burgeoning CSDP realm remains fairly limited and has, hence, not been recalibrated to fit the new realities, such as PESCO or the seemingly ever-expanding EPF.<sup>35</sup> This eclecticism is challenging for the effectiveness of parliamentary oversight in a multi-level setting. Indeed, the policy field traditionally presents a challenge for democratic scrutiny at the EU level also beyond recent initiatives. This is due to the formal institutional and procedural framework of the policy remaining intergovernmental, while administrative and operational realities have experienced a process of 'Europeanisation', understood here as a vertical shift of policy and decision-making powers (not necessarily legal competences) from national to EU actors.<sup>36</sup> This 'Europeanised intergovernmentalism' produces a somewhat schizophrenic governance scheme that makes it difficult for the EP to define and effectively perform its formal but also informal functions in CSDP.

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<sup>32</sup> An account of the Commission's struggle to 'supranationalise' certain defence dossiers can be found in Michael Blauberger and Moritz Weiss, "If You Can't Beat Me, Join Me!" How the Commission Pushed and Pulled Member States into Legislating Defence Procurement', *Journal of European Public Policy* 20 (2013), 1120-1138.

<sup>33</sup> On this topic, see Elsa Bernard, 'La communautarisation de la défense européenne dans le contexte de la guerre en Ukraine'

RTDE 59 (2023), 325-350; Calle Håkansson, 'The Ukraine War and the Emergence of the European Commission as a Geopolitical Actor', *Journal of European Integration* 46 (2024), 25-45; Patrick Müller, Peter Slominski and Wolfgang Sagmeister, 'Supranational Self-Empowerment Through Bricolage: The Role of the European Commission in EU Security and Defence', *JCMS* 46 (2024), 25-45.

<sup>34</sup> A thought-provoking reflection on the loss of 'parliamentary capital' by the EP as a result of the increasing politicisation and supranationalisation of CSDP can be found in: Anna Herranz-Surrallés, 'Paradoxes of Parliamentarization in European Security and Defence: When Politicization and Integration Undercut Parliamentary Capital', *Journal of European Integration* 41 (2019), 29-45.

<sup>35</sup> Steven Blockmans and Dylan Macchiarini Crosson, 'PESCO: A Force for Positive Integration in EU Defence', *European Foreign Affairs Review* 26 (2021), 87-110.

<sup>36</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 6-7. This definition of 'Europeanisation' is inspired by Renaud Dehouze, 'Misfits: EU Law and the Transformation of European Governance' in: Christian Joerges and Renaud Dehouze (eds), *Good Governance in Europe's Integrated Market* (Oxford University Press 2002), 207-229.

### 3. The Broader Parliamentary Landscape

This said, the parliamentary landscape of CSDP entails, next to the dedicated EP (sub-) committees, also a multi-level and extra-EU dimension via the cooperation of the EP with the parliaments of Member States, on the one hand, and its exchange with the Parliamentary Assembly of NATO (North Atlantic Treaty Organization), on the other.

Within the EP, the distribution of defence-related dossiers is under debate, not least to mirror the structure of the new Commission with its brand-new Commissioner for Defence and Space.<sup>37</sup> At the time of writing, there was no fully-fledged defence committee which might, however, change with the 10<sup>th</sup> parliamentary term (2024-29). Next to the Committee on Foreign Affairs (AFET), which would continue to deal with most questions of EU external action, including interparliamentary assemblies falling under its remit,<sup>38</sup> the EP could eventually upgrade the former Subcommittee on Security and Defence (SEDE) to henceforth act as a full committee. This new arrangement, which would modify the distribution of labour in place since 2004, would be the result of a protracted intra-institutional struggle over defence-related competences. Yet, if structures remain unchanged, SEDE would continue to operate as a subcommittee of AFET without budgetary voting rights.

Since 2012, an interparliamentary forum dedicated to foreign affairs, security, and defence, the Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy (IPC for CFSP/CSDP), has operated alongside the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC). Indeed, the Treaty of Lisbon sought to address the oft-lamented democratic deficit of the EU<sup>39</sup> by reinforcing the roles of both the EP and its national counterparts, while emphasising the value of interparliamentary cooperation. Yet, while this biannual encounter of parliamentarians offers a welcome platform for exchanging information and best practices between

<sup>37</sup> See, for instance, Magnus Lund Nielsen and Nick Alipour, *EU Parliament Moves Closer to Setting Up Defence Committee in the Autumn* (Euractiv 16 July 2024), <<https://www.euractiv.v.com/section/politics/news/eu-parliament-moves-closer-to-setting-up-defence-committee-in-the-autumn/>>, last access 15 October 2024.

<sup>38</sup> Rules of Procedure of the European Parliament Annex VI, Powers and responsibilities of standing committees, 9<sup>th</sup> parliamentary term, January 2021.

<sup>39</sup> For a thorough constitutional law discussion of the EU's democratic credentials and the 'democratic deficit' debate prior to the entry into force of the latest treaty revision, see Anne Peters, *Elemente einer Theorie der Verfassung Europas* (Duncker und Humblot 2001), 626-651. For a contextualisation of EU's specific constitutionalisation scheme and questions of legitimacy, see Isabelle Ley, 'Kant versus Locke: Europarechtlicher und Völkerrechtlicher Konstitutionalismus im Vergleich', *ZaöRV* 69 (2009), 317-345.

national parliaments and the EP in relation to the CFSP/CSDP, it is said to have a mixed record in terms of producing concrete outputs or wielding significant influence over policy processes. Challenges include turf wars in the interparliamentary field<sup>40</sup> along with the rather formalistic exchanges of information between the EP and national parliaments.<sup>41</sup>

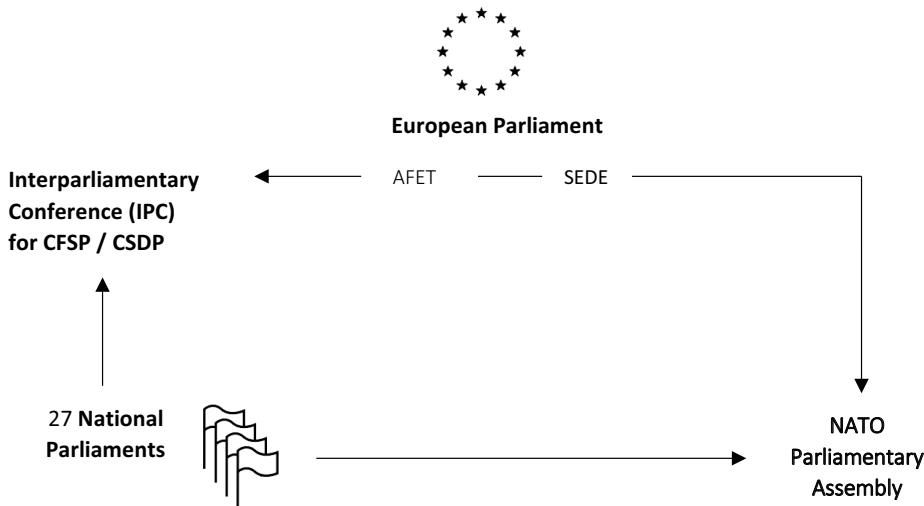


Figure 1. Parliamentary actors in European security and defence matters

Building closer relations with strategic partners, including NATO and the United Nations (UN), and third countries, which are advocates of multilateralism and an international order that promotes peace, is also central to SEDE's work. As is the case for AFET, SEDE is helped in this regard by a raft of interparliamentary committees and delegations. In the context of CSDP, the EP Delegation to the Parliamentary Assembly of NATO (DNAT) is the most relevant. Composed of ten SEDE members, the aim of DNAT is to convey the positions of the EP with a view to further developing the relationship between the EU and NATO. DNAT's role is particularly relevant in addressing common challenges, such as countering hybrid

<sup>40</sup> Anna Herranz-Surrallés, 'The EU's Multilevel Parliamentary (Battle)Field: Inter-Parliamentary Cooperation and Conflict in Foreign and Security Policy', *W. Eur. Pol.* 37 (2014), 957-975.

<sup>41</sup> Daniel Schade, 'Parlamentarische Kontrolle durch Vernetzung? Eine kritische Analyse der Rolle der Interparlamentarischen Konferenz für die GASP/GSVP', *Integr.* 42 (2019), 118-133; Ian Cooper, 'The Inter-Parliamentary Conferences of the European Union: Discussion Forums or Oversight Bodies' in: Kolja Raabe, Meltem Müftüler-Baç and Jan Wouters (eds), *Parliamentary Cooperation and Diplomacy in EU External Relations. An Essential Companion* (Edward Elgar 2019), 139-157.

threats, operational cooperation, cyber security and defence, defence research exercises, and supporting capacity-building efforts undertaken by Eastern and Southern partners. Similar interactions exist between the EP and the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE), particularly in the context of pan-European security.

### III. Unpacking the Law and Practice of EP Competences in EU Security and Defence, with a Focus on CSDP

After having fleshed out the broader governance framework of EU security and defence, this Section examines the functions the EP fulfils in the CSDP realm, both in law and in practice, encompassing its right to information, supervisory, deliberative, advisory, law-making, law-shaping, and budgetary competences.<sup>42</sup>

In law, the EP's role in CFSP/CSDP has not significantly evolved from before the Treaty of Lisbon: the inherently intergovernmental nature of this policy domain offers the institution formally only limited competences. The legal and institutional framework of the CFSP has even been said to resemble a 'parliamentary vacuum',<sup>43</sup> and a cursory look at the pertinent primary law provisions corroborates this finding in relation to CSDP: the EP is not mentioned once in the Treaty chapter dedicated to CSDP matters (Chapter 2, Section 2, TEU). Hence, one can infer that the EP derives its oversight powers over the CSDP 'indirectly' – that is, either *incidentally* from primary or secondary law provisions governing both the CFSP and the CSDP (such as Arts 24, 36, and 41 TEU), or *inherently* from powers the EP holds more generally in relation to budgetary matters, law-making, or appointment procedures. In other words, the precise extent of the EP's competences regarding CSDP derives from the larger body of EU security and defence rules – that is, by reading jointly CSDP and non-CSDP primary law stipulations to be found in the TEU and TFEU along with secondary law sources.

As far as its inherent powers are concerned, the Parliament can exert influence thanks to the general budgetary competences it shares with the Council. As the abovementioned move in April 2024 of withholding the discharge of the 2022 Council budget showed, broader budgetary preroga-

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<sup>42</sup> An overview of these competences can be found in table 1 at the end of this section.

<sup>43</sup> Daniel Thym, 'Beyond Parliament's Reach? The Role of the European Parliament in the CFSP', European Foreign Affairs Review 11 (2006), 109-127 (110-111).

tives can be used as a bargaining chip to try to impact CFSP and CSDP matters. What is more, an Interinstitutional Agreement (IIA) on budgetary discipline sets out practical modalities that allow the EP to supervise the implementation of the CFSP budget, including in the CSDP realm.<sup>44</sup> In addition, the EP acts as co-legislator in the ordinary legislative procedure (Art. 294 TFEU), as recent defence industrial dossiers underpinned. And finally, the EP must approve the composition of the Commission as a college, and Art. 17(7) TEU makes particular reference to the HR in their capacity as Vice-President (VP) of the Commission. It furthermore oversees the Commission's work, with the legal possibility to pass a vote of no-confidence (Art. 17 para. 8 TEU), sanctioning the Commission as a collective body.

As far as its incidental competences (in respect of CSDP) are concerned, Art. 36 TEU serves as a central reference point. Said article weaves together three key dimensions of parliamentary involvement: (i) the provision of information; (ii) a supervisory and deliberative mandate; and (iii) an advisory function. More specifically, Art. 36 TEU imposes upon the HR an obligation to regularly share information with the EP concerning EU security and defence matters. This implicitly grants the EP the right to information within this policy domain. Furthermore, said Article delineates the EP's fundamental supervisory and deliberative responsibilities within the CFSP and CSDP realm. Significantly, it establishes an advisory role with regard to critical CSDP elements.

Although not explicitly stated within the provision itself, it is crucial to recognise the interconnectedness of these three dimensions of parliamentary involvement. The EP's right to information underpins its ability to effectively fulfil its advisory, deliberative, and supervisory functions. This interconnectedness may explain why Art. 36 TEU consolidates these three dimensions into a single Treaty provision and why they are often conflated in official documents and scholarly analyses. Nevertheless, it remains valuable to distinguish between these three dimensions of parliamentary involvement delineated by Art. 36 TEU to fully comprehend the EP's codified role concerning CSDP matters. These dimensions empower the institution to exercise distinct yet complementary competences. That said, let us now address the different dimensions of the EP's role in CSDP in turn.

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<sup>44</sup> Interinstitutional Agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources of 16 December 2020, OJ 2020 LI 433/28.

## 1. Right to Information

The timely provision of appropriate and sufficient information is a prerequisite for effective parliamentary activity, especially in a policy field heavily influenced by national executive actors.<sup>45</sup> Art. 36 TEU recognises this fundamental need for information by obliging the HR to regularly brief the EP about CSDP developments, thereby granting the institution a right to obtain information.

While primary law remains somewhat vague regarding the specific details of this right to information in terms of its content, procedural aspects, and timing, various secondary law sources and official documents serve to substantiate and complement the information requirements stemming from Art. 36 TEU. We will address these additional sources in turn, while also offering insights from practice.

Primarily, the 2010 Declaration on Political Accountability<sup>46</sup> substantiates Art. 36 TEU by fleshing out the procedural guidelines governing the relationship between the HR and the EP.<sup>47</sup> Notably, this declaration reaffirms that the exchange of information concerning CFSP/CSDP matters will, *inter alia*, continue to be conducted through Joint Consultation Meetings (para. 1). These meetings are attended by senior officials from the EEAS and the Chair of the Political and Security Committee (PSC). Importantly, these meetings cover both ongoing CSDP activities and those in the planning phase, thus enabling the EP to receive information on potential future initiatives. The document also acknowledges that, in accordance with Art. 218 para. 10 TFEU, the EP will be promptly and comprehensively informed about the negotiation of international agreements, including those within the scope of CFSP/CSDP (para. 2). Furthermore, the declaration ensures that newly appointed Heads of Delegations and Special Representatives appear before AFET for an exchange of views if requested by the EP (para. 5). Along similar lines, the document specifies that the HR will facilitate the appearance of Heads of Delegations, Special Representatives, Heads of CSDP missions and operations, as well as senior EEAS officials before the EP to provide regular briefings to Members of the European Parliament (MEPs) (para. 7).

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<sup>45</sup> This was, without exception, also echoed by our interviewees. See Respondents # 1 through 10.

<sup>46</sup> Declaration by the High Representative on political accountability (2010), Council Document 12401/10.

<sup>47</sup> Bjorn Kleizen, *Mapping the Involvement of the European Parliament in EU External Relations – a Legal and Empirical Analysis* (CLEER Papers 2016), 1-44 (19).

The Decision establishing the EEAS, which was adopted in 2010,<sup>48</sup> introduces an additional layer of legal provisions reinforcing the EP's right to information in the CSDP domain. While delving into the specifics of this Decision is beyond the scope of this discussion,<sup>49</sup> it is important to highlight that it not only affirms but also expands the EP's information prerogatives.<sup>50</sup> Notably, it emphasises that the EEAS must provide appropriate support and cooperation to various Union institutions, with a specific mention of the EP.<sup>51</sup> Furthermore, the Decision furnishes the EP with a legal basis to request information from EU delegations when it deems such information necessary for its oversight of EU external actions in third countries.<sup>52</sup> Crucially, practice seems to align with this triangular information sharing arrangement including the HR, the EEAS and the EP (i. e. SEDE). Our interview material indicates that, consistent with the established legal and institutional framework, the primary conduit for information flows between the EEAS, which communicates on behalf of the HR, and the EP. While the extent and quality of information provision may vary depending on the specific policy issue, the overall collaboration between SEDE and the EEAS is generally viewed as constructive.<sup>53</sup>

Moreover, an Interinstitutional Agreement (IIA) pertaining to the European Parliament's access to sensitive information within the realm of the CSDP, concluded in 2002, bestows upon the EP the right to consult classified (CSDP-related) information.<sup>54</sup> This IIA outlines that the EP – personified by the President of the EP or the Chairpersons of various committees, including SEDE – can formally request information concerning CSDP developments from the Council Presidency or the HR.<sup>55</sup> In the event that the requested

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<sup>48</sup> Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ 2010 L 201/30, and Annex thereto.

<sup>49</sup> For a detailed legal commentary, see Steven Blockmans and Christophe Hillion (eds), *EEAS 2.0. A Legal Commentary on Council Decision 2010/427/EU Establishing the Organisation and Functioning of the European External Action Service* (Centre for European Policy Studies 2013).

<sup>50</sup> Rosén and Raube (n. 9), 7; Kolja Raube, 'The European External Action Service and the European Parliament', *The Hague Journal of Diplomacy* 7 (2012), 65-80 (75).

<sup>51</sup> Art. 3 para. 4, Council Decision 2010/427/EU. See also point 6 of the Decision's preamble.

<sup>52</sup> Art. 5 para. 7, Council Decision 2010/427/EU, Kleizen (n. 47), 15.

<sup>53</sup> Respondents # 1, 2, 3, 7, 8 and 10.

<sup>54</sup> On (the difficult access to) classified information in the EU generally, see Vigilencia Abazi, *Official Secrets and Oversight in the European Union* (Oxford University Press 2019).

<sup>55</sup> Point 3.1, Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy, OJ 2002 C 298/01). In times of crisis, this information shall be provided timely in line with point 3.2 of the IIA.

information is of a sensitive nature, the IIA establishes distinct information-sharing procedures. Specifically, it introduces a special committee with access to sensitive information (encompassing documents classified *confidentiel UE* and above) on the premises determined by the Council. The special committee consists of the Chairperson of AFET and four designated MEPs,<sup>56</sup> typically drawn from different committees (AFET and SEDE) and representing diverse political affiliations.

However, it is important to note that the existing IIA on sensitive CSDP information exclusively pertains to documents classified as top secret, secret, or confidential, while it does not encompass *restreint UE* documents, which constitute the bulk of classified materials within the Council's register.<sup>57</sup> Additionally, *limité* documents, which are internal records used during the decision-making process and constitute around one-third of Council documents, are equally excluded from the current access to information arrangements.<sup>58</sup> The implications of this regime for parliamentary practice will be discussed in more detail later. Suffice to mention here that, despite the restrictions on access and the Council's purported tendency over-classify documents,<sup>59</sup> the IIA concerning sensitive information facilitates the operationalise of the EP's right to information as enshrined in Art. 36 TEU. This is particularly valuable because it enables the EP to proactively seek information, foster working relationships with the Council, and engage with other pertinent actors in Brussels regarding security and defence issues. However, the utilisation of information contained in classified documents within the EP's work – for instance, an own-initiative report or a resolution – remains uncertain, especially when not all (shadow) rapporteurs have access to the classified sources.<sup>60</sup>

Another channel of information, as briefly mentioned earlier, stems from Art. 218 para. 10 TFEU, which pertains to the conclusion of international agreements. This Article mandates that during the negotiation and conclusion of such international agreements by the EU, the EP must be 'immediately' and 'fully' informed about 'all stages of the procedure'. ECJ rulings have clarified that Art. 218 para. 10 TFEU establishes an essential procedural

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<sup>56</sup> Point 3.3, Interinstitutional Agreement of 20 November 2002 (n. 55).

<sup>57</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 112.

<sup>58</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 160; David Galloway, 'Classifying Secrets in the EU', *JCMS* 52 (2014), 668-683 (672); Deirdre Curtin, 'Overseeing Secrets in the EU: A Democratic Perspective', *JCMS* 52 (2014), 684-700 (685-686).

<sup>59</sup> Guri Rosén, 'Secrecy versus Accountability. Parliamentary Scrutiny of EU Security and Defence Policy', (ARENA Working Paper 2014), 15.

<sup>60</sup> This matter is discussed in more detail below.

requirement applicable to all international agreements, including those exclusively related to CFSP and CSDP matters.<sup>61</sup>

Lastly, the EP is entitled to receive information when a crisis response is activated, as outlined in Art. 222 TFEU<sup>62</sup> in conjunction with the relevant Council Decision outlining the implementation specifics.<sup>63</sup> Art. 222 TFEU – known as the Union’s solidarity clause – encompasses responses to both terrorist attacks and natural or man-made disasters. It is worth noting that such responses can also involve the deployment of military resources, as emphasised in Art. 222 para. 1 TFEU. Consequently, leveraging CSDP tools, including capabilities developed through PESCO and funded by the EDF, is a viable (even though rare) option in this context. However, this can only occur if Member States opt for such action, and it would not take the form of a CSDP operation or mission, as primary law does *a priori* not envision the use of CSDP assets *within* the Union (Art. 42 para. 1 TEU).<sup>64</sup>

In practice, the provision of information to the EP is significantly influenced by four key factors: (i) informality, (ii) limitations on information sharing concerning purely intergovernmental matters, (iii) the complex handling of classified information, and (iv) the division of labour within the EP. These factors will be examined in detail.

First and foremost, informality plays a pivotal role. While formal exchanges occur between the EP, on one side, and the HR and the EEAS, on the other, such as the HR’s appearances in the plenary, the participation of mostly senior EEAS staff in EP (public) hearings and Joint Consultation Meetings, a substantial portion of the information that enables SEDE to effectively monitor CSDP developments and pose critical questions is acquired through informal information-sharing arrangements, particularly with the EEAS.<sup>65</sup> Exemplary hereof is the informal interaction between the EU Council and the EP in the form of follow-up briefings and pre-briefings.<sup>66</sup> Although MEPs generally express contentment with the extent and

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<sup>61</sup> ECJ, *European Parliament v. Council (Tanzania Agreement)*, judgment of 14 June 2016, case no. C-263/14, ECLI:EU:C:2016:435; ECJ, *European Parliament v. Council (Mauritius Agreement)*, judgment of 24 June 2014, case no. C-658/11, ECLI:EU:C:2014:2025.

<sup>62</sup> For further details, see Steven Blockmans, ‘L’Union Fait La Force: Making the Most of the Solidarity Clause (Article 222 TFEU)’ in: Inge Govaere and Sara Poli (eds), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises* (Brill/Nijhoff 2014), 111–135.

<sup>63</sup> Council Decision 2014/415/EU of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause, OJ 2014 L 192/53.

<sup>64</sup> What is more, according to Art. 222 para. 3 TFEU, responses having a defence implication are to follow usual CFSP decision-making procedures as set out by Art. 31 para. 1 TEU.

<sup>65</sup> Respondents # 1, 2, 3, 7 and 10.

<sup>66</sup> Respondent # 10.

quality of the informal information they receive from the EEAS,<sup>67</sup> the informal nature of many communication channels between the EP and the EEAS underscores the inadequacy of formal information-sharing mechanisms.

For instance, the ‘Kangaroo’ format meetings,<sup>68</sup> where a select group of MEPs engage informally in discussions on CSDP-related matters in the presence of additional stakeholders such as external experts and industry representatives, exemplify this informality.<sup>69</sup> Access to the Kangaroo group is subject to the organisers’ discretion, potentially excluding individuals deemed untrustworthy, which raises concerns regarding democratic legitimacy of this ‘exclusive’ format. However, this does not necessarily result in a high degree of homogeneity within the group, as representatives from various political groups and countries are typically included.<sup>70</sup> Regardless of governance considerations, the very existence of this format underscores the vital role of informal platforms for exchanging information on CSDP-relevant topics, crucial for the EP’s fulfilment of its scrutiny mandate. However, the inherent risk of current practices is that, if the currently smooth working relations between the EEAS and the EP were to deteriorate, Parliament might lose access to valuable and necessary information, potentially hindering its democratic oversight and transparency.

Secondly, information sharing faces severe limitations when it comes to purely intergovernmental CSDP dossiers and initiatives. While the EEAS generally supports the EP, it must be cautious not to exceed its mandate or breach confidentiality rules. Striking a delicate balance, the EEAS tries to meet the EP’s expectations for adequate information while addressing the concerns of many Member States who fear that the EEAS might grant the EP a role not conferred by the treaties.<sup>71</sup> Consequently, the EEAS refrains from sharing any information, either formally or informally, on the European Defence Agency (EDA) or PESCO and redirects the EP/SEDE to the Member States instead.<sup>72</sup> Since these initiatives are formally intergovernmental, the EP continues to face challenges accessing the information necessary to scrutinise significant CSDP developments, leading to frustration.<sup>73</sup>

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<sup>67</sup> Respondents # 1, 6 and 7.

<sup>68</sup> <<https://www.kangaroogroup.de/>>, last access 15 October 2024. Created in 1979, the format is currently chaired by MEP Michael Gahler.

<sup>69</sup> Respondents # 1, 3 and 5.

<sup>70</sup> Respondent # 2.

<sup>71</sup> Respondents # 2, 3 and 7.

<sup>72</sup> Respondents # 1, 5 and 7.

<sup>73</sup> Respondents # 7, 9 and 10.

Thirdly, gaining access to classified information often proves to be difficult and incomplete for several reasons. First, the access procedure outlined in the IIA on classified information is relatively burdensome, both in terms of the composition of the exclusive group of MEPs permitted to access classified information and defining the consultation conditions, such as location and timing. The limited number of MEPs granted access to classified information – namely five MEPs<sup>74</sup> – has raised concerns as it excludes many parliamentarians dealing with defence issues, like those in the EP's Committee on Industry, Research, and Energy (ITRE).<sup>75</sup> Additionally, the 2002 IIA, currently under renegotiation, appears outdated and does not align with the multifaceted nature of contemporary defence issues. Secondly, the IIA in question solely covers specific types of sensitive information, *restreint* and *limité* documents, which constitute the majority of working documents in the CSDP policy cycle.<sup>76</sup> Consequently, even privileged MEPs with access to classified information can only consult a fraction of these documents. Although this limitation may have less impact on legislative procedures, it can impede the scrutiny of implementation measures and projects, such as those under the EDF or EDIRPA projects.<sup>77</sup> Despite these restrictions, MEPs often receive classified information through other EU institutions, which make it public through alternative channels, including the press.<sup>78</sup> Thirdly, political dynamics within the EP appear to hinder the sharing of (particularly) sensitive information due to concerns over leaks.<sup>79</sup> A notable example was the development of the Strategic Compass,<sup>80</sup> during which the underlying threat analysis was deemed too sensitive to share even with high-level MEPs, mainly due to the absence of a secure space for sharing highly confidential information.<sup>81</sup> Besides, not necessarily all EP-affiliated persons working on security and defence matters have the sufficient security clearance, in particular members of the administration or MEP assistants. It was also reported that there is not enough awareness of the (legal) consequences of leakages.<sup>82</sup> Interestingly, some challenges related to information sharing seem to originate from internal issues rather than

<sup>74</sup> In line with the pertinent IIA, the 'special committee' is composed by the Chair of AFET and four additional members designated by the Conference of the Presidents. Para. 3.3 Inter-institutional Agreement of 20 November 2002.

<sup>75</sup> Respondents # 1 and 5.

<sup>76</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 112.

<sup>77</sup> Respondent # 8.

<sup>78</sup> Respondents # 1 and 10.

<sup>79</sup> Respondents # 1, 5 and 10.

<sup>80</sup> Respondents # 1, 2, 3, 5 and 7.

<sup>81</sup> Respondent # 1, 2, 3, 5 and 10.

<sup>82</sup> Respondent # 1.

cooperation with the EEAS,<sup>83</sup> although communication insecurity and the lack of interoperability between encrypted messaging systems among institutions further exacerbate these issues.<sup>84</sup>

Fourthly, the division of labour within the EP concerning security and defence aggravates existing information asymmetries. The fragmentation of security and defence competences across various (sub-) committees, political groups, and nationalities undermines the EP's quest for coherence and influence in the CSDP realm.<sup>85</sup> While this phenomenon is not unique to CSDP policies, it was for many years exacerbated by the absence of a fully-fledged security and defence committee. At the time of writing, it is still uncertain whether the status of the SEDE will change or its remit will be expanded with the 10<sup>th</sup> legislative term. It remains to be seen how a possible upgrade to a full committee (or the decision not to do so) will affect parliamentary influence on defence dossiers. The above notwithstanding, there remains a concern that sharing certain information, even within *in camera* meetings, could be problematic and risky, given the diverse political spectrum of participants of various involved parliamentary committees, each with distinct political priorities, who could potentially leak information.<sup>86</sup> To address these challenges, the EP should better streamline internal access to and processing of security and defence-related information. This includes ensuring sufficient security clearance for staff, offers one or more secure spaces, and adopting encrypted messaging systems compatible with those used by other EU institutions and services. Additionally, it is crucial for those handling sensitive information within the EP to be aware of the potential legal consequences of disclosing classified information via appropriate compliance measures.

## 2. Supervisory and Deliberative Mandate

As mentioned earlier, Art. 36 TEU sets out different dimension of parliamentary involvement in CSDP matters by granting the EP, *inter alia*, a supervisory and deliberative mandate. More precisely, the second indent of said Article spells out three types of parliamentary tasks. First, the EP is man-

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<sup>83</sup> Respondents # 1, 6 and 7.

<sup>84</sup> See Recommendation No. 9, Christophe Hillion and Steven Blockmans, *From Self-Doubt to Self-Assurance. The European External Action Service as the Indispensable Support for a Geopolitical EU, Report by the Task Force 'EEAS 2.0' led by Pierre Vimont* (CEPS, SIEPS, FES 2021).

<sup>85</sup> Respondents # 1, 2, 4, 5, 7 and 9. On this issue, see also Herranz-Surrallés, 'Paradoxes' (n. 34).

<sup>86</sup> Respondent # 1.

dated to deliberate bi-annually on the state of play of the CFSP and the CSDP. This deliberation relies on the annual report prepared by the Council that summarises the implementation of these policies. Secondly, the EP holds an inquisitive function, allowing it to pose parliamentary questions to the HR and the Council on matters related to the CSDP. Thirdly, the EP can issue recommendations to these two entities within the CSDP domain.<sup>87</sup> This supervisory and deliberative role encompasses all aspects of the CSDP.

Upon closer examination of practice, it becomes evident that the actual supervisory and deliberative functions of the EP and, more specifically, SEDE, extend beyond what a positivist reading of EU law might suggest.<sup>88</sup> In fact, the three formal tasks outlined in Art. 36 TEU are complemented by a range of additional parliamentary activities aligned with the EP's internal rules and working methods.<sup>89</sup> These activities establish the EP and SEDE as significant partners for the EEAS in conveying political messages regarding CSDP developments and priorities to the Council.<sup>90</sup>

Notably, the EP draws up its own yearly assessment reports on the progress of the CFSP and the CSDP (drafted by AFET and SEDE respectively) in response to the polished annual report delivered by the Council. The voting procedure for these annual shadow reports plays a pivotal role in generating momentum for parliamentary debates and even agenda-setting, attracting attention from Brussels-based institutions and beyond. Apart from summarising key events, ongoing activities, initiatives, and institutional matters in the realms of CFSP and CSDP, these reports also outline the EP's vision for significant future developments, including strategic choices.<sup>91</sup>

Our empirical material also suggests that the SEDE subcommittee has so far tended to function more as an echo chamber or think tank regarding policy developments in EU security and defence, since all votes are taken at the level of the AFET Committee.<sup>92</sup> As a subcommittee of AFET, SEDE held a privileged position due to its proximity to Brussels-based policy and decision-makers, setting it apart from its national parliamentary counterparts. SEDE frequently hosts stakeholders from various EU institutions and extends invitations to members of national ministries of defence, hence creating a rich environment for knowledge exchange.

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<sup>87</sup> This third task will be dealt with in more detail under Section III. 3. on the EP's advisory function.

<sup>88</sup> Respondent # 10.

<sup>89</sup> The institution does so in line with its own Rules of Procedure, according to which it can table resolutions or own-initiatives reports. See Rule 118, Rules of Procedure of the European Parliament, 9th parliamentary term, January 2021.

<sup>90</sup> Respondent # 7.

<sup>91</sup> On the EP's law-shaping role, see Section III. 4. below.

<sup>92</sup> Respondents # 1, 5 and 8.

The EP proactively seeks information and expertise through a range of mechanisms, including public hearings, exchanges of views, workshops, conferences, and commissioned research, all of which SEDE actively participates in. Since the start of the current parliamentary term in 2019, SEDE has been involved in (co-)organising twenty-six public hearings and exchanges of views with external experts on defence-related topics.<sup>93</sup> Additionally, it has commissioned more than two dozen studies and in-depth analyses.<sup>94</sup> This, in turn, makes SEDE a central hub for information exchange and policy discussion.

The decision to establish the EEAS has further enhanced SEDE's role. This decision stipulates that, in addition to the HR, senior EEAS staff must participate in joint meetings with the EP (paras 1 and 6) and provide requested briefings (paras 5 and 7). Moreover, SEDE members tend to have strong connections, including with national institutions, and several possess extensive experience in security and defence policy-making. These factors contribute to the high quality of exchanges with external interlocutors.<sup>95</sup> However, it is important to note that our interviews indicate that parliamentary scrutiny primarily occurs in *in camera* meetings, where MEPs reportedly ask pointed questions to (senior-level) guests.<sup>96</sup> This level of scrutiny is not consistently maintained outside of meetings, though, for instance via written parliamentary questions.<sup>97</sup> Therefore, there is room for improvement, and SEDE could enhance its oversight by increasing the frequency of parliamentary questions, with a sharper focus on matters related to CSDP to gather information and follow up on the EP's previous input.

Additionally, SEDE plays a crucial role in supervising CSDP missions, as insights from practice show. This special status stems from its function as an essential forum at the EU level where heads of CSDP missions and operations engage in discussions about the state of play.<sup>98</sup> These interactions are characterised by frequency and quality, driven by MEPs asking numerous well-informed questions<sup>99</sup> and undertaking field visits, including visits to deployed personnel. This direct engagement allows MEPs to gain a better

<sup>93</sup> For further details on dates and topics, see <[https://www.europarl.europa.eu/cmsdata/286133/SEDE\\_activity\\_report\\_2019-2024.pdf](https://www.europarl.europa.eu/cmsdata/286133/SEDE_activity_report_2019-2024.pdf)>, last access 15 October 2024.

<sup>94</sup> For an overview of the commissioned studies and analyses, see <<https://www.europarl.europa.eu/committees/en/sede/supporting-analyses/search-database?termId=9&textualSearchMode=TITLE&textualSearch=&publicationTypeCode=&authors=&peNumber=&publicationDateFrom=&publicationDateTo=&isSubmitted=>>>, last access 15 October 2024.

<sup>95</sup> Respondents # 7 and 10.

<sup>96</sup> Respondents # 1, 2, 3, 5 and 7.

<sup>97</sup> Respondents # 3, 5, 7 and 9.

<sup>98</sup> Respondents # 1 and 5.

<sup>99</sup> Respondents # 1 and 7.

understanding of the situation in third countries, crisis regions, and deployment contexts. Moreover, this hands-on interaction may explain why staff from CSDP missions and operations regularly reach out to MEPs to provide information and draw the institution's attention to specific issues.<sup>100</sup> Collectively, these activities enable the EP to exercise democratic scrutiny over CSDP activities and the bodies of the EEAS that serve as conduits for political control by the Member States.

Furthermore, deliberation and supervision also extend to budgetary matters related to CSDP activities funded through the EU's general budget. Art. 41 TEU serves as the core reference in this context, supplemented by the Interinstitutional Agreement on budgetary discipline. A detailed discussion of the EP's budgetary competence will follow, but it is worth noting here that parliamentary debate and supervision encompass the entire budgetary cycle as it co-decides on the EU budget, including budget planning, approval of CSDP budget appropriations, awareness of current disbursements, and voting on past spending within the discharge procedure.<sup>101</sup>

Turning our attention to the EP's role in interparliamentary encounters, the IPC for CFSP/CSDP stands out. This bi-annual event takes place under the rotating presidency, alternating between the host country of the Council presidency and the European Parliament.<sup>102</sup> The IPC serves as a platform for sharing information and best practices between national parliaments and the EP, particularly in the realm of CFSP and CSDP.<sup>103</sup> However, our empirical findings indicate that the IPC for CFSP/CSDP is a relatively weak point in parliamentary activity.<sup>104</sup> The effectiveness of IPC discussions in addressing security and defence matters chiefly depends on the agenda set by the country holding the Council Presidency, which also organises the bi-annual interparliamentary conference.<sup>105</sup> Moreover, the level of expertise among national parliamentarians regarding EU security and defence issues tends to be rather weak at the national level.<sup>106</sup> This knowledge gap can hinder meaningful exchanges and debates during IPC meetings. Nevertheless, there is a consensus that these formats hold untapped potential for fostering dialogue,

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<sup>100</sup> Respondent # 5.

<sup>101</sup> For further details, see Section III. 5. on the EP's budget competence.

<sup>102</sup> Art. 3, Rules of procedure of the Inter-Parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy, adopted at its first meeting in Cyprus (9-10 September 2012), as amended at its meeting in Rome (5-7 November 2014).

<sup>103</sup> For a more detailed discussion of the realities of interparliamentary cooperation in the CSDP realm, see in particular Schade (n. 41).

<sup>104</sup> Respondents # 1, 2 and 3.

<sup>105</sup> Respondents # 1, 2 and 3.

<sup>106</sup> Respondents # 2 and 3.

sharing perspectives, and deliberating on critical security and defence issues.<sup>107</sup> A (more) strategic approach by national parliaments and the EP, especially involving the chairs of relevant committees like AFET and SEDE, could maximise the benefits of these interparliamentary encounters.

At this juncture, it is worth noting that, at the national level, parliamentary oversight of foreign policy, particularly in the context of EU security and defence matters, often focuses on procedural aspects. This typically involves ensuring that the parliamentary consultation or consent processes align with constitutional requirements, rather than delving into the substantive aspects of these policies.<sup>108</sup> Consequently, there are varying degrees of national parliamentary involvement in EU security and defence issues, ranging from high to low or even non-existent.<sup>109</sup> These differences in national parliamentary engagement can impact the effectiveness of interparliamentary cooperation since not all national parliaments possess the same level of interest or competencies in this policy area.

### 3. Advisory Function

The third dimension of parliamentary involvement, as outlined in Art. 36 TEU, is the EP's advisory function in relation to the CSDP.<sup>110</sup> This treaty provision stipulates that the HR shall: (a) regularly consult the EP on crucial CSDP matters; and (b) ensure that the institution's views are duly taken into consideration. Before delving into these two aspects, it is essential to note that the effectiveness of the EP's advisory function hinges on the consistent and timely provision of comprehensive information by the HR regarding the current status and future developments of CSDP, as outlined in the first indent of Art. 36 TEU. Scholars have emphasised that this requirement provides the EP with an opportunity to influence EU foreign and security policy matters.<sup>111</sup>

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<sup>107</sup> Respondent # 3.

<sup>108</sup> Hans Born and others, *Parliamentary Oversight of Civilian and Military ESDP Missions: The European and National Levels*, Study PE 348.610, (European Parliament 2007). This point was also made by Respondents # 9 and 10.

<sup>109</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 139-141; Catriona Gourlay, 'Parliamentary Accountability and ESDP: The National and the European Level' in: Hans Born and Hans Hänggi (eds), *The 'Double Democratic Deficit'. Parliamentary Accountability and the Use of Force Under International Auspices* (Asghate 2004), 183-200.

<sup>110</sup> In order to avoid any confusion with the EP's prerogatives in the context of the consultation procedure (special legislative procedure) laid down by Art. 289 TFEU, we refer to this parliamentary CSDP competence as 'advisory function'.

<sup>111</sup> See, for instance, Péter Bajtay, 'Democratic and Efficient Foreign Policy?' (EUI Working Papers RCAS 2015), 15.

The EP's advisory function is corroborated by both the Declaration on Political Accountability (2010) and the Council Decision establishing the EEAS (2010). While the latter mentions both elements of the consultation requirement – namely, the consultation itself and the obligation to adequately feed the EP's views into the political process<sup>112</sup> – the former only references consultation requirement,<sup>113</sup> but remains silent concerning the requirement imposed on the HR to ensure that the EP's views are duly taken into consideration.

This said, let us first turn to consultations between the EP and the HR. It is worth remembering that the EP's advisory function is firmly established in the EU Treaty, arising from primary law that explicitly grants the EP the right to express its opinions on significant CSDP matters.<sup>114</sup> Yet, the contours of this right are rather loosely codified, which carries three important implications. To begin with, the precise format and procedure for the EP's advisory input are not specified by Treaty Law. The pertinent provision simply stipulates that: (a) the 'consultation' is to occur between the HR and the EP; and that (b) it is to take place regularly. This leaves open questions regarding whether the EP's advice should be provided in oral or written form or both, and in response to which developments or events. Secondly, Art. 36 TEU lacks specificity regarding the frequency of consultations. While it mandates 'regular' consultations, it does not set explicit intervals or define specific contexts in which such consultations should take place – such as during the adoption of key strategy documents or the initiation of new security and defence initiatives. Thirdly, there are no substantive limitations: Art. 36 TEU does not restrict the EP's input on crucial aspects of the CSDP to particular dossiers. In theory, the EP can communicate its stance on a wide range of issues, spanning from operational CSDP activities and PESCO advancements to EDA operations and even broader aspects associated with the 'progressive framing of a common Union defence policy', as articulated in Art. 42 para. 2 TEU, such as the support of Ukraine. Hence, speech acts could also fall under this category. Furthermore, the EP is not legally bound to confine its input to ongoing activities or current initiatives. In contrast, the institution is free to express its views on past, present, and future CSDP and CSDP-related matters.

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<sup>112</sup> Point 6 of the Preamble, Council Decision 2010/427/EU.

<sup>113</sup> Declaration by the High Representative on political accountability, Council Document 12401/10.

<sup>114</sup> Ben Crum, 'Parliamentarization of the CFSP through Informal Institution-Making? The Fifth European Parliament and the EU High Representative', *Journal of European Public Policy* 13 (2006), 383-401 (389).

Moving on to the follow-up or impact of the EP's advisory input, primary law provides limited guidance. Art. 36 TEU merely states that the HR must ensure that the EP's views are 'duly taken into consideration'. Presently, the consultation requirement is primarily fulfilled by the annual report presented by the HR to the EP. However, this has two noteworthy implications. First, while the debate that follows the presentation of the report represents a crucial moment for parliamentary discussion, it is often used more as an opportunity for MEPs to express their political positions rather than for in-depth democratic scrutiny of the HR and the EEAS.<sup>115</sup> While this reflection of political positions and current affairs is a part of the parliamentary process, it can sometimes overshadow the opportunity to thoroughly down on both the HR and the EEAS.<sup>116</sup> Secondly, the EP's involvement before and after the presentation of the HR's annual report seems to be limited. While the EEAS staff prepare a summary and background information for Parliament, channelling the EP's comments or critiques into the policy process is a complex endeavour.<sup>117</sup> The EEAS reportedly cross-checks the EP's positions and proposals expressed in the annual report with a view to extrapolating possible work strands, and then seeks to identify elements that need to be addressed.<sup>118</sup> Beyond the institution's annual report, though, integrating the EP's rather heterogenous stances into the policy cycle proves challenging,<sup>119</sup> notably because MEPs seem to express varying, sometimes diverging priorities at different occasions.<sup>120</sup> Hence, the involvement of the EP before and after the debates with the HR is rather limited, and takes primarily place through informal briefings. This also applies to follow-up communication, such as addressing outstanding questions posed in the plenary, which is typically handled informally, often through oral channels, especially for dossiers that cannot be formally shared.<sup>121</sup> While unsatisfactory in and of itself, the informal exchange of information was nevertheless described as being key, not least because plenty of dossiers cannot be shared formally.

In practice, another key expression of the EP's advisory function is the Parliament's annual shadow report. This report concisely outlines the EU's security and defence landscape and includes some recommendations. To increase the impact of its advisory input, the EP appears to be incorporating

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<sup>115</sup> Respondents # 2, 5 and 7.

<sup>116</sup> Respondents # 1, 3 and 7.

<sup>117</sup> Respondents # 2, 3 and 7.

<sup>118</sup> Respondent # 7.

<sup>119</sup> Respondent # 9.

<sup>120</sup> Respondent # 7.

<sup>121</sup> Respondents # 2 and 3.

actionable recommendations into its annual reports.<sup>122</sup> In light of the multi-faceted developments in security and defence at the EU level and to counter the fragmentation of parliamentary scrutiny over EU security and defence (writ large), it would be advisable to consolidate all defence-related aspects within the annual CSDP report and debate. This could involve input from other EP committees. However, the limited (formal) involvement and impact of the EP on the CSDP policy cycle remains a recurring concern among respondents.

Another dimension of the EP's advisory function is to make recommendations to both the HR and the Council regarding CSDP issues, as stipulated by the second indent of Art. 36 TEU. Mirroring the thematic indeterminacy of the 'consultation requirement', these recommendations can, in principle, cover all CSDP and CSDP-related subjects without substantive restrictions. In addition, the EP's Rules of Procedure permit the institution to draw up draft recommendations for the Commission.<sup>123</sup> In the previous (9<sup>th</sup>) parliamentary term, SEDE has (co-) drafted twenty-four own-initiative reports on CSDP-topics (the five annual shadow reports on CSDP implementation included), having led to the adoption of twenty-one resolutions<sup>124</sup> and three

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<sup>122</sup> Respondent # 5.

<sup>123</sup> Rule 118, para. 1, EP Rules of Procedure (2021).

<sup>124</sup> European Parliament Resolution of 28 February 2024 on the implementation of the common security and defence policy – annual report 2024, (2023/2119(INI)); European Parliament Resolution of 17 January 2024 on the security and defence implications of China's influence on critical infrastructure in the European Union, (2023/2072(INI)); European Parliament Resolution of 23 November 2023 Strategic compass and EU space-based defence capabilities, (2022/2078(INI)); European Parliament Resolution of 9 May 2023 on Critical technologies for security and defence: state of play and future challenges, (2022/2079(INI)); European Parliament Resolution of 18 April 2023 on the implementation of civilian CSDP and other EU civilian security assistance, (2022/2196(INI)); European Parliament Resolution of 19 April 2023 on the EU Rapid Deployment Capacity, EU Battlegroups and Article 44 TEU: the way forward, (2022/2145(INI)); European Parliament Resolution of 8 June 2022 on security in the Eastern Partnership area and the role of the common security and defence policy, (2021/2199 (INI)); European Parliament Resolution of 18 January 2023 on the implementation of the common security and defence policy – annual report 2022, (2022/2050(INI)); European Parliament Resolution of 7 June 2022 on the EEAS's Climate Change and Defence Roadmap, (2021/2102(INI)); European Parliament Resolution of 7 June 2022 on the EU and the security challenges in the Indo-Pacific, (2021/2232(INI)); European Parliament Resolution of 17 February 2022 on the implementation of the Common Security and Defence Policy – annual report 2021, (2021/2183(INI)); European Parliament Resolution of 15 December 2021 on the challenges and prospects for multilateral weapons of mass destruction arms control and disarmament regimes, (2020/2001(INI)); European Parliament Resolution of 7 October 2021 on the state of EU cyber defence capabilities, (2020/2256(INI)); European Parliament Resolution of 7 July 2021 on EU-NATO cooperation in the context of transatlantic relations, (2020/2257 (INI)); European Parliament Resolution of 25 March 2021 on the implementation of Directive 2009/81/EC, concerning procurement in the fields of defence and security, and of Directive 2009/43/EC, concerning the transfer of defence-related products, (2019/2204(INI)); European

recommendations.<sup>125</sup> SEDE has also contributed to the adoption of two legislative resolutions regarding the EDF.<sup>126</sup> Finally, SEDE adopted one legislative report (on EDIRPA) and four opinions on legislative matters.<sup>127</sup>

This is linked to another issue, namely the enhancement of security and defence expertise at the EP, in particular in SEDE.<sup>128</sup> Several Respondents highlighted that SEDE has managed to acquire and consolidate its essential expertise in the field of EU security and defence in recent years – a progress that can be attributed, in part, to certain MEPs who possess a strong background in security and defence matters, as well as expert hearings and commissioned reports.<sup>129</sup> This increase in knowledge, in turn, has enabled MEPs to gain a better understanding of the current state of affairs, keep track of initiatives and activities, and reflect upon potential future developments. However, it is important to contextualise this expertise enhancement within

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Parliament Resolution of 20 January 2021 on the implementation of the Common Security and Defence Policy – annual report 2020, (2020/2207(INI)); European Parliament Resolution of 20 January 2021 on artificial intelligence: questions of interpretation and application of international law in so far as the EU is affected in the areas of civil and military uses and of state authority outside the scope of criminal justice, (2020/2013(INI)); European Parliament Resolution of 20 October 2020 with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies, (2020/2012(INI)); European Parliament Resolution of 17 September 2020 on Arms export: implementation of Common Position 2008/944/CFSP, (2020/2003(INI)); European Parliament Resolution of 16 September 2020 on EU-African security cooperation in the Sahel region, West Africa and the Horn of Africa, (2020/2002(INI)); European Parliament Resolution of 15 January 2020 on the implementation of the common security and defence policy – annual report, (2019/2135(INI)).

<sup>125</sup> European Parliament recommendation of 8 June 2022 to the Council and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy on the EU's Foreign, Security and Defence Policy after the Russian war of aggression against Ukraine, (2022/2039(INI)); European Parliament recommendation of 20 October 2020 to the Council and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy concerning the Implementation and governance of Permanent Structured Cooperation (PESCO), (2020/2080(INI)); European Parliament recommendation of 21 October 2020 to the Council and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy concerning the preparation of the 10th Non-Proliferation of Nuclear Weapons Treaty (NPT) review process, nuclear arms control and nuclear disarmament options, (2020/2004(INI)).

<sup>126</sup> European Parliament legislative resolution of 18 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the European Defence Fund (COM(2018)0476 – C8-0268/2018 – 2018/0254(COD)), OJ 2021 C 158/74; European Parliament legislative resolution of 29 April 2021 on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (06748/1/2020 – C9-0112/2021 – 2018/0254(COD)), OJ 2021 C 506/44.

<sup>127</sup> For an overview, see SEDE's activity report (2019-2024) at <[https://www.europarl.europa.eu/cmsdata/286133/SEDE\\_activity\\_report\\_2019-2024.pdf](https://www.europarl.europa.eu/cmsdata/286133/SEDE_activity_report_2019-2024.pdf)>, last access 15 October 2024.

<sup>128</sup> On this issue, see also Herranz-Surrallés, 'Paradoxes' (n. 34).

<sup>129</sup> Respondents # 1, 3, 5, 7 and 10.

the broader landscape of EU security and defence. The proliferation of topics related to EU security and defence, along with the expansion of expertise within relevant EU institutions, has been significant. For example, the Commission established an entire Directorate General dedicated to transversal defence and space issues (DG DEFIS, subject to further change), the EEAS formed a specialised Division (SECDEFPOL.1), and the Council created an ad hoc working party focused on the defence industry. In contrast, the EP committees in charge of security and defence – notably SEDE – have, in turn, not (yet) seen a corresponding increase in (administrative) staff.<sup>130</sup>

Finally, the EP has a consultative mandate concerning the conclusion of certain international agreements. Indeed, Art. 218 para. 6 lit. b) TFEU stipulates that, in some circumstances – namely when agreements do not exclusively relate to the CFSP and do not fall under the types of agreements requiring EP consent under Art. 218 para. 6 lit. a) TFEU – the Council must consult the EP before concluding an international agreement. The precise procedure for adopting the relevant EP resolution is outlined in the institutions Rules of Procedure.<sup>131</sup> Yet, even if defence issues are concerned by such international agreements, SEDE has so far played a minor role in the EP's consultation.

#### **4. Law-Making and Law-Shaping Role**

This brings us to the EP's competences regarding law-making and law-shaping in CSDP. While the adoption of legislative acts is excluded from the CFSP/CSDP (Art. 24 para. 1 TEU), the Treaties still provide room for influencing legislation pertaining to defence matters beyond CSDP. This influence primarily arises 'indirectly' from the non-legislative powers the EP holds in the CSDP realm (i.e. its rights to information or its advisory function), which enable the EP to express its views and potentially leave an impact on CSDP issues, even when it may not seem initially involved.

The EP's law-shaping potential mainly stems from Art. 36 TEU, which mandates that the EP's views are to be 'duly taken into consideration' regarding the status quo and evolution of the CFSP/CSDP. It is worth recalling in this context that the Union's competence in such matters 'cover[s] *all* [...] *questions* relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence' (Art. 24 para. 1 TEU). Indeed, the EP effectively employs recommendations and

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<sup>130</sup> Respondent # 5.

<sup>131</sup> Rules 114 and 118, EP Rules of Procedure (2021).

non-legislative resolutions to voice its positions on security and defence matters. As mentioned earlier, the EP's annual report on the state of the CSDP provides a significant opportunity to highlight specific topics and, thus, elevate them on the political agenda of other EU institutions. This agenda-setting role should not be confused with proper law-making competences, however.<sup>132</sup> That said, parliamentary proactivity can also leave its mark on the law of purely intergovernmental initiatives unfolding under the CSPD, namely PESCO. Despite not holding any formal law-making or law-shaping mandate in this area,<sup>133</sup> the EP (i. e. SEDE) reportedly influenced the outcome of PESCO's constituent Council decision by adopting a report on the matter.<sup>134</sup> The dynamic which explains this influence resides in informal contacts between the EEAS and Parliament, during which the different policy perspectives are being exchanged and eventually aligned to a degree that is beneficial for both institutions. The EEAS seeks to ensure that the HR's priorities are generally respected, and obtains a higher degree of perceived democratic legitimacy for its policy proposals through the cooperation with the EP.<sup>135</sup>

That said, the EP does possess law-making and law-shaping options in the field of defence beyond the CSDP, particularly concerning the common defence industry (dealt with under the common market umbrella). In these cases, procedures and competences are governed by the TFEU, following the ordinary legislative procedure (Art. 294 TFEU). This can be exemplified by the introduction of the EDF, where the EP acted as a co-legislator. The same applies to the most recent legislative dossiers, namely EDIRPA, ASAP and EDIP. Importantly, there has been a recent change in the division of labour within the EP concerning legislative dossiers related to the defence industry. While the ITRE Committee previously led in the context of the European Defence Fund with AFET and the Committees on Internal Market and Consumer Protection (IMCO) and Budget (BUDG) providing their opinions, SEDE was not officially part of the negotiations. However, regarding EDIRPA, a protracted internal struggle regarding competences, which delayed the parliamentary deliberations on EDIRPA for several months, eventually turned out beneficial for SEDE:<sup>136</sup> the latter is now in the joint lead with ITRE, with IMCO also being in the loop – this is a truly remarkable

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<sup>132</sup> Lazarou (n. 10), 446.

<sup>133</sup> Jelena von Achenbach, *Politische und militärische Integration in der Verteidigungspolitik der Europäischen Union. Eine verfassungs- und verwaltungsrechtliche Untersuchung zur Europäisierung der militärischen Handlungsfähigkeit* (Mohr Siebeck, forthcoming).

<sup>134</sup> Respondent # 2.

<sup>135</sup> Respondents # 2 and 7.

<sup>136</sup> Respondents # 8, 9 and 10.

first.<sup>137</sup> Indeed, SEDE's new role as law-making committee represents a considerable readjustment of parliamentary division of labour in relation to EU security and defence matters.<sup>138</sup> This said, the involvement of the EP in these legislative dossiers underlines the essential role of the EP in law-making, but also law-shaping on questions related to the Union's security – particularly the framing of a common defence policy – notably when the legislative basis for these parliamentary competences falls outside the realm of CSDP.

This observation extends to various other legislative dossiers as well. For instance, two defence procurement Directives – Directive 2009/43/EC and Directive 2009/81/EC – aimed to apply internal market principles to the defence industry which otherwise often benefits from national security exemptions under Art. 346 TFEU, involved the EP in both initial legislation and subsequent updates through the ordinary legislative procedure.<sup>139</sup> Similarly, a Regulation on the handling of dual-use items was adopted using the legal basis of Art. 207 para. 2 TFEU (outlining the Common Commercial Policy of the EU), and thus depending on the EP as a co-legislator.<sup>140</sup>

Formally, the EP's law-making and law-shaping competences in CFSP are most apparent in the negotiation and conclusion of international agreements under Art. 37 TEU. As mentioned above, the 'Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement [...] except where agreements relate exclusively to the common foreign and security policy' (Art. 218 para. 6 TFEU). While this might suggest that the Parliament does not contribute to the process, the EP's consent is required for agreements that may have a CFSP or CSDP dimension. These include association agreements (Art. 217 TFEU), accession treaties (Art. 218 para. 6 lit. a) (i) TFEU), and agreements with significant budgetary implications for the Union (Art. 218 para. 6 lit. a) (iv) TFEU). Art. 218 para. 6 lit. a) TFEU further stipulates that the 'European Parliament and the Council may, in an urgent situation, agree upon a time-limit' (Art. 218 para. 6 lit. a) TFEU) for agreements that require the EP's consent – and which may include a CSDP dimension – thus underlining the Parliament's role as an equally competent co-legislator for the types of agreements listed by this Treaty provision. Art. 218 para. 10 TFEU grants the EP important information rights in rela-

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<sup>137</sup> Respondents # 8, 9 and 10.

<sup>138</sup> Respondents # 9 and 10.

<sup>139</sup> Cemal Karakas, *Defence Industry Cooperation in the European Union. Rationale, Initiatives, Achievements, Challenges*, PE 690.607 (European Parliament 2021), 5.

<sup>140</sup> Regulation 2021/821/EU of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), OJ 2021 L 206/1.

tion to the negotiation and conclusion of international agreements, even those exclusively related to CFSP/CSDP matters, as the ECJ has clarified.<sup>141</sup> The EP's right to information is corroborated by Art. 218 para. 6 lit. b) TFEU, which states that the Council may only adopt agreements that do not require the EP's consent 'after consulting the European Parliament'. Furthermore, Parliament is entitled to deliver an opinion on the agreement in question within a time-limit set by the Council, thus providing a potential avenue for law-shaping.

However, in practice, the EP's role in relation to the Council for international agreements concluded under Art. 218 TFEU is often considered weak.<sup>142</sup> The lack of involvement of the SEDE committee in agreements on security and defence matters (or those with a CFSP/CSDP dimension) is a key reason for this, as a result of which the parliamentary committee responsible for providing input may not have the necessary awareness or expertise to scrutinise specific CSDP-related issues.<sup>143</sup> There are exceptions, such as the role of SEDE in the context of Brexit. Due to the membership of the SEDE chair Nathalie Loiseau in the Brexit-Coordination Group (together with the chairs of AFET and ITRE), interaction with the EU's Chief Negotiator Michel Barnier for the Withdrawal Agreement was possible, including on defence dossiers.<sup>144</sup> In most cases, however, the relationship between the Council and the EP/SEDE is described as almost non-existent, except within the context of trilogue discussions on dossiers with defence implications.<sup>145</sup> Furthermore, while the ECJ strengthened the EP's right to information in relation to the conclusion of international agreements in its *Mauritius Agreement* and *Tanzania Agreement* judgements, this jurisprudence appears to have limited practical impact. Many CSDP-related agreements, such as Status of Forces and Status of Mission Agreements, consist of template documents with standard clauses, leaving little room for negotiation.<sup>146</sup> Thus, while the jurisprudence strengthens the EP's right to information, it seems to have limited influence on the course of action or the content of the agreements in practice.<sup>147</sup>

Additionally, the EP possesses law-shaping competences stemming from its right to request ECJ opinions on draft international agreements under

<sup>141</sup> ECJ, *Mauritius Agreement* (n. 61); ECJ, *Tanzania Agreement* (n. 61); Declaration by the High Representative on political accountability, Council Document 12401/10, pt 2.

<sup>142</sup> Respondent # 10.

<sup>143</sup> Respondents # 1 and 5.

<sup>144</sup> Respondent # 1.

<sup>145</sup> Respondents # 1 and 3.

<sup>146</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 198-203; Kleizen (n. 47), 8-10.

<sup>147</sup> Respondents # 1 and 3.

Art. 218 para. 11 TFEU. This allows the EP to ascertain the Treaty compliance of international agreements during the drafting stage (and not just when it comes to ratification), offering an opportunity to express concerns and seek ECJ opinions if necessary. While this scrutiny is limited to ensuring Treaty-compliance of international agreements and does not enable the EP to shape policy objectives in the field of CSDP beyond the limits provided by primary law, it does allow it to formulate concerns, and offers another opportunity to ask the ECJ for an opinion if it is not sure about or satisfied with the amendments made to the draft agreement.<sup>148</sup>

Regarding CFSP sanctions (which may involve a CSDP dimension), they are adopted through a Council decision requiring unanimity (Art. 31 para. 1 TEU), based on a proposal from the HR. In order for the sanctions to take effect, the Council must adopt a regulation outlining the implementation details, based on a joint proposal from the Member States and the HR, requiring qualified majority voting in accordance with Art. 215 TFEU. While the EP has the right to be informed of these measures, it is not formally involved in the decision-making process.<sup>149</sup>

In general, the EP's law-making and law-shaping competences in CSDP matters do not arise from the Treaties themselves, but largely result from various channels that enable the Parliament to voice its positions during the legislative process.<sup>150</sup> Yet, this role depends on the availability of information, creating interdependencies between this area and the EP's supervisory, budgetary, and advisory competences. Personalities and personal ties also play a role.<sup>151</sup> For instance, since the French Council presidency in 2021, the SEDE Chair takes a seat at the table as an observer when there is an informal defence ministers meeting in the Council.<sup>152</sup> Thus, despite legal limitations, the Parliament's role in law-making and law-shaping extends beyond what the Treaties explicitly outline, with notable differences across specific CSDP files. The overall added value of the EP in this regard was described as engaging the public through hearings, involving diverse perspectives, and exercising both ex ante and ex post scrutiny over the legislative process.<sup>153</sup>

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<sup>148</sup> The Commission, which is also entitled to request ECJ Opinions under Art. 218 para. 11 TFEU, did so in ECJ, *Opinion 1/91 EEA I*, opinion of 14 December 1991, ECLI:EU:C:1991:490 and ECJ, *Opinion 1/92 EEA II*, opinion of 10 April 1992, ECLI:EU:C:1992:189; Kleizen (n. 47), 13-15.

<sup>149</sup> Kleizen (n. 47), 17.

<sup>150</sup> Respondents # 9 and 10.

<sup>151</sup> Respondents # 1, 2 and 3.

<sup>152</sup> Respondent # 10.

<sup>153</sup> Respondents # 2, 9 and 10.

## 5. Budgetary Powers

The EP's budgetary prerogatives serve as a crucial avenue for overseeing EU affairs, including those related to CSDP. In essence, the EP's involvement is a standard requirement whenever EU funds are spent, and this applies equally to CSDP activities. In this context, it is important to distinguish between scrutiny and actual parliamentary control: budgetary prerogatives grant the EP the ability to oversee the broader financial aspects of EU policies without necessarily shaping specific policy decisions. The EP wields various budget-related powers, including *ex post* control rights (Art. 318 TFEU), the formulation of observations on the basis of which the Commission must act (Art. 319 TFEU), and the right to veto the budget altogether (Art. 314 para. 7 TFEU). These powers have been previously utilised by the EP to exert influence in policy areas where primary law does not inherently provide for such parliamentary involvement, as observed in the CFSP realm, for instance.<sup>154</sup> However, it is important to note that the EP's actual budgetary competences in CSDP remain confined to specific areas, which we will explore in the subsequent analysis.

Indeed, the EP's impact over and control of financial resources for the CSDP remains limited, except in the case of funding for civilian missions and administrative CSDP activities. To date, SEDE's status has not included voting on budget-related issues, so the subcommittee's involvement, if any, was typically channelled through internal and informal channels.<sup>155</sup> This often relied heavily on the willingness of the rapporteur from the lead committee responsible for budgets (BUDG).<sup>156</sup> Additionally, the Joint Consultation Meetings, to which the EP is entitled by virtue of the IIA on budgetary matters, are not used to their full potential, as their focus tends to shift towards discussing current affairs.<sup>157</sup>

Civilian missions constitute a branch of CSDP operational activity where the EP can exercise its budgetary powers to their full extent, as both administrative costs (Art. 41 para. 1 TEU) and operating expenditure (Art. 41 para. 2 TEU) are to be charged to the Union's budget.<sup>158</sup> However, it is

<sup>154</sup> For instance, by the EP's threat to veto the budget in 2010 until a draft decision on the EEAS was presented which was more in line with Parliament's demands.

<sup>155</sup> Respondent # 6.

<sup>156</sup> Respondent # 1.

<sup>157</sup> Respondent # 7.

<sup>158</sup> For a concise overview of the incremental integration, institutional setting, and operational realities of EU civilian missions, see Koutrakos (n. 11), 131-182; Ana E. Juncos, 'Civilian CSDP Missions: "The Good, the Bad and the Ugly" in: Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar 2018), 89-110.

judicious to note that significant financial contributions, such as those for seconded personnel, come from Member States, making it challenging to achieve a comprehensive overview of the precise composition of the funding stream.<sup>159</sup> The 2020 IIA on budgetary matters provides a more detailed procedure for civilian missions,<sup>160</sup> stating that operating costs, accounted for in the CFSP budget section, must be agreed upon by the EP and the Council annually.<sup>161</sup> Although the IIA does not explicitly mention CSDP expenditure, it does specify that both ‘single major missions’ and ‘other missions’ shall be distributed to individual articles within the CFSP budget chapter.<sup>162</sup> Furthermore, the IIA grants the EP a minimum of five Joint Consultation Meetings with the HR annually.<sup>163</sup> Additionally, the Commission is obligated to furnish information regarding the implementation of CFSP (including CSDP) actions and financial forecasts for the remainder of the financial year to both the EP and the Council on a quarterly basis.<sup>164</sup> The IIA also mandates that the HR inform the European Parliament ‘immediately, and in any event, no later than five working days’ after the Council adopts a ‘decision in the field of the CFSP entailing expenditure’.<sup>165</sup> This grants MEPs the right to receive a financial statement and to stay informed about Council decisions with financial implications. Moreover, the HR is required to ‘consult the European Parliament on a forward-looking document, [...], setting out the main aspects and basic choices of the CFSP, including the financial implications’,<sup>166</sup> offering insight into future budgetary developments.

In contrast, military operations are not financed through the Union’s budget, hence offering very limited opportunities for budgetary oversight by the EP.<sup>167</sup> Given that CFSP expenditure for operational activities cannot

<sup>159</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 156; Esther Barbé and Anna Herranz Surrallés, ‘The Power and Practice of the European Parliament in Security Policies’ in: Dirk Peters, Wolfgang Wagner and Nicole Deitelhoff (eds), *The Parliamentary Control of European Security Policy* (ARENA 2008), 77–108.

<sup>160</sup> Interinstitutional Agreement on budgetary discipline (2020).

<sup>161</sup> Para. 23, Interinstitutional Agreement on budgetary discipline (2020).

<sup>162</sup> Para. 23, Interinstitutional Agreement on budgetary discipline (2020). The budget appropriations for civilian missions are listed under a special line in chapter 19.03 of the EU budget.

<sup>163</sup> Para. 24, Interinstitutional Agreement on budgetary discipline (2020).

<sup>164</sup> Para. 24, Interinstitutional Agreement on budgetary discipline (2020).

<sup>165</sup> Para. 24, Interinstitutional Agreement on budgetary discipline (2020).

<sup>166</sup> Para. 24, Interinstitutional Agreement on budgetary discipline (2020).

<sup>167</sup> For a concise overview of the incremental integration, administrative framework, capabilities, financing, and operational realities of EU military activities, see Kourtrakos (n. 11), 101–132; Daniel Fioott, ‘Military CSDP Operations: Strategy, Financing, Effectiveness’ in: Steven Blockmans and Panos Kourtrakos (eds), *Research Handbook on the EU’s Common Foreign and Security Policy* (Edward Elgar 2018), 111–131.

be charged to the Union budget if it has military or defence (hence CSDP) implications, but must be paid for by Member States according to Art. 41 para. 2 TEU, a specific off-budget mechanism funded by national contributions was put in place to finance common costs related to EU military operations. Originally set up in 2004 as the Athena mechanism,<sup>168</sup> the EPF replaced the scheme in 2021.<sup>169</sup> Neither the EPF nor its predecessor Athena do contain any explicit rights for the EP to be informed or consulted, making it dependent on information provided by the HR and the EEAS to SEDE.

The situation differs somewhat concerning PESCO. Although PESCO is generally conducted at the level of the Council and operates within the intergovernmental framework outlined in Art. 46 TEU without EP input, this changes when PESCO projects receive financial support through the EDF.<sup>170</sup> Indeed, the EDF forms part of the EU budget administered by the Commission (through DG DEFIS) and thus subject to parliamentary scrutiny. The Regulation establishing the EDF even explicitly states that actions developed within a PESCO context may benefit from an additional 10 per cent funding increase.<sup>171</sup> The extent to which this connection to the EU budget will practically enable the EP to exercise its democratic oversight remains uncertain. This uncertainty is due, in part, to the fact that the implementation of these projects often relies on classified information that the EP cannot access.<sup>172</sup>

Similarly, the EDA, which facilitates the development of defence capabilities that underpin the CSDP, depends on contributions from participating Member States and is therefore not subject to the standard parliamentary budgetary competences. Yet, once EDF funds come into play, this situation changes, and the ordinary budgetary mechanisms apply, including both *ex ante* and *ex post* control through the EP.<sup>173</sup>

Regarding the EPF, the influence of the EP and SEDE is limited due to its intergovernmental nature.<sup>174</sup> However, the evolving integrative tendencies in CSDP funding have already increased executive branch involvement at the

<sup>168</sup> Council Decision (CFSP) 2004/197 of 23 February 2004 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications, OJ 2004 L 63/68.

<sup>169</sup> Council Decision 2021/509.

<sup>170</sup> See Blockmans, EU's Modular Approach (n. 31).

<sup>171</sup> Art. 13 para. 3 lit. a) Regulation 2021/697/EU.

<sup>172</sup> Respondent # 8.

<sup>173</sup> Art. 14 para. 9 Council Decision (EU) 2016/1353 of 4 August 2016 concerning the financial rules of the European Defence Agency and repealing Decision 2007/643/CFSP, OJ 2016 L 219/98.

<sup>174</sup> Respondents # 2, 6, 9 and 10.

supranational level.<sup>175</sup> This is particularly noticeable in measures assisting third states and international or regional organisations, which are adopted pursuant to Art. 28 and Art. 30 TEU, and intend to either strengthen the military and defence capacities or support the military aspects of peace operations. Notably, the allocation of EUR 11.1 billion from the EPF to support Ukraine, including the delivery of lethal weapons and ammunition, marks a ‘watershed’ in the evolution of the EU’s strategic responsibility for the return of peace to the European continent.<sup>176</sup> The HR is responsible for the implementation of these support measures,<sup>177</sup> as well as for appointing an administrator for this purpose.<sup>178</sup> This enhanced role within the EPF framework may, in light of the advisory competences that the EP enjoys in relation to the HR by virtue of Art. 36 TEU, create a spill-over effect on the amount and type of information with CSDP relevance communicated to Parliament.

Despite the substantial EPF funds earmarked for Ukraine and other projects, there have been no clear signs of increased parliamentary participation, either formal or informal, except for a speech by the HR in the plenary, where he suggested that the EP advocate for including such spending in the EU’s regular annual budget.<sup>179</sup> In terms of adjusting the EP’s budgetary role in defence spending, the 2017 Gahler/González Pons Report<sup>180</sup> had already recommended that EDA and PESCO be treated as unique cases, similar to the EEAS, and funded through a dedicated section of the Union budget rather than relying on Member State contributions. The legal argument developed by the report posited that expenditure resulting from decisions within the CSDP, particularly those under Art. 45 para. 2 and Art. 46 para. 2 TEU, should be financed through the EU budget,<sup>181</sup> necessitating amendments to the Financial Regulation.<sup>182</sup> There also appears to be growing motivation within the Commission to increasingly cover certain defence-related expenses using the EU budget,<sup>183</sup> al-

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<sup>175</sup> For a more detailed analysis of this shift, see Section II. 2.

<sup>176</sup> See Dylan Macchiarini Crosson, ‘The European Peace Facility Supporting Ukraine and Bolstering the EU’s Strategic Responsibility’, CEPS in Brief, 7 March 2022.

<sup>177</sup> Art. 10 Council Decision 2021/509, OJ 2021 L102/14.

<sup>178</sup> Art. 12 Council Decision 2021/509.

<sup>179</sup> Josep Borrell, ‘Russian Aggression against Ukraine, Speech of the HR/VP at the EP Plenary, (Brussels 1 March 2022) <Russian aggression against Ukraine: Speech by High Representative/Vice-President Josep Borrell at the EP plenary | EEAS (europa.eu)>, last access 20 October 2024.

<sup>180</sup> European Parliament Resolution (2015/2343(INI)).

<sup>181</sup> Para. 4, European Parliament Resolution (2015/2343(INI)).

<sup>182</sup> Para. 5, European Parliament Resolution (2015/2343(INI)).

<sup>183</sup> Pt. 4 of the Annex, Council Document 7632/23 of 20 March 2023, ‘Delivery and joint procurement of ammunition for Ukraine’, approved by the Council on 20 March 2023.

though the (long-term) feasibility and specifics of this approach remain unclear.<sup>184</sup>

This inevitably leads to questions about the budgetary competence of the EP for defence industrial projects and programmes unfolding under the Single Market umbrella. Take, for instance, the EDF.<sup>185</sup> The EP, being a co-legislator in the regulation that established the EDF, automatically enjoys a higher level of involvement than for acts set on a CSDP legal basis. However, this heightened involvement is primarily limited to the initial adoption of the EDF regulation, which is grounded in Art. 173 para. 3, Art. 182 para. 4, Art. 183, and Art. 188 para. 2 TFEU, making it subject to the ordinary legislative procedure where the EP enjoys budgetary and legislative powers that it lacks in CSDP matters. Despite the EP's far-reaching budgetary powers in the realm of the Single Market, it cannot automatically assume the same level of authority within the EDF. Budgetary dynamics in the CSDP field do not necessarily change because of the fact that the Commission created a new DG dealing with defence topics using a legal basis enshrined in the TFEU.<sup>186</sup> The EDF regulation itself places constraints on the EP's role, requiring the Commission to monitor the Fund's implementation and provide annual updates to both the EP and the Council, including the results of Commission evaluations.<sup>187</sup> For adopting the EDF work programme and grant award decisions, the Commission employs implementing acts under Art. 291 TFEU, not delegated acts (Art. 290 TFEU), which leaves the EP outside the operational decision-making process of EDF implementation.<sup>188</sup> The EP's influence over EDF implementation primarily relies on its use of limited information rights, rather than granting it the competence to directly intervene in budget decisions related to Fund management. Nonetheless, under both the Treaties (*lex generalis*) and the EDF regulation (*lex specialis*), the EP possesses competencies that extend beyond its role as a co-legislator. This notably includes the right to monitor EDF implementation through the information provided by the Commission.<sup>189</sup> Therefore, the EP's involvement in the EDF framework can

<sup>184</sup> Respondents # 8, 9 and 10.

<sup>185</sup> Regulation 2021/697/EU.

<sup>186</sup> Art. 28 para. 3 Regulation 2021/697/EU; Daniel Fiott, *The Scrutiny of the European Defence Fund by the European Parliament and National Parliaments EP/EXPO/B/SEDE/FWC/2017-01/02* (European Parliament 2019).

<sup>187</sup> Art. 29 para. 4 Regulation 2021/697/EU.

<sup>188</sup> Frédéric Mauro, Edouard Simon and Isabel Xavier, *Review of the Preparatory Action on Defence Research (PADR) and European Defence Industrial Development Programme (EDIDP): Lessons for the Implementation of the European Defence Fund (EDF)*, EP/EXPO/SEDE/FWC/2019-01/LOT4/R/01 (European Parliament 2021), 16.

<sup>189</sup> Mauro, Simon and Xavier (n. 188), 75.

be understood in two phases: a high level of involvement during the initial drafting phase of the EDF regulation, determining the Fund's alignment, followed by five years of implementation where its role is largely that of an informed spectator.<sup>190</sup> As EDIRPA follows the same blueprint, this two-phased scheme of parliamentary involvement would apply to this defence industrial initiative as well.<sup>191</sup> Surprisingly, respondents indicated that the establishment of the EDF did not significantly enhance the involvement of the subcommittee on defence (SEDE), despite the EP's institutional success in shaping the EDF based on its formal co-legislative powers.<sup>192</sup> While discussions on the overall budget and legislative framework of the EDF took place in the Parliament, SEDE-related individuals perceived the debate as lacking in-depth exploration of specific details, resulting in limited progress for the subcommittee in terms of influence over European security and defence matters.<sup>193</sup> SEDE's informal role in the EDF negotiations (even if it was limited) was attributed to personal connections with the rapporteur of the leading ITRE committee, underscoring the significance of individual relationships among key stakeholders.<sup>194</sup> Furthermore, the limited discussion of the EDF within the context of the Multiannual financial framework (MFF) and its significant reduction during MFF negotiations led interviewees to believe that, in practice, the collegial interest of the EP in security and defence had been relatively limited at that time (that is prior to Russia's aggression against Ukraine).<sup>195</sup>

This suggests that even when the EP is engaged in defence (industrial) matters through the ordinary legislative procedure, it may not necessarily involve parliamentary committees equipped with relevant field-related competences. This observation implies that the internal structure of the Parliament may not be optimised to exercise the highest level of democratic scrutiny. In light of this, some respondents emphasised the need to revise the EP's Rules of Procedure to provide clearer definitions of prerogatives, as the current setup appears to lack coherence and has a diminished impact.<sup>196</sup> An agreement in the Conference of Presidents, the EP's political body deciding on the responsibilities of committees, was identified as one possible way of improving this, establishing that SEDE was to be in charge of budgetary matters.

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<sup>190</sup> This point was also made by respondent # 8.

<sup>191</sup> Respondent # 8.

<sup>192</sup> Respondents # 2 and 6.

<sup>193</sup> Respondents # 1 and 6.

<sup>194</sup> Respondents # 1 and 6.

<sup>195</sup> Respondents # 1 and 6.

<sup>196</sup> Respondents # 1, 5 and 6.

In the context of the EDIRPA, flexibility in adjusting competences could be noted. According to Rule 58 of the EP's Rules of Procedure regarding joint committee procedures, the Conference of Presidents decided to entrust SEDE with a leading role in this legislative dossier, in collaboration with ITRE and in association with IMCO (Rule 57 of the Rules of Procedure), even though the final vote took place in AFET. Another proposed avenue, widely discussed in EP debates and reports, is the elevation of SEDE to a full-fledged committee alongside AFET, resulting in improved transparency and accountability. Rule 206 of the EP's Rules of Procedure allows for the establishment of such standing committees through a proposal from the Conference of Presidents, which could also confer budgetary powers upon them. Interestingly, a committee reform was reportedly under way at the European Parliament at the end of the previous term but failed to materialise. If and when endorsed, this would lead to a full-fledged standing committee on security and defence, which would also cover defence industrial dossiers and foreign interference matters.<sup>197</sup> At the time of writing, the EP had not yet reached a decision on the matter after months of internal debates.

As this section showed and the following table summarises, the EP fulfils manifold functions in the CSDP realm, both in law and in practice, each affording the institution a varying degree of *ex ante* and *ex post* control, as well as involvement in decision-making and policy implementation. More precisely, the EP holds a supervisory and deliberative mandate, as well as an advisory function. The institution moreover exercises budgetary powers with respect to EU finances spent on CSDP activities and can act as law-shaper. The conferral of these competences occurs mainly 'indirectly'; that is, either incidentally by provisions governing both the CFSP and the CSDP, or inherently by powers which the EP holds more generally. Importantly, the effective exercise of these functions is contingent upon the respect of the institution's enshrined right to information.

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<sup>197</sup> Eleonora Vasques, '*LEAK: European Parliament Gets Ready to Shake up Internal Committee Structure*', (Euractiv 17 October 2023), <<https://www.euractiv.com/section/eu-reforms/news/leak-european-parliament-gets-ready-to-shake-up-internal-committee-structure/>>, last access 15 October 2024.

Law	Practice
<b>Right to information</b>	<ul style="list-style-type: none"> <li>- Duty of HR to regularly update the EP (Art. 36 TEU)</li> <li>- Regular encounters and exchanges of views (Declaration on Political Accountability, 2010)</li> <li>- Access to classified information (IIA on sensitive information in the CSDP realm, 2002)</li> <li>- Required updates regarding negotiation of international agreements (Art. 218(10) TFEU)</li> </ul>
<b>Supervisory and deliberative mandate</b>	<ul style="list-style-type: none"> <li>- Bi-annual deliberations on CFSP/CSDP (Art. 36 TEU)</li> <li>- Parliamentary questions (Art. 36 TEU)</li> <li>- Recommendations (Art. 36 TEU)</li> <li>- Bi-annual multi-level exchange on CFSP/CSDP (IPC)</li> </ul>
<b>Advisory function</b>	<ul style="list-style-type: none"> <li>- Views to be taken into consideration by HR (Art. 36 TEU)</li> </ul>
<b>Law-making and law-shaping role</b>	<ul style="list-style-type: none"> <li>- No formal involvement in the adoption of secondary law (e.g. sanctions) or treaty making</li> <li>- Views to be taken into consideration by HR (Art. 36 TEU)</li> </ul>
<b>Budgetary powers</b>	<ul style="list-style-type: none"> <li>- Ex post control rights (Art. 318 TFEU)</li> <li>- Formulation of observations on the basis of which the Commission must act (Art. 319 TFEU)</li> <li>- Right to veto the budget altogether (Art. 314(7) TFEU)</li> <li>- Oversight of CSDP expenses charged to the EU budget (Art. 41(1)-(2) TEU &amp; IIA on budgetary matters, 2020)</li> </ul>

Table 1. The multiple roles of the EP in CSDP

## IV. Democratic Scrutiny Over Security and Defence: Navigating the Intersection of Principles and Realities

With a view to complementing the above study of existing legal arrangements and practice, this Section will put the different roles the EP plays in relation to CSDP dossiers in its wider constitutional law and policy context. As previously mentioned, CSDP is a burgeoning EU policy field – not least since the Russian invasion of Ukraine. The EP is situated somewhat tangentially in the concrete design and implementation of multiplying CFSP/CSDP initiatives and activities: it acts as an only partially informed, but nonetheless vocal spectator. Our argument is not to modify this setting and confer the EP more or different prerogatives, for instance in respect of budgetary or regulatory matters. Rather, we want to demonstrate why a CSDP less elusive to parliamentary control would not only be logical in view of relevant (constitutional) principles and jurisprudential developments, but also necessary from a broader governance perspective. Key in this respect is a more parliamentary-friendly reading of existing provisions circling around the timely and comprehensive provision of information – as information is the very prerequisite for any form of political accountability.<sup>198</sup> This holds true in particular to the institution's supervisory and deliberative mandate as well as to its advisory function. How can the institution plausibly exercise democratically warranted political control – one of its core tasks as set out in Art. 14 para. 1 TEU – if it is not (sufficiently) informed about what is actually happening? To make our point, we will first flesh out the relevant constitutional framework, then discuss jurisprudential developments and, finally, outline which problems persist and how improvements à *droit constant* could be implemented.

### 1. No EU External Action Without Parliamentary Involvement

Let us start by outlining the primary law provisions that define the values, objectives, and principles guiding the EU's security and defence policy, that integrally forms part of the CFSP. Art. 2 TEU articulates the foundational values upon which the EU is built. These values include the 'respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities'.

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<sup>198</sup> Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework', *ELJ* 13 (2007), 447-468; Richard Mulgan, "Accountability": An Ever-Expanding Concept?, *Pub. Adm.* 78 (2000), 555-573.

As our analysis focuses on parliamentary oversight, it is judicious to stress that the operationalisation of democracy in the EU context is fleshed out in Art. 10 TEU. The first paragraph of Art. 10 TEU emphasises that ‘the functioning of the Union shall be founded on representative democracy’. Furthermore, the second paragraph of said Article underscores the paramount role of the EP, the institution that directly represents EU citizens at the EU level, while national governments find their representation in the European Council and Council. Although the EU’s multi-level democratic legitimacy and accountability structure is intricate,<sup>199</sup> one can say that representative democracy constitutes a core value of the EU edifice which, at the Union level, is to a considerable degree institutionalised in the EP.

Primary law also defines foundational principles guiding EU foreign affairs.<sup>200</sup> Art. 21 para. 1 TEU enumerates these guiding principles, with democracy ranking first.<sup>201</sup> The promotion of democracy is likewise an objective of external action, as specified in Art. 21 para. 2 lit. b) TEU.<sup>202</sup> Crucially, Art. 21 para. 3 TEU requires the EU to respect the very principles and objectives it seeks to pursue internationally when developing and implementing the different strands of the EU’s external action. Hence, this primary law provision establishes an ‘obligation of conduct’, according to which consistent standards apply to both policy *goals* and policy *processes*.<sup>203</sup> In other words, the provision at hand entails both procedural and substantive requirements for EU external action.<sup>204</sup> These requirements extend to the CFSP and the CSDP as well. Indeed, Art. 24 para. 2 TEU dictates that the CFSP operates within the framework of the principles and objectives guiding EU external action, a mandate that extends to the CSDP, which forms an integral part of the CFSP (Art. 42 para. 1 TEU). Consequently, (representative) democracy constitutes a key reference for both the content and conduct of

<sup>199</sup> For a thorough discussion of the Union’s democratic legitimisation structures, see Jelena von Achenbach, *Demokratische Gesetzgebung in der Europäischen Union* (Springer 2014), 302-326.

<sup>200</sup> For a definition and discussion of these founding (or ‘constitutional’) principles, see Armin von Bogdandy, ‘Founding Principles of EU Law: A Theoretical and Doctrinal Sketch’, *ELJ* 16 (2010), 95-111.

<sup>201</sup> It is followed by the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

<sup>202</sup> In this context, it is also worth mentioning Art. 3 para. 5 TEU that circumscribes the EU’s foreign affairs aims which, essentially, consist in upholding and promoting the EU’s values and interest and contribute to the protection of its citizens.

<sup>203</sup> Moser, *Accountability in EU Security and Defence* (n. 9), 77-78, 80.

<sup>204</sup> Ramses Wessel, ‘General Principles in EU Common Foreign and Security Policy’ in: Katja Ziegler, Päivi Neuvonen and Violetta Moreno-Lax (eds), *Research Handbook on General Principles in EU Law. Constructing Legal Orders in Europe* (Edward Elgar 2022), 607-624.

EU foreign affairs – the precise contours remaining vague. Yet, there are a number of pertinent EU law principles,<sup>205</sup> which can help us to better understand these contours.

Despite the legal and procedural distinctiveness of the CFSP and the CSDP, both policies form part of the EU's legal order. This order comprises a range of organising principles that originate from primary law and ECJ jurisprudence,<sup>206</sup> in addition to the abovementioned founding or constitutional principle of democracy – or to use the formulation of the ECJ, the fundamental democratic principle. These organising principles, which are designed to regulate the interactions among different EU institutions and national actors in external relations, comprise sincere and loyal cooperation, conferral, institutional balance, mutual solidarity, subsidiarity, autonomy, consistency (coherence), transparency, and effectiveness.<sup>207</sup> Of particular relevance, the principles of sincere and loyal cooperation, in conjunction with the principle of institutional balance, will be highlighted in the subsequent section, discussing relevant jurisprudential developments.

For the sake of completeness, it is worth noting that democracy is listed as a founding 'value' of the Union, on the one hand, and as a guiding 'principle', as well as a core 'objective' of EU external action, on the other. Generally, values and objectives are somewhat indeterminate, although providing essential orientation points for policymakers. They are given concrete expression in principles, which are generally more defined and can generate specific legal rules and obligations enforceable by a court.<sup>208</sup> Yet, in relation to CFSP/CSDP, values and principles seem to be used interchangeable (by the ECJ), suggesting that the semantic variation across treaty provisions does not make a substantial legal difference.<sup>209</sup> Be this as it may: democracy matters in the EU law and governance edifice – and CSDP is no exception here.

<sup>205</sup> There is a rich corpus of literature discussing the structural and procedural principles underpinning EU external action. For an overview see Wessel (n. 204).

<sup>206</sup> Different scholars have discussed those principles under different headings, including structural, relational, systemic, or procedural. See, for instance, Marise Cremona, 'Structural Principles and Their Role in EU External Relations Law', *Current Legal Probs* 69 (2016), 35-66; Wessel (n. 204). For the sake of clarity, we will refer to all these principles as *organising principles* (in contrast to *founding principles*).

<sup>207</sup> Cremona, 'Structural Principles' (n. 205).

<sup>208</sup> This argument was made in ECJ, *Hungary v. European Parliament and Council of the European Union*, judgment of 16 February 2022, case no. C-156/21, ECLI:EU:C:2022:97, para. 232. In this line of thought, see further von Bogdandy (n. 200); Cremona, 'Structural Principles' (n. 205), 47-48.

<sup>209</sup> See, *inter alia*, ECJ, *H v. Council and others*, judgment of 19 July 2016, case no. C-455/14 P, ECLI:EU:C:2016:569, para. 41; Advocate General Čapeta, *KS & KD v. Council and others*, opinion of 23 November 2023, case no. Joined Cases C-29/22 P and C-44/22 P, ECLI:EU:C:2023:901, para. 71.

Before we delve into jurisprudential developments, it is important to mention an important caveat here. A closer examination of the constitutional arrangements and traditions of Member States regarding parliamentary prerogatives in foreign policy, particularly in security and defence matters, reveals that democratic scrutiny tends to be limited and often focused on procedural aspects rather than substance.<sup>210</sup> Some national parliaments wield a high degree of involvement, even exercising *ex ante* decisional control over their executives in the Council (e.g. Finland, Sweden), while others have no influence on CSDP due to the exclusion of their scrutiny (e.g. Greece, Romania). Yet, others enjoy at least some say over EU security and defence matters, often involving approval of military deployments (e.g. Germany, Spain), whereas certain national parliaments play a consultative and debating role (e.g. France, Poland), thus having relatively limited involvement in CSDP affairs.<sup>211</sup> So while, on the one hand, the democratic principle cannot be absent from CFSP/CSDP matters, it cannot be construed and exist in isolation from national parliamentary realities and offer a (partly radically) different democracy standard. In other words, striking a balance between the EU's normative frame of reference and existing constitutional arrangements and traditions in Member States is essential to navigate this complex landscape effectively.

## 2. No Parliamentary Scrutiny Without the Provision of Information

That said, let us now turn our attention to the case law that helps to shed light on the importance of democratic scrutiny within the framework of the CFSP and, by extension, the CSDP. Although a specific judgement of the Court of Justice of the EU addressing the EP's role in the CSDP is so far lacking, we can draw insights from pertinent ECJ jurisprudence concerning the EP's engagement in CFSP matters more broadly. This approach enables us to discern key elements and, by means of analogy, apply them to the context of the CSDP.

Two notable ECJ judgements, namely the *Mauritius Agreement*<sup>212</sup> and *Tanzania Agreement*,<sup>213</sup> serve as crucial reference points as they both high-

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<sup>210</sup> Born and others (n. 108).

<sup>211</sup> For more details on the matter, see Moser, *Accountability in EU Security and Defence* (n. 9), 137–148.

<sup>212</sup> ECJ, *Mauritius Agreement* (n. 61).

<sup>213</sup> ECJ, *Tanzania Agreement* (n. 61).

light the importance of supranational democratic scrutiny of the CFSP. These cases revolved around the Council's conclusion of international agreements within the context of the EU-led anti-piracy operation Atalanta in the Gulf of Aden, one with Mauritius in 2011<sup>214</sup> and the other with Tanzania in 2014.<sup>215</sup> These judgements, rendered in 2014 and 2016 respectively, primarily centred on clarifying the EP's information rights as stipulated in Art. 218 para. 10 TFEU, which mandates that the 'European Parliament shall be immediately and fully informed [by the Council] at all stages of the procedure'. The Court of Justice held that Art. 218 para. 10 TFEU contained an information requirement that constituted an 'essential procedural requirement' – including for the conclusion of agreements exclusively relating to CFSP matters.<sup>216</sup> In both instances, the Court found that the Council had violated this essential procedural requirement by failing to promptly and comprehensively inform the EP at all stages of the procedure.

It is worthwhile to delve deeper into the arguments pertaining to democratic scrutiny presented in this context. In its 2014 *Mauritius Agreement* ruling, the Court underscored the significance of democratic scrutiny concerning CFSP matters. It emphasised that the EP's 'involvement in the decision-making process [was] the reflection, at EU level, of the fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly'.<sup>217</sup> Furthermore, the Court explained that the 'Treaty of Lisbon has even enhanced the importance of that rule [the operationalisation of the democratic principle via a supranational representative assembly] in the treaty system', and that it could not be inferred from Treaty law that 'the Parliament has no right of scrutiny in respect of that EU policy' (i. e. CFSP).<sup>218</sup> On the contrary, the Court argued that precisely because primary rules accord the EP a limited role in CFSP, the provision of information is indispensable for the institution to be 'in a position to exercise democratic scrutiny of the European Union's external action and, more specifically, to verify that its powers are respected

<sup>214</sup> Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer, OJ 2011 L 254/1.

<sup>215</sup> Council Decision 2014/198/CFSP of 10 March 2014 on the signing and conclusion of the Agreement between the European Union and the United Republic of Tanzania on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the United Republic of Tanzania, OJ 2014 L 108/1.

<sup>216</sup> ECJ, *Mauritius Agreement* (n. 61).

<sup>217</sup> ECJ, *Mauritius Agreement* (n. 61), 81.

<sup>218</sup> ECJ, *Mauritius Agreement* (n. 61), 82, 84.

precisely in consequence of the choice of legal basis for a decision concluding an agreement'.<sup>219</sup>

Advocate General Kokott, in her opinion on the *Tanzania* case in 2015, echoed a similar sentiment. She reasoned that the 'very extensive duty for the Council to provide information' under Art. 218 para. 10 TFEU was 'a reflection of the fundamental democratic principle applying to *any* decision-making process at EU level [see Art. 2 TEU], including in the field of foreign and security policy'.<sup>220</sup> Furthermore, she argued that 'democratic control is not limited to the exercise of formal rights to have a say', highlighting that the purpose of informing the Parliament extends beyond mere preparation for exercising such rights.<sup>221</sup> Rather, information leads to enhanced transparency which, in turn, has an inherent value in the context of the EU's fundamental democratic principle.<sup>222</sup> According to Advocate General Kokott, timely and comprehensive information provision is a natural consequence of the democratic principle, as parliamentary scrutiny is only viable when the EP is adequately informed.<sup>223</sup> This reasoning aligns with both the *Mauritius Agreement* and *Tanzania Agreement* judgements of the Court. In its 2016 *Tanzania Agreement decision*, the Court reaffirmed its earlier assessment and elucidated that timely and comprehensive information sharing between the Council and the EP during the conclusion of international agreements serves not only to enable democratic control of the EU's external action but also as a means to ensure coherence and consistency.<sup>224</sup>

With the above jurisprudence in mind and in light of treaty interpretation methods,<sup>225</sup> we can derive some overarching features of the EP's role in CSDP according to primary law. First, we can infer a broad application of the democratic principle across EU policies. This means that the EP's democratic control extends to the distinctive policy fields of the CFSP and CSDP. Secondly, although the EP's democratic scrutiny of CSDP matters is more constrained

<sup>219</sup> ECJ, *Mauritius Agreement* (n. 61), 80. A similar reflection is developed in ECJ, *Mauritius Agreement* (n. 61), 83-86.

<sup>220</sup> Advocate General Kokott, *Tanzania Agreement*, opinion of 28 October 2015, case no. C-263/14, ECLI:EU:C:2015:729, para. 76.

<sup>221</sup> Kokott, *Tanzania Agreement* (n. 220), 78.

<sup>222</sup> Kokott, *Tanzania Agreement* (n. 220), 78.

<sup>223</sup> Kokott, *Tanzania Agreement* (n. 220), 79.

<sup>224</sup> ECJ, *Tanzania Agreement* (n. 61), paras 71-72. See also Soledad R Sánchez-Tabernero, 'The Choice of Legal Basis and the Principle of Consistency in the Procedure for Conclusion of International Agreements in CFSP Contexts: Parliament v. Council (Pirate-Transfer Agreement with Tanzania)', *CML Rev.* 54 (2017), 899-920.

<sup>225</sup> See Art. 31 Vienna Convention on the Law of Treaties of 23 May 1969, 1155 UNTS 331; with regard to the interpretation of EU law, see Jan Komárek, 'Legal Reasoning in EU Law' in: Damian Chalmers and Anthony Arnulf (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015), 2-21.

compared to other policy areas where it acts as a co-legislator, it is implausible to construe it so narrowly as to further limit or undermine its already limited democratic role. In other words, the formally limited rights of the EP in the CFSP/CSDP context have to be taken seriously to live up to the principles of democracy, transparency, sincere cooperation, institutional balance, and coherence. Thirdly, we can infer that the provision of timely and comprehensive information to the EP holds paramount importance as it forms the basis for the EP to exercise its democratic scrutiny effectively, which is warranted by the principle of institutional balance.<sup>226</sup> Yet, while few challenges exist in respect of the fulfilment of the institution's inherent rights in this policy field (i. e. budgetary and co-decision prerogatives stemming from non-CFSP policies), informational asymmetries remain a major obstacle for the effective exercise of the EP's incidental competences,<sup>227</sup> hence impeding the institution to adequately fulfil its supervisory and deliberative mandate, and provide advisory input on CSDP dossiers. Against the backdrop of the CSDP's distinctively intergovernmental blueprint, this poses a problem to the separation of powers or, in EU parlance, the principle of institutional balance.<sup>228</sup>

### 3. Problems and Solutions à *droit constant*

With a view to honouring the principle of the separation of powers, the core issue is hence about enabling the EP to fully play its role as a democratic watchdog who is somewhat tangentially involved in the concrete design and implementation of CFSP/CSDP activities. This brings us back to Art. 36 TEU, which outlines the information and consultation obligations of the HR vis-à-vis the EP. Given the fundamental principle of democracy along with the organising principles of transparency, sincere cooperation, institutional balance, and coherence – each of which also applies to the CSDP – it is logical to interpret this provision in a manner that is favourable to parliamentary involvement.

If EU law principles – particularly democracy, sincere cooperation, and coherence – are to be taken seriously, this implies that information regarding 'how the CSDP evolves' (as stipulated in Art. 36 TEU) must be shared by the HR with the EP frequently enough to enable the EP to adequately fulfil its

<sup>226</sup> For the inherent connection between the principle of institutional balance (also referred to as the separation of powers) and the principle of democracy in EU law and governance, see Advocate General Čapeta, *KS & KD v. Council and others* (n. 209), footnote 76.

<sup>227</sup> Myriam Goinard, 'The Growing Role of the European Parliament as an EU Foreign Policy Actor' in: Martin Westlake (ed.), *The European Union's New Foreign Policy* (Springer International Publishing 2020), 107-124 (113-114).

<sup>228</sup> See Advocate General Čapeta, *KS & KD v. Council and others* (n. 209), para. 114.

supervisory and deliberative roles, as well as its advisory function. While the Treaty does not specify the exact frequency of information provision or define precisely which developments warrant reporting, it is reasonable to assume that a yearly report may fall short of meeting the information requirement. The provision of information should adapt to the actual pace of developments in the CSDP realm, necessitating more frequent briefings, especially during times of crises. In essence, the more significant the developments, the more proactive the HR must be in keeping the EP informed about these matters.

Considering several EU law principles, the existing arrangements concerning the EP's right to information may necessitate several changes. First, the predominantly informal nature of many information-sharing arrangements can pose problems for the EP's ability to fulfil its multifaceted CSDP-related competences, whether supervisory, deliberative, advisory, related to law-making, or budgetary. Overreliance on informal arrangements risks instability, as a deterioration of work relations between the EEAS and the EP could result in the latter being deprived of essential information, thereby hindering its democratic oversight. Such a situation would undermine transparency and impede the EP's efforts to maintain institutional balance and coherence. Secondly, the limited scope of documents covered by the relevant IIA presents a challenge for democratic scrutiny. Renegotiating the IIA and improving the EP's position in line with the treaty principle of sincere cooperation and relevant ECJ jurisprudence (e. g. judgements concerning the EU's agreements with Tanzania and Mauritius) would be advisable. Thirdly, the provision of information to the EP about fundamentally intergovernmental bodies, projects, and initiatives under the CSDP umbrella – such as the EDA, PESCO, and the EPF – remains very limited. While this limitation is inherent to the governance scheme of these bodies, projects, and initiatives, it has broader implications because they significantly contribute to shaping the present and future of CSDP. The lack of information on these developments hampers the EP's role as a democratic watchdog, making it challenging for the institution to gauge whether the principles of institutional balance and coherence are being upheld. Fourthly, concerns about the confidentiality and proper handling of classified information within the EP aside, the restricted and fragmented access to classified information is at odds with the principles of transparency and sincere cooperation.

Given the vague contours and content of the EP's right to information, particularly under Art. 36 TEU and Art. 218 para. 10 TFEU, it may be prudent for Parliament to refer questions to the ECJ under Art. 263 TFEU and/or Art. 218 para. 11 TFEU in order to obtain clarity on the legal remit of its competences. The lack of the EP's involvement in shaping the Strategic Compass, a publicly available document expected to be implemented through

one or more Council decisions, could serve as a suitable basis for the Court's intervention.

Regarding the EP's supervisory and deliberative mandate, adherence to the democratic principle implies that the EP's involvement should not be confined solely to *ex post* assessments but should also encompass *ex ante* participation. Restricting the EP's involvement in discussions on matters that have already been decided would contradict the democratic ethos underpinning EU law, relegating the EP to the role of a well-informed spectator without a meaningful function in exercising its democratic scrutiny. Such a limitation would also run counter to the principles of sincere cooperation and institutional balance, as it would prevent the EP from adequately fulfilling its limited democratic scrutiny role as outlined in primary law.

In practice, another significant entry point for the EP lies in the initiatives established under the 2016 Action Plan on Defence.<sup>229</sup> These initiatives encompass an industrial defence package covering various aspects, including the industrial base, development capabilities, and research incentives.<sup>230</sup> To ensure coherence, the EP could demand a sufficient level of scrutiny over these initiatives, allowing it to monitor compliance with this EU law principle effectively.<sup>231</sup> This would practically grant the EP the means to request increased scrutiny over a range of security and defence initiatives, including the EDF,<sup>232</sup> as well as involvement in initiatives aiming to establish a 'European Defence Single Market', as these were part of the 2016 Action Plan on Defence. Importantly, the *Tanzania Agreement* judgement emphasised the importance of the principles of democracy and coherence in external action, stating that the information requirement laid out in the Treaties aims 'to ensure that the Parliament is in a position to exercise democratic control over the European Union's external action'<sup>233</sup> and that the 'European Union must ensure, in accordance with Art. 21 para. 3 TEU, consistency between the different areas of its external action', giving room to the interpretation that this could, in practice, go beyond the purely procedural requirements on negotiation and conclusion of international agreements. This opens a potential baseline against which current practice can be considered insufficient to meet the principle of coherence.<sup>234</sup>

<sup>229</sup> European Commission Communication *European Defence Action Plan* COM(2016) 950 final.

<sup>230</sup> Steven Blockmans, 'The 2016 "Winter Package" on European Security and Defence: Constitutional, Legal and Institutional Implications', PE 571.405 (European Parliament 2016).

<sup>231</sup> Respondent # 4.

<sup>232</sup> European Commission Communication *European Defence Action Plan* COM(2016) 950 final, 5-7.

<sup>233</sup> ECJ, *Tanzania Agreement* (n. 61), para. 71.

<sup>234</sup> Respondent # 4.

Finally, for the EP's advisory input regarding the 'main aspects' and 'basic choices' to contribute to the CSDP policy cycle in line with Art. 36 TEU to align with the democratic principle, it should not only be limited to ex post considerations but should also relate to ongoing decision-making and implementation processes. One is tempted to think that if the inverse scenario been intended by Treaty drafters – that is, if the EP was to simply give its opinion without this having any impact on the further course of action – Art. 36 TEU would not expressly have provided for the EP to be *regularly consulted* or for the HR to *ensure that the EP's views are to be duly taken into consideration*. Yet, despite this Treaty stipulation, it is noteworthy that the EP is predominantly asked to provide its views after decisions have been made or implemented, and there is no formalised or institutionalised process or follow-up mechanism to ensure that the EP's input is genuinely considered for current or future CSDP developments.

Moreover, primary law does not limit the thematic scope of the EP's advisory function. Although the institution is consulted on major developments only, these can encompass operational activities, strategic reflections, defence industrial initiatives, or any other CSDP-related topics. In light of the fundamental democratic principle that underpins EU decision-making – CFSP and CSDP being no exception in this regard – it is problematic that the formal involvement and impact of the EP on the CSDP policy cycle are currently severely restricted.

In conclusion, echoing the discussion on democratic scrutiny by Advocate General Kokott in her opinion in the *Tanzania Agreement* case, it is reasonable to assert that the EP has a legitimate expectation to informally influence the CSDP policy cycle at various stages, including planning, decision-making, implementation, and evaluation, even in cases where the EP lacks the formal competence(s) to do so.<sup>235</sup> This reading is, as has also stressed Advocate General Kokott's, consistent with primary law or Declaration 14 annexed to the Treaty of Lisbon, which specifies that 'the provisions covering the [CFSP] do not give new powers to the Commission to initiate decisions, nor do they increase the role of the European Parliament'. All of the founding and organising principles, which help delineate the exact extent of the EP's competences in relation to the CSDP, existed within the EU legal order before the Treaty of Lisbon came into force. Furthermore, during the drafting of the Treaty of Lisbon, which articulates a set of external action principles and objectives, including democracy, these principles and objectives were deliberately chosen to be grand and ambitious to reflect the EU's global

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<sup>235</sup> Kokott, *Tanzania Agreement* (n. 220), para. 79.

aspirations.<sup>236</sup> Consequently, it is not tenable to argue that a significantly lower democratic standard should apply to the CFSP/CSDP in principle.

However, one needs to be aware that more democratic scrutiny does not necessarily lead to more (defence) integration. That is because the EP's 'parliamentary capital' chiefly depends on a joint vision on the legitimacy and desirability of EU defence, which is all but a given.<sup>237</sup> Indeed, different political groupings across the EU and even within the EP hold strongly diverging views on the importance and utility of defence and, even if they are in favour of enhancing defence, they are not necessarily backing a higher degree of integration in these matters at the EU level.<sup>238</sup> In other words: expanding the EP's CSDP portfolio does not automatically lead to increased parliamentary support for EU defence integration. Hence, empowering the EP might be desirable from a governance point of view to ensure political accountability in a multi-level setup of EU defence. But it should not be mistaken for a miracle cure for overcoming the political hesitations and blockages that have prevented CSDP from unfolding its full potential over the last few decades.

## V. Conclusions

A legal positivist reading of EU law underscores the inherent limitations on parliamentary scrutiny within the CSDP realm. Operating within the intergovernmental governance structure of the CSDP, the EP plays a notably modest formal role compared to its involvement in other EU policy areas. Even when the institution participates as a co-legislator in defence-related developments under the Single Market umbrella, such as the European Defence Fund or the ongoing European Defence Industrial Programme, its competences remain constrained. While this outcome aligns with the expectations set by the 'specific' (i. e. intergovernmental) governance regime applied to the CFSP as a whole, it signifies a departure from the trajectory seen in other policy domains where the EP's functions have grown in tandem with

<sup>236</sup> Panos Kourakos, 'External Action: Common Commercial Policy, Common Foreign and Security Policy, Common Security and Defence Policy' in: Damian Chalmers and Anthony Arnulf (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015), 271-300.

<sup>237</sup> Herranz-Surrallés, 'Paradoxes' (n. 34).

<sup>238</sup> Wang and Moise (n. 2); Catarina Thomson and others, 'European Public Opinion: United in Supporting Ukraine, Divided on the Future of NATO', *Int'l Aff.* 99 (2023), 2485-2500; Tapio Raunio and Wolfgang Wagner, 'Party Politics or (Supra-)National Interest? External Relations Votes in the European Parliament', *Foreign Policy Analysis* 16 (2020), 547-564; Herranz-Surrallés (n. 34).

the expansion of existing or the conferral of new decision-making powers to the EU level.<sup>239</sup>

Indeed, a contextual and teleological approach to EU law suggests that a more expansive reading of the competence reach of the EP in CSDP would not only be logical but also necessary to accommodate the gradual expansion and, in certain aspects, even supranationalisation of EU defence policy. EU law principles, notably democracy and institutional balance, furnish the EP with invaluable normative tools to clarify the contours and content of its different CSDP competences, and to exercise them more effectively.

In essence, the tension between formal constraints and the evolving supranational character of EU defence matters not falling under the CSDP underscores why a dynamic interpretation of the EP's role is useful. The principles enshrined in EU law, especially those emphasising democratic accountability and maintaining institutional equilibrium, can guide the EP in navigating this delicate balance. The EP's role in CSDP is not static; it should evolve in tandem with the changing landscape of defence policy within the EU. By harnessing the normative power of EU law principles and advocating for a broader role, the EP can contribute meaningfully to the ongoing development and supranationalisation of EU defence, while respecting the intergovernmental framework inherent to the CFSP.

## Annex: List of Interview Partners

Respondent # 1, European Parliament, SEDE subcommittee (MEP office)

Respondent # 2, EEAS, CSDP and Crisis Response Division, SECDEF-POL.1

Respondent # 3, EEAS, CSDP and Crisis Response Division, SECDEF-POL.1

Respondent # 4, European Commission, Legal Service, External relations team

Respondent # 5, European Parliament, DG for Parliamentary Research Services

Respondent # 6, European Parliament, Budget Committee

Respondent # 7, EEAS, Parliamentary Affairs Division, SG.2

Respondent # 8, European Commission, DG DEFIS

Respondent # 9, European Parliament, AFET committee (secretariat)

Respondent # 10, Council of the EU, Council staff

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<sup>239</sup> Marianne Riddervold and Guri Rosén, 'Beyond Intergovernmental Cooperation: The Influence of the European Parliament and the Commission on EU Foreign and Security Policies', *European Foreign Affairs Review* 20 (2015), 399-417 (401).

